



California Fair Political Practices Commission

August 20, 1987

James W. Dilworth, Esq.
5225 Canyon Crest Drive
Building 400, Suite 409
Riverside, CA 92507

Re: Your Request for Advice
Our File No. A-87-201

Dear Mr. Dilworth:

You have requested advice regarding the duties of the members of the San Bernardino Valley Municipal Water District's Advisory Commission under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Are the provisions of the San Bernardino Valley Municipal Water District's conflict of interest code applicable to the district's newly created advisory commission?

CONCLUSION

The district's conflict of interest code does not, in its present form, apply to the members of the advisory commission. However, it is the stated policy of the district's board, pursuant to Resolution No. 724, to approve the recommendations of the advisory commission. Therefore, the advisory commission members are considered to have decision-making authority under the Act and must be included as designated employees in the district's conflict of interest code. The district's conflict of interest code must be amended to include the advisory commission within six months after the date the advisory commission came into existence.

^{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.

FACTS

The conflict of interest code for the San Bernardino Valley Municipal Water District currently lists the following as designated positions: Members of the board, general manager, chief engineer and consultants.

The advisory commission of the district was created in July 1987 for the purpose of providing maximum opportunities for consultation with elected officials of water-producing agencies, and communication with members of the community who have concerns regarding water policy. The function of the advisory commission is to study and make recommendations to the district's board on matters of water policy for the district.

The advisory commission is comprised of 19 members and 19 alternates, each representing a city, water district, water company or water-related board. All advisory commission members and alternates must be members of the city council, board of directors or other governing body of such public agency; or members of the governing body of privately-owned entities represented on the advisory commission.

The advisory commission recommendations may come to the board's attention in one of two ways:

1. One of the board members will, from time to time, attend the advisory commission's meetings and serve as an informal channel between the advisory commission and the board; and
2. The advisory commission may, from time to time, submit recommendations in writing to the board, along with statements of reason, as appropriate. A recommendation must include the vote by which it was adopted and be signed by the members joining therein. A dissenting report also may be submitted and shall be signed by the members joining in dissent.

In furtherance of the purpose and goal of establishing the advisory commission, the board also passed Resolution 724 which provides:

BE IT RESOLVED by the Board of Directors of the San Bernardino Valley Municipal Water District that it be the policy of the Board to follow the recommendations of the Advisory Commission on Water Policy unless they will adversely impact the greater community. In the case of disagreement, the Board will meet in good faith with the Commission and attempt to resolve the areas of disagreement and attempt to develop an agreed position.

ANALYSIS

Each state or local government agency must adopt a conflict of interest code. (Section 87300.) Conflict of interest codes are required to identify "designated employees" and assign to those designated positions appropriate categories of financial disclosure. (Section 87302.) The San Bernardino Valley Municipal Water District is a local government agency and thus has adopted a conflict of interest code.

Each conflict of interest code is required to specifically enumerate the positions within the agency which involve making or participating in governmental decisions which may foreseeably have a material effect on any economic interest. (Section 87302(a).) Persons so designated in the conflict of interest code are "designated employees." The conflict of interest code specifies the economic interests designated employees must report on their statements of economic interests. (Section 87302.)

The conflict of interest code for the water district enumerates district board members, the general manager, chief engineer and consultants^{2/} as designated positions. Members of the newly constituted advisory commission do not fall within any of these categories, and, as a consequence, are not presently covered by the conflict of interest code. We must determine whether the district's conflict of interest code should be amended to include members of the advisory commission as designated positions.

The term "designated employee" is defined in Section 82019 to specifically exclude "...any unsalaried member of any board or commission which serves a solely advisory function." Regulation 18700 provides guidance in determining whether a board or commission is "solely advisory" or has decision-making authority. It provides:

...A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

^{2/} "Consultant" is defined in Regulation 18700(a)(2) to include any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency.

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1)(A),
(B) and (C).

Applying this regulation, it may appear that the advisory commission members lack decision-making authority. The advisory commission does not make final governmental decisions; it cannot compel or prevent governmental decisions; nor does it have a record of having made substantive recommendations over an extended period of time which have been regularly approved by the board.

However, the Commission has recently considered the meaning of Regulation 18700(a)(1)(C) in its opinion, In re Rotman, (1987) 10 FPCC Ops. 1 (copy enclosed). In Rotman, the Commission concluded that redevelopment project area committees possess decision-making authority, within the meaning of Regulation 18700(a)(1)(C). The decision was based in large part on the fact that a project area committee recommendation against approval of a redevelopment plan may be overturned only if the city council or other legislative body adopts the plan by a two-thirds vote of its entire membership eligible and qualified to vote on the plan. (Health and Safety Code Sections 33366 and 33385.5.) The Commission addressed this "supermajority" requirement stating:

...Subsection (C) of Regulation 18700(a)(1) provides that a board or commission possesses decision-making authority if its recommendations are, and over an extended period of time have been, regularly approved without amendment or modification by another governmental agency. The concept of this regulation is that if the recommendations of a body have a significant impact upon the ultimate outcome of a decision, the body is considered to possess decision-making authority. The regulation provides that an assessment of the impact of a body's recommendations is to be made by analyzing the extent to which its recommendations have been followed in the past. With project area committees, no such analysis of the past is necessary. The statutory changes assure that recommendations of project area committees will

often be approved without significant amendment. As such, we believe project area committees possess decision-making authority within the meaning of Regulation 18700(a)(1)(C).

