



California  
Fair Political  
Practices Commission

**SUPERSEDED**

Sub A-02-202  
(Carter)

March 10, 1989

Joseph G. Giuffre  
Attorney at Law  
1209 Columbus Avenue  
Bakersfield, CA 93305

Re: Your Request for Advice  
Our File No. A-89-066

Dear Mr. Giuffre:

You have requested advice concerning the Greater Bakersfield Convention and Visitors Bureau's duties under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup>

QUESTION

Is the Greater Bakersfield Convention and Visitors Bureau (the "bureau") a public agency subject to the conflict of interest provisions of the Political Reform Act?

CONCLUSION

The bureau is a public agency and is subject to the conflict of interest provisions of the Political Reform Act.

FACTS

The bureau, a nonprofit organization, was formed to actively solicit and promote conventions and other gatherings and visitors to the City of Bakersfield. The activities of the bureau were previously performed by the Bakersfield Chamber of Commerce. You informed me in a telephone conversation that the bureau decided that it could better operate its own activities and in 1984 chose to terminate its contract with the Chamber of Commerce.

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Joseph G. Giuffre  
Page Two  
March 10, 1989

The bureau obtains approximately 75 percent of its funds through a room tax assessed by the City of Bakersfield and County of Kern on hotels and motels in their respective areas. The remaining funds of the bureau are provided through membership dues.

The board of directors for the bureau is comprised of 11 members. Four are elected by its membership and represent the hotel/motel industry; another four are member-elected members at large; two members are appointed by the Bakersfield City Council and the remaining member is appointed by the Kern County Fair. The government and policy-making responsibilities of the bureau are vested in the board of directors who control its property, are responsible for its finances and direct its affairs.

#### ANALYSIS

"Local government agency" is defined in Section 82041 as:

...a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

In determining whether a particular entity is a private entity or a local government agency, the Commission in its Siegel<sup>2/</sup> Opinion, stated that certain criteria should be considered. These criteria are:

- (1) Whether the impetus for formation of the corporation originated with a government agency;
- (2) Whether it is substantially funded by, or its primary source of funds is, a government agency;
- (3) Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
- (4) Whether the corporation is treated as a public entity by other statutory provisions.

---

<sup>2/</sup> In re Siegel (1977) 3 FPPC Ops. 62, copy enclosed.

Joseph Giuffre  
Page Three  
March 10, 1989

#### Impetus for Formation

The activities of the bureau were previously performed by the Chamber of Commerce under an agreement with the city. The bureau chose to terminate its relationship with the Chamber of Commerce and in 1984 incorporated as a nonprofit corporation. While the bureau initiated the incorporation, the idea for a convention bureau originated with the City of Bakersfield. Therefore, the first criterion set forth in Siegel is met.

#### Funded by a Government Agency

Seventy-five percent of the funding of the bureau is derived from a room tax assessed hotels and motels in the area. The tax is imposed by the city and county respectively. Both entities provide a portion of this room tax to the bureau for its activities. Accordingly, the second criterion in Siegel is met.

#### Service Which Public Agencies Traditionally Perform

Even though the operation of a convention bureau is sometimes performed by cities, it is performed by nongovernmental entities equally as often. (See in re Leach<sup>3/</sup>.) The services performed by the bureau benefit hotels, motels and restaurants located in the Bakersfield area. These services could be construed to benefit private rather than public interests. Thus, the bureau does not meet the third criterion.

#### Treated as a Public Entity by Other Statutes

The bureau, as a non-profit corporation under Section 501(c)(6) of the Internal Revenue Code, enjoys certain tax benefits similar to public agencies. Therefore, the bureau meets the fourth criterion.

The Siegel opinion provides that certain criteria must be considered in determining whether an agency is private or public in nature, but it does not require that all four criteria be met. The bureau meets three of the four criteria. The bureau was originally formed by the city; it is substantially funded by tax revenues assessed by public agencies; and it is considered a public agency by other statutory provisions.

---

<sup>3/</sup> In re Leach (1978) 4 FPPC Ops. 48, copy enclosed.

Joseph G. Giuffre  
Page Four  
March 10, 1989

Accordingly, we conclude that the bureau is a local government agency within the meaning of Section 82041 and accordingly must develop a conflict of interest code. You should contact the Kern County Board of Supervisors for assistance in this regard. They may have specific procedures for you to follow. Your code, once developed, must be sent to the Board of Supervisors as your code reviewing body for approval. (Section 82011(b)).

In our telephone conversation, you further asked if the mass mailing provisions of Section 89001 would apply to the bureau. Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. "Mass mailing" is more than two hundred substantially similar pieces of mail sent in a calendar month. (Section 82041.5 and Regulation 18901(d), copy enclosed.) A newsletter or other mass mailing is "sent at public expense" if any of the costs of design, production, printing or distribution are paid for with public moneys (Regulation 18901(a)), and if it is distributed by agency personnel or agents of the agency. Thus, any mass mailing sent by the bureau may not feature the name, photograph or signature of an elected official affiliated with the agency which produces or distributes the document. (Regulation 18901(c).) For instance, any mailing which features an elected official of the City of Bakersfield or the County of Kern would be prohibited.

If I can be of further assistance to you, or if you wish to discuss this further, please feel free to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Jeanette E. Turvill  
Political Reform Consultant  
Legal Division

DMG/JET/jt

California Fair Political Practices Commission

MEMORANDUM

11/4/03  
OK [signature]

To: Luisa Menchaca, General Counsel  
From: John Symkowick  
Re: Carter A-02-202 superseding *Giuffre* A-89-066 and *Lazarus* I-01-164  
Date: July 13, 2003

---

INTRODUCTION

Consistent with the Legal Division's policy regarding the superseding and rescinding of advice, Commission Counsel Jill Stecher has suggested *Carter* Advice Letter, No. A-02-202, supersedes, in-part, both *Giuffre* Advice Letter, No. A-89-066, and *Lazarus* Advice Letter, No. I-01-164. It is my conclusion that this is correct to the extent that both of these letters are inconsistent with the *Carter* analysis of the fourth criterion set forth in *in re Siegel*, (1977) 3 FPPC Ops. 62. However, *Lazarus* is also inconsistent with the *Carter* analysis of the first criterion set forth in *Siegel*. Therefore, *Lazarus* meets only one of the four *Siegel* factors while *Giuffre* meets two of the four *Siegel* factors.

ANALYSIS

When an entity is not definitively included or excluded by section 82041 of the Political Reform Act,<sup>1</sup> defining "local government agency," the Commission applies the criteria set forth in *Siegel* to assist in making that determination.

Under *Siegel*, to determine the nature of a given entity, four criteria are examined:

- (1) Whether the impetus for formation of the corporation originated with a government agency;
- (2) Whether it is substantially funded by, or its primary source of funds is, a government agency;
- (3) Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and

---

<sup>1</sup> Government Code sections 81000 – 91014.

A-89-066  
Not on Lexis not on F Drive  
per S. Gossett

(4) Whether the corporation is treated as a public entity by other statutory provisions.

With respect to *Giuffre* and *Lazarus*, only the first and the fourth criteria will be examined, as their consistency with *Carter* is in question.

### **Impetus for Formation**

Under *Siegel* the impetus for formation criterion was met because it was clear that the "...Corporation would not have been created were it not for the interest and involvement of the city council." *Giuffre* is consistent with *Siegel* because the impetus for formation criteria was met when the facts demonstrated that the formation of the bureau originated with the city.

The impetus for formation criterion, according to *Carter* and consistent with *Siegel*, is met when "...an entity is created by statute, ordinance or some official action of another governmental agency." The Yosemite Sierra Visitors Bureau, *Carter* points out, does not meet the criterion because it was "initially" formed by a chamber of commerce as a non-profit organization.

Similarly, the facts, as stated in *Lazarus*, clearly show the Huntington Beach Visitors Bureau "...was **not** formed by the city..."(emphasis added). However, in the analysis the impetus for formation criterion is met, not because of the stimulus that led to its creation, but because of its stated purpose. "Because the underlying purpose of the Bureau is to represent the business and tourism industry of the city, it can be concluded that the impetus for the formation of the Bureau came from the city, a government agency." This claim is entirely false.

The impetus for formation criterion, as set forth in *Siegel* and as interpreted by *Giuffre* and *Carter*, is met through an analysis of the initial formation of an entity, not through an examination of the stated purpose of the entity itself. Therefore, the discussion of the first criterion in *Lazarus* is superseded by *Carter*.

### **Treated as a Public Entity by Other Statutes**

In *Siegel* the fourth criterion was met only after it was shown, with a substantial amount of evidence, that the corporation was treated as a public entity by a series of other statutes. Both *Giuffre* and *Lazarus*, on the other hand, merely cite one statute, Section 501(c)(6) of the Internal Revenue Code, as evidence of meeting the criterion.

*Carter* correctly argues that an organization's non-profit, tax exempt status under Section 501(c)(6), alone, is not evidence that it is treated like a public entity by other statutes. "Section 501(c)(6) provides a tax exemption to business leagues, chambers of commerce and other boards not organized for profit." *Carter* concludes, consistent with *in re Leach*, (1978) 4 FPPC Ops. 48, that "Although the visitors bureau enjoys tax exempt status different from business entities, it is not viewed as a public entity under the tax laws." Therefore, Commission Counsel Stecher is

correct and the discussions of the fourth criterion in both *Giuffre* and *Lazarus* are superseded by *Carter*.

### CONCLUSION

*Siegel* provides that certain criteria be evaluated when determining whether an entity is a “local government agency” or not. It does not, however, require that all four criteria be met.

#### *Giuffre*

If *Carter*’s analysis of the fourth *Siegel* criterion supersedes *Giuffre*, then only two of the four factors will have been met. First, the impetus for formation criterion was met because the idea of the bureau originated with the city. Second, 75 percent of the bureau’s funding is from a room-tax assessed by the city and county. Therefore, the second criterion is met because the bureau’s primary sources of funds are government agencies.

Meeting two of the four *Siegel* factors is not sufficient. Therefore, it is my conclusion that the *Giuffre* letter should be superseded in its entirety.

#### *Lazarus*

If *Carter*’s analysis of the first and fourth *Siegel* criteria supersedes *Lazarus*, then only one of four factors will have been met. The second criterion is met because the city is the bureau’s sole source of funding.

Meeting one of the four *Siegel* factors is not sufficient. Therefore, it is my conclusion that the *Lazarus* letter should be superseded in its entirety.

JOSEPH G. GIUFFRE .  
ATTORNEY AT LAW  
1209 COLUMBUS AVENUE  
BAKERSFIELD, CALIFORNIA 93305  
TELEPHONE (805) 872-5331

FFPC

JAN 31 8 25 AM '89

January 25, 1989

CALIFORNIA FAIR POLITICAL PRACTICE COMMISSION  
428 "J" Street, Suite 800  
P.O. BOX 807  
Sacramento, CA 95804

Attn: Jeanette Turvill

Re: Opinion of Applicability

Dear Ms. Turvill:

I have been recently contacted by the "Greater Bakersfield Convention Bureau" who is concerned about the applicability of the Political Reform Act, its current regulations and conflict of interest laws in regards to their organization.

