



California Fair Political Practices Commission

June 16, 1987

Karen R. Wyant
Executive Officer
California Auctioneer Commission
1130 "K" Street, Suite LL20
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-87-137

Dear Ms. Wyant:

This is in response to your request for advice under the conflict of interest code provisions of the Political Reform Act.^{1/}

QUESTION

May the California Auctioneer Commission amend its conflict of interest code (its Regulation 3526) to delete the council of advisors?

CONCLUSION

The council of advisors may be deleted from the code only if its members are truly advisory and do not participate in the decision-making process.

ANALYSIS

Government Code Section 87302 provides that conflict of interest codes shall specifically enumerate the positions within the agency which make or participate in the making of decisions which may foreseeably affect any financial interest.

The Commission has provided in Regulation 18700(a)(1) that a member of an agency possesses decision-making authority whenever the agency makes or may compel final governmental decisions or makes substantial recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Karen R. Wyant
June 16, 1987
Page 2

Further, a designated employee participates in the making of a governmental decision when he or she advises or makes recommendations to the decision-maker by conducting research, making an investigation, or preparing or presenting any report, analysis or opinion which requires the exercise of judgment on the part of the designated employee. (Regulation 18700(c)(2).)

If your council of advisors has a history of having its advice or recommendations altered or modified by the Commission, then it may truly be an advisory body and its members need not be covered by the conflict of interest code.

However, before we can consider an amendment deleting the council of advisors, we would need copies of the minutes of the meetings of the Auctioneers Commission for the past 12 months and a statement from your chief executive officer that the code specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest.

I have enclosed a copy of Regulation 18750, which describes the procedure to follow to amend your code. Should you have any questions after you have reviewed this procedure, please feel free to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Council

Jeanette E. Turvill
by Ked
By: Jeanette E. Turvill
Legal Assistant
Legal Division

JET:km

California Auctioneer Commission
A Public Corporation
Board of Governors



George Deukmejian
Governor

MAY 3 6 31 AM '87

May 7, 1987

Fair Political Practices Commission
428 J Street, Suite 300
Sacramento, CA 95804-0807

The California Auctioneer Commission adopted Regulation 3526 on June 28, 1986, requiring that certain persons file Statements of Economic Interest.

Among those specified are members of the Council of Advisers. This is a request for clarification as to whether Regulation 3526 may be amended to exclude such persons from its requirements.

Section 5715.1 of the Business and Professions Code establishes the Council:

"5715.1. There shall be a council of advisers to the board. The board shall, by rule and appointment as deemed necessary to comprehensively address matters of concern to the board, establish the number and qualifications of advisers. An adviser shall be appointed by the board, and his or her term of office shall be one year. No individual shall serve as a member of the council of advisers for more than two full consecutive terms. In any event, the board shall provide for the appointment of three members of the council of advisers representing consumer interest organizations in this state. Vacancies in the council of advisers shall be filled by the board by appointment for the unexpired term."

Section 5717.3 describes what duties may be assigned to the Council by the Board of Governors:

"5717.3. The board may appoint such committees, representatives, delegates, examiners, firms, and employees as it deems necessary or proper. The board may by rule provide for the assignment of duties to the executive officer, the council of advisers, committees of the council, or any other person. Committees of the council may be assigned responsibility for accepting or denying applications, preparing and grading examinations, receiving or designating complaints involving professional competence or standards of conduct and assisting the

Fair Political Practices Commission
May 7, 1987

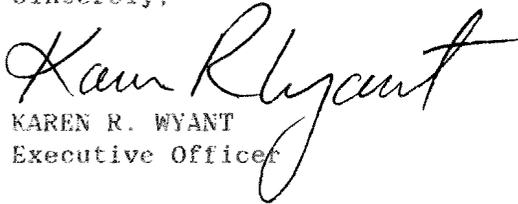
page 2

executive officer to investigate those complaints, and performing such other duties as the board may, by rule, delegate to them. Except as otherwise provided in this section, the board may fix and pay salaries, fees, and necessary expenses."

The Board of Governors has never, and does not intend to, promulgated regulations assigning any duties as described in Section 5717.3 to the Council or any committee thereof. The Council acts solely in an advisory capacity from time to time by providing feedback on such issues as standards of practice in the business, and how existing law or proposed legislation affects the business. Their input on such issues is in addition to many other forms of input. They receive no compensation nor reimbursement for expenses. In the past, they have met twice a year.

Please advise whether the Fair Political Practices Commission would be opposed to an amendment to Regulation 3526 removing Council of Adviser members from its requirements.

Sincerely,


KAREN R. WYANT
Executive Officer



California Fair Political Practices Commission

May 12, 1987

Karen R. Wyant
California Auctioneer Commission
1130 "K" Street, Suite LL20
Sacramento, CA 95814

Re: 87-137

Dear Ms. Wyant:

Your letter requesting advice under the Political Reform Act was received on May 8, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeanette Turvill, in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh