



California Fair Political Practices Commission

December 10, 1986

Mark A. Wasser
General Counsel
County Supervisors Association
of California
1100 K Street, #101
Sacramento, CA 95814-3941

Re: Your Request for Advice
Our File No. I-86-313

Dear Mr. Wasser:

This letter is sent in response to your request for informal advice on behalf of the County Supervisors Association of California (CSAC) regarding the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

You have asked whether an officer of an existing self-insurance joint powers agency would have a conflict of interest if he or she were appointed to serve on the board of directors of the Local Agency Self-Insurance Authority, a statewide agency which will administer a joint pooling agreement for the payment of tort liability or public liability losses.

CONCLUSION

An officer of an existing self-insurance joint powers agency would not have a conflict of interest under the Act merely by virtue of being appointed to the Local Agency Self-Insurance Authority. However, you should analyze whether or not such an appointment raises issues under the common law doctrine of incompatibility of public offices.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

You have indicated that some officers of self-insurance joint powers agencies are compensated. However, salary and reimbursement for expenses or per diem received from a state or local government agency do not constitute "income" within the meaning of the Act. (Section 82030(b)(2).) Accordingly, we do not believe that an officer of a self-insurance joint powers agency would be prohibited under the Act from participating in decisions of the Local Agency Self-Insurance Authority merely by virtue of the fact that he or she is an officer of a

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self-insurance joint powers agency. Of course, the official would still be prohibited from participating in any particular decision in which he or she had a financial interest.

You should also consider whether holding these two public offices creates problems under the common law doctrine of incompatibility of public offices. The Act does not deal with this subject; however, the Attorney General has issued numerous published opinions on the topic. Although it is not an exhaustive list of the opinions on this subject, the following should provide a starting point for research:

68 Op. Att. Gen. 240 (1985)
68 Op. Att. Gen. 7 (1984)
67 Op. Att. Gen. 409 (1984)
66 Op. Att. Gen. 382 (1983)
66 Op. Att. Gen. 293 (1983)
66 Op. Att. Gen. 176 (1983)
65 Op. Att. Gen. 606 (1982)
64 Op. Att. Gen. 795 (1981)
64 Op. Att. Gen. 288 (1981)
64 Op. Att. Gen. 137 (1981)
58 Op. Att. Gen. 241 (1975)

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

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County Supervisors Association of California

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November 6, 1986

Mr. John Larson
Chairman
Fair Political Practices Commission
428 J Street, 8th Floor
Sacramento, California 95814

RE: CHAPTER 1327, STATUTES OF 1986

Dear John:

This is in response to our telephone conversation of Monday, November 3, 1986. As I explained, we and the other organizations mentioned in Chapter 1327 of the Statutes of 1986 are in the process of compiling lists of people who are interested in serving on the board of directors of the Local Agency Self-Insurance Authority created by that legislation. In the course of discussing appointment of the Authority's board of directors, the question has arisen as to whether persons employed by, or serving as officers of, existing insurance joint powers agencies would have a conflict of interest if they were appointed to serve on the board of directors of the Local Agency Self-Insurance Authority. We would like your informal, general advice on the issue.

As you know, many cities, counties and other local agencies have created self-insurance pools for the purpose of providing public liability insurance protection. These pools are typically joint powers agencies. There are dozens of these insurance joint powers agencies providing liability insurance to local agencies throughout the State. They are each governed by a board of directors. Many have paid staff. The levels of insurance they provide differ.

Chapter 1327 provides for a nine-member board of directors to govern the Local Agency Self-Insurance Authority. The section specifies certain minimum requirements for some members of that board. Many of the persons who possess the requisite qualifications are presently affiliated with a local insurance joint powers agencies, either as officers or compensated staff.

In your view, would someone serving as an officer of a local insurance joint powers agency have a conflict of interest if they were to simultaneously serve on the board of directors of the Local Agency Self-Insurance Authority? Does the answer depend on whether the person is compensated by the insurance joint powers agency? Does it make a difference if the levels of insurance offered by the insurance joint powers agency and Local Agency Self-Insurance Authority do not overlap?



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We are trying to do as much preliminary work as possible so as to expedite operation of the Local Agency Self-Insurance Authority as soon as Chapter 1327 becomes effective. Therefore, we would appreciate receiving your comments as early as possible. As I indicated, an informal reply is adequate. If you have any questions or need any additional information, please let me know.

Thank you for your consideration.

Very truly yours,

COUNTY SUPERVISORS ASSOCIATION
OF CALIFORNIA



Mark A. Wasser
General Counsel

MAW:cb