I have enclosed a copy of the By-Laws of the organization for your review and assistance in forming your opinion.

The purpose of the organization is to solicit conventions for the community. Approximately 70 - 75% of the funds are provided through the City and/or County. The remaining funds are provided through membership dues by the individual members.

Please advise whether or not the Political Reform Act applies to this organization and must also comply with the conflict of interest laws. If so, please advise what is necessary for compliance.

Thank you for your assistance and I look forward to an early response.

Very truly yours,

  
JOSEPH G. GIUFFRE,  
Attorney at Law

JG/pf  
enclosure

BY-LAWS  
OF  
THE CONVENTION BUREAU OF GREATER BAKERSFIELD

---

ARTICLE I

GENERAL

Section 1. Name

This organization is a California Corporation under the laws of the State of California and shall be known as The Greater Bakersfield Convention and Visitors Bureau.

Section 2. Purpose

The purpose of The Greater Bakersfield Convention and Visitors Bureau shall be to actively solicit and assist conventions, large and small gatherings and visitors to Bakersfield.

Section 3. Limitation of Methods

The Greater Bakersfield Convention and Visitors Bureau shall observe all local, state and federal laws which apply to a non-profit organization as defined in Section 501 (c) (6) of the Internal Revenue Code or any subsequent provisions.

ARTICLE II

MEMBERSHIP

Section 1. Eligibility

Any person, association, corporation, partnership or estate having an interest in the objectives of the organization shall be eligible to apply for membership.

Section 2. Application

Applications for membership shall be in writing, on forms provided for that purpose, and signed by the applicant. The Membership Committee (or designated individual) shall review all applications and submit them to the Board of Directors with a recommendation. Any applicant shall become a member upon payment of the regularly scheduled dues as provided in Section 3 of Article II, unless decided otherwise by a two-thirds vote of the Board of Directors.

### Section 3. Termination

a) Any member may resign from the Bureau upon written request to the Board of Directors; b) Any member shall be expelled by the Board of Directors by a two-thirds vote for nonpayment of dues after 120 days from the date due, unless otherwise extended for good cause; c) Any member may be expelled by a two-thirds vote of the Board of Directors, at a regularly scheduled or special meeting thereof, for conduct unbecoming a member or prejudicial to the aims or repute of the Bureau after notice and opportunity for a hearing are afforded the member complained against.

### Section 4. Voting

In any proceeding in which voting by members is called for, each member person, association, corporation, partnership or estate in good standing shall be entitled to cast one vote.

### Section 5. Exercise of Privileges

Any firm, association, corporation, partnership, or estate holding membership may nominate individuals, whom the holder desires to exercise the privileges of membership covered by its subscriptions, and shall have the right to change its membership nomination upon written notice.

### Section 6. Life and Honorary Membership

Life and Honorary Membership without voting rights may be conferred upon members of the Bureau at such time and under such terms as the Board of Directors shall determine.

## ARTICLE III

### MEETINGS

#### Section 1. Annual Meeting

The annual meeting of the corporation, in compliance with the state law, shall be held during June of each year. The time and place shall be fixed by the Board of Directors and notice thereof mailed to each member at least ten (10) days before said meeting.

#### Section 2. Additional Meetings

General meetings of the Bureau may be called by the President at any time, or upon petition in writing of any twenty-five (25) members in good standing:

a) Notice of special meetings shall be mailed to each member at least five (5) days prior to such meeting:

b) Board meetings may be called by the President or by the Board of Directors upon written application of three (3) members of the Board. Notice (including the purpose of the meeting) shall be given to each director at least one (1) day prior to said meeting;

c) Committee meetings may be called at any time by the President, respective division Vice-President, or by the committee's chairman with at least one (1) days' notice.

### Section 3. Quorums

At any duly called general meeting of the Bureau 25 members shall constitute a quorum; a majority of Directors present shall constitute a quorum of the Board of Directors; at Committee meetings, a majority shall constitute a quorum.

### Section 4. Notices, Agendas, Minutes

Written notice of all Bureau meetings must be given at least five (5) days, and not greater than thirty (30) days in advance unless otherwise stated herein. An advance agenda (and minutes as necessary) must be prepared for all meetings.

## ARTICLE IV

### BOARD OF DIRECTORS

#### Section 1. Composition of the Board

The Board of Directors shall be composed of eleven (11) members. Three (3) who shall be designated and eight (8) who shall be elected to serve alternating two (2) year terms as indicated herein:

4 - Hotel/Motel	Elected by Membership
4 - At Large	Elected by Membership
1 - City Manager or Representative	Appointed by City
1 - Civic Auditorium	Appointed by City
1 - Kern County Fair	Appointed by Fair

Those Board Members listed herein to be elected by The Convention Bureau Membership shall be elected to serve terms beginning January 1, 1988, as follows:

2 - Hotel/Motel	Term ends June 30, 1988. Two (2) year terms following that date.
2 - At Large	Term ends June 30, 1988. Two (2) year terms following that date.
2 - Hotel/Motel	Term ends June 30, 1989. Two (2) year terms following that date.
2 - At Large	Term ends June 30, 1989. Two (2) year terms following that date.