Rotman, supra at p.6.

The language of Resolution No. 724, which establishes the board's policy to follow the recommendations of the advisory commission, unless they will adversely impact the greater community, indicates the advisory commission has "decision-making authority." Under the resolution, the board bears the burden of proving adverse impact on the community when it disagrees with a recommendation. Even where adverse impact is found, the board is required to attempt to develop an agreed position as between themselves and the advisory commission, rather than simply disapproving the recommendation. This policy demonstrates an intent to delegate decision-making authority concerning water policy matters to the advisory commission. Such authority provides the advisory commission with the ability to materially affect private financial interests. Accordingly, the advisory commission members should be designated employees in the district's conflict of interest code.

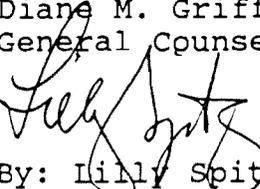
Amendment of Conflict of Interest Code

Section 87300, et seq. sets out the requirements for formulation, submission and approval of conflict of interest codes. Section 87303 provides that any agency not in existence on April 1, 1975, shall have a period of six months after it comes into existence in which to submit a proposed conflict of interest code to the code-reviewing body. This provision applies to amending an existing conflict of interest code where an agency has been established subsequent to April 1975, as in the case of the advisory commission. (Section 87306.)

Enclosed herewith is a copy of Regulation 18750.1 which outlines the procedures for amendment of conflict of interest codes. If you have any questions, or if we can be of further assistance, please feel free to contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel


By: Lily Spitz
Counsel, Legal Division

LS:km
Enclosures

LAW OFFICES
JAMES W. DILWORTH
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RIVERSIDE, CALIFORNIA 92507

AREA CODE 714
TELEPHONE 682-7930

July 7, 1987

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: San Bernardino Valley Municipal Water District

Gentlemen:

On behalf of the San Bernardino Valley Municipal Water district, advice is requested pursuant to Section 83114 of the Government Code as to the applicability of the disqualification and disclosure provisions of the District's Conflict of Interest Code to members and alternate members of the District's Advisory Commission.

I enclose a copy of the District's ordinance establishing the Commission and of a resolution with respect thereto. If you need further information please let me know.

Thank you for your assistance.

Very truly yours,


JAMES W. DILWORTH

JWD:aec
Enclosure

ORDINANCE NO. 61

ORDINANCE OF THE BOARD OF DIRECTORS OF THE SAN
BERNARDINO VALLEY MUNICIPAL WATER DISTRICT ESTABLISHING
AN ADVISORY COMMISSION TO ADVISE THE BOARD OF DIRECTORS
ON WATER POLICY

WHEREAS, it is the desire of the Board of Directors ("Board") of the San Bernardino Valley Municipal Water District to provide the maximum opportunities for consultation with elected officials of water producing agencies and other members of the community, and to provide a convenient method for those who have concerns which they wish to express to communicate them to the Board, and

WHEREAS, establishing appropriate means to promote the widest possible opportunity for such communication will enable the District to provide better service to the public and is in the public interest;

NOW THEREFORE BE IT ORDAINED by the Board of Directors of the San Bernardino Valley Municipal Water District as follows:

SECTION 1: ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

There is hereby established an advisory commission to be known as the "Advisory Commission on Water Policy to the Board of Directors of the San Bernardino Valley Municipal Water District". It shall be the function of such Commission to study and make recommendations to the Board on matters of water policy for the District. The Commission shall study such matters of water policy as are submitted to it by the Board for consideration and may study such other matters of water policy as the Commission deems appropriate.

SECTION 2: MEMBERSHIP.

Membership of the Commission shall be constituted as follows:

a. One member and one alternate from each of the following entities or groups of entities shall be appointed to the Commission:

1. City of Colton
2. City of Grand Terrace
3. City of Loma Linda
4. City of Redlands
5. City of Rialto

6. City of Riverside or City of Riverside Board of Public Utilities
7. City of San Bernardino
8. East Valley Water District
9. South San Bernardino County Water District
10. West San Bernardino County Water District
11. Yucaipa Valley Water District
12. Bear Valley Mutual Water Company
13. Fontana Union Water Company
14. Riverside-Highland Water Company
15. Agua Mansa Water Company and Meeks & Daley Water Company
16. Other mutual water companies and agricultural producers not majority owned by a city or other public agency
17. San Bernardino County Board of Supervisors
18. San Bernardino Valley Water Conservation District
19. City of San Bernardino Board of Water Commissioners

In the event of the establishment of any new city within the boundaries of the District, a representative for the said city shall be added.

b. All members and alternates chosen from public agencies shall be members of the City Council, Board of Directors or other governing body of such agency. Members and alternates representing privately owned organizations shall be members of the governing body of the organization.

c. Members and alternates of the Commission shall be designated from time to time by the entity from which they are chosen and shall be appointed by the Board for a term of one year, ending on June 30th. Any member or alternate may be replaced at any time by the designation of a new member or alternate for the balance of such member's term by the entity or entities affected. In cases where one member is chosen to represent more than one entity, the designation may be made jointly by the entities represented, or if they fail to make a joint designation, in such manner as may be determined by the Board.

SECTION 3: MEETINGS.

a. Regular meetings of the Commission shall be held quarterly, unless dispensed with by the Commission. At its first meeting the Commission shall provide for the time and place of holding its regular meeting. Special meetings may be called by the Chairman of the Commission, or a majority of the Commission, or by the Board. Notice of all meetings shall be furnished in writing to each commissioner at least 72 hours prior to the time appointed for the meeting.

b. The Commission shall elect its Chairman and Vice Chairman from its membership for a term of one year coinciding with the terms of the members. A Secretary shall be designated by the Board.

c. A majority of the members of the Commission shall constitute a quorum for purposes of transacting business. All actions of the Commission shall be passed upon the affirmative vote of a majority of the members present at a meeting attended by a quorum. Each member of the Commission shall have one vote, and in the event of the absence of a member such member's duly appointed alternate may act in his place.

d. The Secretary shall cause to be kept Minutes of the meetings of the Commission and shall provide for the distribution thereof to the members.

e. All meetings of the Commission shall be open to the public and shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Sections 54950, et seq.).

SECTION 4: FINANCES.

a. No member or alternate member or officer of the Commission shall receive any compensation for his service other than his regular compensation in connection with his duties for the entity from which he was chosen. Such entities may at their option compensate commissioners or alternates designated by them for their expenses in connection with their service.

b. The District shall provide secretarial support for the Commission and clerical assistance in connection with the mailing of notices, and the like.

c. Neither the Commission nor any member, alternate member or officer shall have any authority to obligate any District funds or to act on behalf of the District.

SECTION 5: TECHNICAL SUPPORT.

The District may provide technical support for the Commission when required. Such support may also be obtained from the Upper

Santa Ana Water Resources Association or other available sources.

SECTION 6: CONFLICT OF INTEREST.

Members and alternate members of the Commission shall comply with any requirements with respect to disqualification for conflict of interest and/or disclosure of economic interests which are determined to be applicable under the Fair Political Practices Act, any regulation enacted pursuant thereto, the District's Conflict of Interest Code or any other legal authority.

SECTION 7: TRANSMISSION OF RECOMMENDATIONS TO DISTRICT.

a. The Board shall from time to time designate one of its members to attend the meetings of the Commission, who shall serve as an informal channel of communication between the Commission and the Board.

b. The Commission may from time to time submit recommendations to the Board. Such recommendations shall be submitted in writing, together with such statement of reasons as the Commission deems appropriate, shall be signed by the members joining therein, and shall show the vote by which the recommendation was adopted. Members of the Commission not in agreement with the recommendation may, at their option, submit a dissenting report or recommendation which shall be signed by the members joining therein.

c. Promptly upon receipt of any recommendation or dissent, the staff shall place such document upon the Board agenda.

SECTION 8: EFFECTIVE DATE.

This ordinance shall be in effect 30 days after its enactment.

ENACTED: July 6, 1987



President

ATTEST:



Secretary

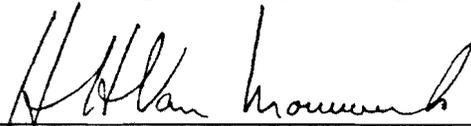
(SEAL)

RESOLUTION NO. 724

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT REGARDING RECOMMENDATIONS OF THE ADVISORY COMMISSION ON WATER POLICY

BE IT RESOLVED by the Board of Directors of the San Bernardino Valley Municipal Water District that it be the policy of the Board to follow the recommendations of the Advisory Commission on Water Policy unless they will adversely impact the greater community. In the case of disagreement, the Board will meet in good faith with the Commission and attempt to resolve the areas of disagreement and attempt to develop an agreed position.

ENACTED: July 6, 1987



President

ATTEST:



Secretary

(SEAL)



California Fair Political Practices Commission

July 21, 1987

James W. Dilworth
5225 Canyon Crest Drive
Riverside, CA 92507

Re: 87-201

Dear Mr. Dilworth:

Your letter requesting advice under the Political Reform Act was received on July 20, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney 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 more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:jaj