The Executive Committee will consist of five (5), the President, First Vice President, Vice President, Treasure, and Executive Director.

The government and policy making responsibilities of the Bureau shall be vested in the Board of Directors, which shall control its property, be responsible for its finances, and direct its affairs.

The immediate Past President shall serve as a non-voting ex-officio member to the Board of Directors for the following year, if not continuing to serve as a regular member of the Board of Directors.

## Section 2. Selection and Election of Directors.

A. Nominating Committee. At the regular March Board meeting, the President shall appoint, subject to approval by the Board of Directors, a Nominating Committee of three (3) members of the Bureau.

Prior to May, the Nominating Committee shall notify the membership of the slate of candidates to serve terms to replace the directors whose regular terms are expiring. Each candidate must be a member in good standing and must have agreed to accept the responsibility of a directorship. No Director, who has served three consecutive two (2) year terms, is eligible for election of a fourth term. A period of one (1) year must elapse before eligibility is restored.

B. Publicity of Nominations - Upon receipt of the report of the Nominating Committee, the Executive Director shall immediately notify the membership by mail of the names of person nominated as candidates for directors and the right of petition.

C. Nominations of Petition. Additional names of candidates for Directors can be nominated by petition bearing the genuine signatures of at least twenty-five (25) qualified members of the Bureau. Such petitions shall be filed with the Nominating Committee within ten (10) days after notice has been given of the names of those nominated. The determination of the Nominating Committee as to the legality of the petition(s) shall be final.

D. Determination. If no petition is filed within the designated period, the nominations slate of candidates shall be declared elected by the Board of Directors at their regular June meeting.

If a legal petition shall present additional candidates, the names of all candidates shall be arranged on a ballot in alphabetical order. Instructions will be to vote for a specified number of candidates only. The Executive Director shall mail this ballot to all members at least fifteen (15) days before the regular June Board meeting.

The ballots shall be marked in accordance with instructions printed on the ballot and returned to the Bureau office within ten (10) days. The Board of Directors shall at their regular June Board meeting declare a specified number of candidates, consistent with Article IV, Section 1, with the greatest number of votes, elected.

E. Judges - The President shall appoint, subject to the approval of the Board of Directors, at least three (3), but not more than five (5), judges who are not members of the Board of Directors or candidates for election. Such judges shall have complete supervision of the election including the auditing of the ballots. They shall report the results of the election to the Board of Directors.

### Section 3. Seating of New Directors

All newly elected Board members shall be seated at the June Board meeting and shall be participating members thereafter. Retiring Directors shall continue to serve until the end of the program year.

### Section 4. Vacancies

A member of the Board of Directors who shall be absent from three(3) consecutive regular meeting of the Board of Directors shall automatically be dropped from membership on the Board, unless confirmed by illness or other absence by a majority vote of those voting at any meeting thereof.

Vacancies on the Board of Directors, or among the officers, shall be filled by recommendations from the Bureau President, through the use of the Nominating Committee as herein set forth, with approval of the Board of Directors by a majority vote; and who shall serve the unexpired term of office.

### Section 5. Policy

The Board of Directors is responsible for establishing procedure and formulating policy of the organization. They are also responsible for adopting all policies of the organization. These policies shall be maintained in a Policy Manual, to be reviewed annually and revised as necessary.

### Section 6. Management

The Board of Directors shall employ an Executive Director (or appropriate title) and shall set the salary and other considerations of employment, according to the procedures set forth in the organization's policy/procedure manual.

### Section 7. Indemnification

The Bureau may, consistent with applicable laws, by resolution of the Board of Directors, provide for indemnification by the Bureau of any and all of its Directors or former Directors against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them are made parties, or a party, by reason of having been Directors of the Bureau, except in relation to matters as to which such Director shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty and to such matters as shall be settled by agreement predicted on the existence of such liability or negligence or misconduct unless prior approval of

## ARTICLE V

### OFFICERS

#### Section 1. Determination of Officers

The Board of Directors (new and retiring Directors) at its regular June meeting, shall reorganize for the coming year. At this meeting, the Board shall elect the President, First Vice President, and as many Vice Presidents as is deemed necessary to conduct the activities of the Bureau, and the Treasurer. Officers will be elected from members of the new Board. All officers shall serve for a term of one (1) year or until their successors assume the duties of the office, and they shall be voting members of the Board of Directors.

#### Section 2. Duties of Officers

A. President - The President shall serve as the chief elected officer of the Bureau and shall preside at all meeting of the membership, Board of Directors and Executive Committee.

The President shall, with the advice and counsel of the Executive Director and Assigned Vice Presidents, to divisional or departmental responsibilities, subject to Board of Directors approval.

The President shall, with the advice and counsel of the Vice Presidents and the Executive Director, determine all committees, select all committee chairman, assist in the selection of committee personnel, subject to approval of the Board of Directors.

B. First Vice President. The First Vice President shall exercise the powers and authority and perform the duties of the President in the absence or disability of the President. The First Vice President will be responsible for determining that the program activities of the Bureau are of such duration as is required, at all times being alert to assure that the activities of the Bureau are directed achieving business and community needs in the area served by the Bureau.

C. Vice President. The duties of the Vice President shall be such his/her title by general usage would indicated, and such as required by law, as well as those that may be assigned by the President and Board of Directors. His/her will also have under their immediate jurisdiction all committees pertaining to their general duties.

D. Treasurer. The Treasurer shall be responsible for the safeguarding of all funds received by the Bureau and for their proper disbursement. Such funds shall be kept on deposit in financial institutions, or invested in a manner approved by the Board of Directors. Checks are to be signed by the Treasurer and the Executive Director or in the absence of either or both, by any two (2) designated officers. The Treasurer shall cause a monthly financial report to be made to the Board.

E. Executive Director. The Executive Director shall be chief administrative and executive officer. The Executive Director shall serve as secretary to the Board of Directors, and cause to be prepared notices, agendas, and minutes of the Board.

The Executive Director shall serve as advisor to the President and Board of Directors, and shall assemble information and data and cause to be prepared special reports as directed by the Board.

The Executive Director shall be a non-voting member of the Board of Directors and all committees.

The Executive Director shall be responsible for hiring, discharging, directing and supervision all employees.

With the cooperation of the Finance Committee, the Executive Director shall be responsible for the preparation of any operating budget covering all activities of the Bureau, subject to approval of the Board of Directors. The Executive Director shall also be responsible for all expenditures with approved budget allocation.

### Section 3. Indemnification

The Bureau may, by resolution of the Board of Directors, provide for indemnification by the Bureau of any and all of its Officers or former Officers as spelled out in Article IV, Section 7 of these By-Laws.

## ARTICLE VI

### COMMITTEES AND DIVISIONS

#### Section 1. Appointment and Authority

The President, by and with the approval of the Board of Directors, shall appoint all committee chairmen. The President may appoint such ad hoc committees and their chairmen as deemed necessary to carry out the program of the Bureau. Committee appointments shall be at the will and pleasure of the President and shall serve concurrent with the term of the appointing President, unless a different term is approved by the Board of Directors.

It shall be the function of committees to make investigations, conduct studies and hearing, make recommendations to the Board of Directors, and to carry on such activities as may be delegated to them by the Board.

#### Section 2. Limitation of Authority

Absent an appointment by the Board of Directors of an individual to take specific action on a subject of interest to

the Bureau, no action by any member, committee, division, employee, Director or Officer shall be binding upon, or constitute an expression of, the policy of the Bureau until it shall have been approved or ratified by the Board of Directors.

Committees shall be discharged by the President when their work has been completed and their reports accepted, or when, in the opinion of the Board of Directors, it is deemed wise to discontinue the committee.

### Section 3. Testimony

Once committee action has been approved by the Board of Directors, it shall be incumbent upon the committee leaders or, in their absence, whom they designate as being familiar enough with the issue to give testimony to, or make presentations before, civic and governmental agencies.

### Section 4. Divisions

The Board of Directors may create such divisions, bureaus, departments, councils or subsidiary corporations as it deems advisable to handle the work of the Bureau.

The Board shall have the authority to authorize and define the powers and duties of all divisions, bureaus, departments, councils and subsidiary corporations. The Board shall have the authority to annually review and approve all activities and proposed programs of such divisions, bureaus, departments, councils or subsidiary corporations, including collection and disbursements of funds.

No action or resolution of any kind shall be taken by divisions, bureaus, departments, council or subsidiary corporations having bearing upon or expressive of the Bureau, unless approved by the Board of Directors.

## ARTICLE VII

### FINANCES

#### Section 1. Funds

All money paid to the Bureau shall be placed in a general operating fund, except for those funds duly authorized to be dedicated for special projects. Funds unused from the current year's budget will be placed in a reserve account.

#### Section 2. Disbursements

Upon approval of the Budget, the Executive Director is authorized to make disbursements on accounts and expenses provided for in the budget without additional approval of the Board of Directors. Disbursements shall be by check.

#### Section 3. Fiscal Year

 The fiscal year of the Bureau will close on June 30. (to coincide with the City )

#### Section 4. Budget

The Financial Committee, in conjunction with the Executive Director shall adopt the budget for the coming year and submit it to the Board of Directors for approval.

#### Section 5. Annual Audit

The accounts of the Bureau shall be audited annually as of the close of business on June 30 by a public accountant. The audit shall at all times be available to members of the organization within the offices of the Bureau. (to coincide with the City)

#### Section 6. Bonding

The Executive Director and such other officers and staff as the Board of Directors may designate shall be bonded by a sufficient fidelity bond in the amount set by the Board and paid for by the Bureau.

### ARTICLE VIII

#### DISSOLUTION

#### Section 1. Procedure

The Bureau shall use its funds only to accomplish the objectives and purposes specified in these By-Laws, and not part of said funds shall inure, or be distributed to the members of the Bureau. On dissolution of the Bureau, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific or philanthropic organizations to be selected by the Board of Directors as defined in IRS Section 501 (c) (3).

### ARTICLE IX

#### Section 1. Parliamentary Authority

The current edition of Roberts Rules of Order shall be the final source of authority in all questions of parliamentary procedure when such rules are not inconsistent with the Charter or By-Laws of the Bureau.

### ARTICLE X

#### AMENDMENTS

#### Section 1. Revisions

These By-Laws may be amended or altered by a two-thirds (2/3) vote of the Board of Directors, or by a majority of the

members at any regular or special meetings, providing the notice for the meeting includes the proposals for amendments. Any proposed amendments or alterations shall be submitted to the Board or members in writing, at least ten (10) days in advance of the meeting at which they are to be acted upon.

89-066

FPPC

JAN 31 8 25 AM '89

JOSEPH G. GIUFFRE  
ATTORNEY AT LAW  
1209 COLUMBUS AVENUE  
BAKERSFIELD, CALIFORNIA 93305  
TELEPHONE (805) 872-5331

January 25, 1989

CALIFORNIA FAIR POLITICAL PRACTICE COMMISSION  
428 "J" Street, Suite 800  
P.O. BOX 807  
Sacramento, CA 95804

Attn: Jeanette Turvill

Re: Opinion of Applicability

Dear Ms. Turvill:

I have been recently contacted by the "Greater Bakersfield Convention Bureau" who is concerned about the applicability of the Political Reform Act, its current regulations and conflict of interest laws in regards to their organization.

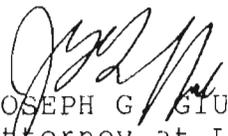
I have enclosed a copy of the By-Laws of the organization for your review and assistance in forming your opinion.

The purpose of the organization is to solicit conventions for the community. Approximately 70 - 75% of the funds are provided through the City and/or County. The remaining funds are provided through membership dues by the individual members.

Please advise whether or not the Political Reform Act applies to this organization and must also comply with the conflict of interest laws. If so, please advise what is necessary for compliance.

Thank you for your assistance and I look forward to an early response.

Very truly yours,

  
JOSEPH G. GIUFFRE,  
Attorney at Law

JG/pf  
enclosure

BY-LAWS  
OF  
THE CONVENTION BUREAU OF GREATER BAKERSFIELD

---

ARTICLE I

GENERAL

Section 1. Name

This organization is a California Corporation under the laws of the State of California and shall be known as The Greater Bakersfield Convention and Visitors Bureau.

Section 2. Purpose

The purpose of The Greater Bakersfield Convention and Visitors Bureau shall be to actively solicit and assist conventions, large and small gatherings and visitors to Bakersfield.

Section 3. Limitation of Methods

The Greater Bakersfield Convention and Visitors Bureau shall observe all local, state and federal laws which apply to a non-profit organization as defined in Section 501 (c) (6) of the Internal Revenue Code or any subsequent provisions.

ARTICLE II

MEMBERSHIP

Section 1. Eligibility

Any person, association, corporation, partnership or estate having an interest in the objectives of the organization shall be eligible to apply for membership.

Section 2. Application

Applications for membership shall be in writing, on forms provided for that purpose, and signed by the applicant. The Membership Committee (or designated individual) shall review all applications and submit them to the Board of Directors with a recommendation. Any applicant shall become a member upon payment of the regularly scheduled dues as provided in Section 3 of Article II, unless decided otherwise by a two-thirds vote of the Board of Directors.

### Section 3. Termination

a) Any member may resign from the Bureau upon written request to the Board of Directors; b) Any member shall be expelled by the Board of Directors by a two-thirds vote for nonpayment of dues after 120 days from the date due, unless otherwise extended for good cause; c) Any member may be expelled by a two-thirds vote of the Board of Directors, at a regularly scheduled or special meeting thereof, for conduct unbecoming a member or prejudicial to the aims or repute of the Bureau after notice and opportunity for a hearing are afforded the member complained against.

### Section 4. Voting

In any proceeding in which voting by members is called for, each member person, association, corporation, partnership or estate in good standing shall be entitled to cast one vote.

### Section 5. Exercise of Privileges

Any firm, association, corporation, partnership, or estate holding membership may nominate individuals, whom the holder desires to exercise the privileges of membership covered by its subscriptions, and shall have the right to change its membership nomination upon written notice.

### Section 6. Life and Honorary Membership

Life and Honorary Membership without voting rights may be conferred upon members of the Bureau at such time and under such terms as the Board of Directors shall determine.

## ARTICLE III

### MEETINGS

#### Section 1. Annual Meeting

The annual meeting of the corporation, in compliance with the state law, shall be held during June of each year. The time and place shall be fixed by the Board of Directors and notice thereof mailed to each member at least ten (10) days before said meeting.

#### Section 2. Additional Meetings

General meetings of the Bureau may be called by the President at any time, or upon petition in writing of any twenty-five (25) members in good standing:

a) Notice of special meetings shall be mailed to each member at least five (5) days prior to such meeting:

b) Board meetings may be called by the President or by the Board of Directors upon written application of three (3) members of the Board. Notice (including the purpose of the meeting) shall be given to each director at least one (1) day prior to said meeting;

c) Committee meetings may be called at any time by the President, respective division Vice-President, or by the committee's chairman with at least one (1) days' notice.

### Section 3. Quorums

At any duly called general meeting of the Bureau 25 members shall constitute a quorum; a majority of Directors present shall constitute a quorum of the Board of Directors; at Committee meetings, a majority shall constitute a quorum.

### Section 4. Notices, Agendas, Minutes

Written notice of all Bureau meetings must be given at least five (5) days, and not greater than thirty (30) days in advance unless otherwise stated herein. An advance agenda (and minutes as necessary) must be prepared for all meetings.

## ARTICLE IV

### BOARD OF DIRECTORS

#### Section 1. Composition of the Board

The Board of Directors shall be composed of eleven (11) members. Three (3) who shall be designated and eight (8) who shall be elected to serve alternating two (2) year terms as indicated herein:

4 - Hotel/Motel	Elected by Membership
4 - At Large	Elected by Membership
1 - City Manager or Representative	Appointed by City
1 - Civic Auditorium	Appointed by City
1 - Kern County Fair	Appointed by Fair

Those Board Members listed herein to be elected by The Convention Bureau Membership shall be elected to serve terms beginning January 1, 1988, as follows:

2 - Hotel/Motel	Term ends June 30, 1988. Two (2) year terms following that date.
2 - At Large	Term ends June 30, 1988. Two (2) year terms following that date.
2 - Hotel/Motel	Term ends June 30, 1989. Two (2) year terms following that date.
2 - At Large	Term ends June 30, 1989. Two (2) year terms following that date.

The Executive Committee will consist of five (5), the President, First Vice President, Vice President, Treasure, and Executive Director.

The government and policy making responsibilities of the Bureau shall be vested in the Board of Directors, which shall control its property, be responsible for its finances, and direct its affairs.

The immediate Past President shall serve as a non-voting ex-officio member to the Board of Directors for the following year, if not continuing to serve as a regular member of the Board of Directors.

## Section 2. Selection and Election of Directors.

A. Nominating Committee. At the regular March Board meeting, the President shall appoint, subject to approval by the Board of Directors, a Nominating Committee of three (3) members of the Bureau.

Prior to May, the Nominating Committee shall notify the membership of the slate of candidates to serve terms to replace the directors whose regular terms are expiring. Each candidate must be a member in good standing and must have agreed to accept the responsibility of a directorship. No Director, who has served three consecutive two (2) year terms, is eligible for election of a fourth term. A period of one (1) year must elapse before eligibility is restored.

B. Publicity of Nominations - Upon receipt of the report of the Nominating Committee, the Executive Director shall immediately notify the membership by mail of the names of person nominated as candidates for directors and the right of petition.

C. Nominations of Petition. Additional names of candidates for Directors can be nominated by petition bearing the genuine signatures of a least twenty-five (25) qualified members of the Bureau. Such petitions shall be filed with the Nominating Committee within ten (10) days after notice has been given of the names of those nominated. The determination of the Nomination Committee as to the legality of the petition(s) shall be final.

D. Determination. If no petition is filed within the designated period, the nominations slate of candidates shall be declared elected by the Board of Directors at their regular June meeting.

If a legal petition shall present additional candidates, the names of all candidates shall be arranged on a ballot in alphabetical order. Instructions will be to vote for a specified number of candidates only. The Executive Director shall mail this ballot to all members at least fifteen (15) days before the regular June Board meeting.

The ballots shall be marked in accordance with instructions printed on the ballot and returned to the Bureau office within ten (10) days. The Board of Directors shall at their regular June Board meeting declare a specified number of candidates, consistent with Article IV, Section 1, with the greatest number of votes, elected.

E. Judges - The President shall appoint, subject to the approval of the Board of Directors, at least three (3), but not more than five (5), judges who are not members of the Board of Directors or candidates for election. Such judges shall have complete supervision of the election including the auditing of the ballots. They shall report the results of the election to the Board of Directors.

### Section 3. Seating of New Directors

All newly elected Board members shall be seated at the June Board meeting and shall be participating members thereafter. Retiring Directors shall continue to serve until the end of the program year.

### Section 4. Vacancies

A member of the Board of Directors who shall be absent from three(3) consecutive regular meeting of the Board of Directors shall automatically be dropped from membership on the Board, unless confirmed by illness or other absence by a majority vote of those voting at any meeting thereof.

Vacancies on the Board of Directors, or among the officers, shall be filled by recommendations from the Bureau President, through the use of the Nominating Committee as herein set forth, with approval of the Board of Directors by a majority vote; and who shall serve the unexpired term of office.

### Section 5. Policy

The Board of Directors is responsible for establishing procedure and formulating policy of the organization. They are also responsible for adopting all policies of the organization. These policies shall be maintained in a Policy Manual, to be reviewed annually and revised as necessary.

### Section 6. Management

The Board of Directors shall employ an Executive Director (or appropriate title) and shall set the salary and other considerations of employment, according to the procedures set forth in the organization's policy/procedure manual.

### Section 7. Indemnification

The Bureau may, consistent with applicable laws, by resolution of the Board of Directors, provide for indemnification by the Bureau of any and all of its Directors or former Directors against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them are made parties, or a party, by reason of having been Directors of the Bureau, except in relation to matters as to which such Director shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty and to such matters as shall be settled by agreement predicted on the existence of such liability or negligence or misconduct unless prior approval of

## ARTICLE V

### OFFICERS

#### Section 1. Determination of Officers

The Board of Directors (new and retiring Directors) at its regular June meeting, shall reorganize for the coming year. At this meeting, the Board shall elect the President, First Vice President, and as many Vice Presidents as is deemed necessary to conduct the activities of the Bureau, and the Treasurer. Officers will be elected from members of the new Board. All officers shall serve for a term of one (1) year or until their successors assume the duties of the office, and they shall be voting members of the Board of Directors.

#### Section 2. Duties of Officers

A. President - The President shall serve as the chief elected officer of the Bureau and shall preside at all meeting of the membership, Board of Directors and Executive Committee.

The President shall, with the advice and counsel of the Executive Director and Assigned Vice Presidents, to divisional or departmental responsibilities, subject to Board of Directors approval.

The President shall, with the advice and counsel of the Vice Presidents and the Executive Director, determine all committees, select all committee chairman, assist in the selection of committee personnel, subject to approval of the Board of Directors.

B. First Vice President. The First Vice President shall exercise the powers and authority and perform the duties of the President in the absence or disability of the President. The First Vice President will be responsible for determining that the program activities of the Bureau are of such duration as is required, at all times being alert to assure that the activities of the Bureau are directed achieving business and community needs in the area served by the Bureau.

C. Vice President. The duties of the Vice President shall be such his/her title by general usage would indicated, and such as required by law, as well as those that may be assigned by the President and Board of Directors. His/her will also have under their immediate jurisdiction all committees pertaining to their general duties.

D. Treasurer. The Treasurer shall be responsible for the safeguarding of all funds received by the Bureau and for their proper disbursement. Such funds shall be kept on deposit in financial institutions, or invested in a manner approved by the Board of Directors. Checks are to be signed by the Treasurer and the Executive Director or in the absence of either or both, by any two (2) designated officers. The Treasurer shall cause a monthly financial report to be made to the Board.

E. Executive Director. The Executive Director shall be chief administrative and executive officer. The Executive Director shall serve as secretary to the Board of Directors, and cause to be prepared notices, agendas, and minutes of the Board.

The Executive Director shall serve as advisor to the President and Board of Directors, and shall assemble information and data and cause to be prepared special reports as directed by the Board.

The Executive Director shall be a non-voting member of the Board of Directors and all committees.

The Executive Director shall be responsible for hiring, discharging, directing and supervision all employees.

With the cooperation of the Finance Committee, the Executive Director shall be responsible for the preparation of any operating budget covering all activities of the Bureau, subject to approval of the Board of Directors. The Executive Director shall also be responsible for all expenditures with approved budget allocation.

### Section 3. Indemnification

The Bureau may, by resolution of the Board of Directors, provide for indemnification by the Bureau of any and all of its Officers or former Officers as spelled out in Article IV, Section 7 of these By-Laws.

## ARTICLE VI

### COMMITTEES AND DIVISIONS

#### Section 1. Appointment and Authority

The President, by and with the approval of the Board of Directors, shall appoint all committee chairmen. The President may appoint such ad hoc committees and their chairmen as deemed necessary to carry out the program of the Bureau. Committee appointments shall be at the will and pleasure of the President and shall serve concurrent with the term of the appointing President, unless a different term is approved by the Board of Directors.

It shall be the function of committees to make investigations, conduct studies and hearing, make recommendations to the Board of Directors, and to carry on such activities as may be delegated to them by the Board.

#### Section 2. Limitation of Authority

Absent an appointment by the Board of Directors of an individual to take specific action on a subject of interest to

the Bureau, no action by any member, committee, division, employee, Director or Officer shall be binding upon, or constitute an expression of, the policy of the Bureau until it shall have been approved or ratified by the Board of Directors.

Committees shall be discharged by the President when their work has been completed and their reports accepted, or when, in the opinion of the Board of Directors, it is deemed wise to discontinue the committee.

### Section 3. Testimony

Once committee action has been approved by the Board of Directors, it shall be incumbent upon the committee leaders or, in their absence, whom they designate as being familiar enough with the issue to give testimony to, or make presentations before, civic and governmental agencies.

### Section 4. Divisions

The Board of Directors may create such divisions, bureaus, departments, councils or subsidiary corporations as it deems advisable to handle the work of the Bureau.

The Board shall have the authority to authorize and define the powers and duties of all divisions, bureaus, departments, councils and subsidiary corporations. The Board shall have the authority to annually review and approve all activities and proposed programs of such divisions, bureaus, departments, councils or subsidiary corporations, including collection and disbursements of funds.

No action or resolution of any kind shall be taken by divisions, bureaus, departments, council or subsidiary corporations having bearing upon or expressive of the Bureau, unless approved by the Board of Directors.

## ARTICLE VII

### FINANCES

#### Section 1. Funds

All money paid to the Bureau shall be placed in a general operating fund, except for those funds duly authorized to be dedicated for special projects. Funds unused from the current year's budget will be placed in a reserve account.

#### Section 2. Disbursements

Upon approval of the Budget, the Executive Director is authorized to make disbursements on accounts and expenses provided for in the budget without additional approval of the Board of Directors. Disbursements shall be by check.

#### Section 3. Fiscal Year

 The fiscal year of the Bureau will close on June 30. (to coincide with the City )

#### Section 4. Budget

The Financial Committee, in conjunction with the Executive Director shall adopt the budget for the coming year and submit it to the Board of Directors for approval.

#### Section 5. Annual Audit

The accounts of the Bureau shall be audited annually as of the close of business on June 30 by a public accountant. The audit shall at all times be available to members of the organization within the offices of the Bureau. (to coincide with the City)

#### Section 6. Bonding

The Executive Director and such other officers and staff as the Board of Directors may designate shall be bonded by a sufficient fidelity bond in the amount set by the Board and paid for by the Bureau.

### ARTICLE VIII

#### DISSOLUTION

#### Section 1. Procedure

The Bureau shall use its funds only to accomplish the objectives and purposes specified in these By-Laws, and not part of said funds shall inure, or be distributed to the members of the Bureau. On dissolution of the Bureau, any funds remaining shall be distributed to one or more regularly organized and qualified charitable, educational, scientific or philanthropic organizations to be selected by the Board of Directors as defined in IRS Section 501 (c) (3).

### ARTICLE IX

#### Section 1. Parliamentary Authority

The current edition of Roberts Rules of Order shall be the final source of authority in all questions of parliamentary procedure when such rules are not inconsistent with the Charter or By-Laws of the Bureau.

### ARTICLE X

#### AMENDMENTS

#### Section 1. Revisions

These By-Laws may be amended or altered by a two-thirds (2/3) vote of the Board of Directors, or by a majority of the

members at any regular or special meetings, providing the notice for the meeting includes the proposals for amendments. Any proposed amendments or alterations shall be submitted to the Board or members in writing, at least ten (10) days in advance of the meeting at which they are to be acted upon.