

August 7, 2012

Stephanie Mizuno, MMC
Assistant City Clerk
City of Sacramento
915 I Street, Rm. 116
Sacramento, CA 95814

Re: Your Request for Advice
Our file No. A-12-113

Dear Ms. Mizuno:

This letter responds to your request for advice regarding the personal financial disclosure provisions applicable to public officials under the Political Reform Act (the “Act”).¹

QUESTIONS

1. Are individuals who will appear on the November 6, 2012 ballot for election to the City of Sacramento’s charter commission “candidates” for purposes of the Act?
2. Are these candidates required to file a Statement of Economic Interests (FPPC Form 700) in conjunction with their declarations of candidacy?
3. Assuming Sacramento voters approve establishment of the city charter commission at the November 6, 2012 election, must the members and appropriate staff of the charter commission be included either in a conflict-of-interest code adopted by the charter commission or in the City of Sacramento’s conflict-of-interest code?

CONCLUSIONS

1. Yes. Individuals who appear on the November 6, 2012 ballot for election to the City of Sacramento’s charter commission are “candidates” for purposes of the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Yes. These candidates are required to file Statements of Economic Interests (FPPC Form 700) in conjunction with their declarations of candidacy, and file the statement no later than the final filing date for the declaration of candidacy. As discussed below, they would file these statements consistent with the provisions applicable to positions listed in Section 87200. If the charter commission is approved by the voters, candidates elected to the commission would continue to file in this manner until the charter commission adopts a conflict-of-interest code or the City of Sacramento amends its code to include appropriate members and staff of the charter commission (see Conclusion 3 below and Analysis).

3. Yes. Assuming Sacramento voters approve establishment of the city charter commission at the November 6, 2012 election, members and appropriate staff of the charter commission must be included either in a conflict-of-interest code adopted by the charter commission or in the City of Sacramento's conflict of interest code.

FACTS

The Sacramento City Clerk is the city's election officer and you are the designated filing official for purposes of the Act. (See City Resolution, 2011-663, Section 300 [December 13, 2011].) You are requesting formal written advice on your duty to request and receive a Statement of Economic Interest from candidates for the office of charter commissioner.

On June 19, 2012, the Sacramento City Council approved placement of a measure on the November 6, 2012 general municipal election ballot. This measure ("Measure M") will ask the voters the following: "Shall a charter commission be elected to propose a new charter or to revise the charter?" Directly following that question, there will be a list of candidates for the office of elected charter commissioner. If the question of an elected charter commission receives a majority of votes, the 15 candidates for the office of charter commissioner receiving the highest number of votes will be elected and immediately organize as a charter commission. However, if the first question receives less than a majority of the votes, no charter commission will be formed.

The city council's actions were performed pursuant to Sections 34450 - 34462. These sections govern the creation and operation of an elected charter commission. Under these provisions, the commissioners are to be nominated in the same manner as other city officers (Section 34454) and the only qualification for the office is that the candidate is a registered voter of the city (Section 34451). The commission is required to propose a charter and amendments thereto for the city (Section 34455) and to complete its work within two years after the members' election, after which the commission is abolished by operation of law (Section 34462). The commission's proposed charter must be filed with the city clerk (Section 34455) and the clerk is required to place the proposed charter on the ballot in a specified upcoming election (Section 34457). Under Section 34458, the city council could have chosen an alternative method of seeking voter approval of a charter amendment by voting to directly place a proposed amendment on the ballot and not seeking voter approval to create a charter commission.

Although you understand the charter commission's recommendations – if any – must be submitted to the voters for approval, you are unsure whether the commission, as a separately elected body, will otherwise seek to make “government decisions,” such as hiring consultants. The Sacramento City Attorney's Office has publicly opined that if the commission wishes to use the services of the city attorney, both commission and city council approval is necessary.

ANALYSIS

Sacramento Charter Commission Candidates as “Candidates” under the Act

As pertinent to these questions, Section 82007 defines the term “candidate” as “an individual who is listed on the ballot . . . for . . . election to any elective office,” and Section 82023 defines “elective office” as “any state, regional, county, municipal, district or judicial office that is filled at an election.” Individuals running for election to the City of Sacramento's charter commission pursuant to the provisions of Sections 34450 – 34462 will appear on the ballot and, if the charter commission measure passes and they are elected, they will hold a municipal office. Therefore, they are candidates under the Act.

Sacramento Charter Commission Candidates and Filing of Statements of Economic Interests

The Act requires specified public officials of state and local government agencies to file periodically Statements of Economic Interests disclosing defined financial interests. These officials fall into two categories: (1) Officials holding positions specified in Section 87200, who are required to disclose the broadest range of financial interests (Sections 87200 – 87210); and (2) Officials holding agency positions that involve participation in government decisions that have financial impacts. These latter positions are designated in the agency's conflict-of-interest code and disclosure for each position is tailored to the scope of the official's job duties. (Sections 87300 – 87313.) Since members of charter commissions are not listed in Section 87200, they are only required to file Statements of Economic Interests if their office is listed or, as discussed below, required to be listed in an agency's conflict-of-interest code pursuant to Sections 87300 – 87313. (Also see Regulations 18219 and 18734.)

Section 87302.3(a) requires a candidate for an elective office listed in an agency's conflict-of-interest code to file, in conjunction with his or her declaration of candidacy for office and no later than the final filing date for the filing of the declaration, a Statement of Economic Interests that is consistent with the agency's code provisions applicable to that office. This section is silent on the filing duties of candidates for election to a position in newly or soon-to-be created agencies that do not yet have conflict-of-interest codes, including agencies such as this charter commission that will only go into existence if the voters approve the charter commission measure. Section 87302.6 provides that members of newly created boards or commissions must file a Statement of Economic Interests at the same time and in the same place as those individuals required to file pursuant to Section 87200 and, once their agency promulgates a new conflict-of-interest code, they must file as provided in that code. Regulation 18754(a)(3)(D) states that it is not necessary for a member of a newly created board or commission to file a

Statement of Economic Interests under Section 87302.6 if the board or commission has no “decisionmaking authority” as defined in Regulation 18701(a)(1).

Under the facts you present, two questions arise on application of these provisions. First, will the City of Sacramento charter commission, if created, have “decisionmaking authority?” Second, if the charter commission has decisionmaking authority, at the time they file their declarations of candidacy for office, what are the Statement of Economic Interests filing requirements for candidates seeking election to the commission? If the charter commission has no decisionmaking authority, candidates for the commission and, if the commission is established, its members and employees, would not have to file Statements of Economic Interests and there would be no need to adopt a conflict-of-interest code applicable to the commission.

Regulation 18701(a)(1) defines when a government-created body has “decisionmaking authority” and its members are therefore public officials required to file Statements of Economic Interests. Under that provision, such a body has decisionmaking authority when, among other things, the body may “make” a governmental decision. (Regulation 18701(a)(1)(A)(i).) We have previously advised that a city councilmember “makes” a government decision when he or she votes to place a matter on the ballot for consideration by the voters. (*Stone* Advice Letter, No. A-06-007.) Since deciding the provisions of the new charter and submitting them to the city clerk for placement on the ballot are the primary duties of the City of Sacramento’s charter commission (see Sections 34455 and 34457), we conclude this body will “make” government decisions and thus have decisionmaking authority under Regulations 18701(a)(1) and 18954(a)(3)(D).²

Given that the proposed charter commission has decisionmaking authority, we next must determine what the Statement of Economic Interests filing requirements are for candidates who seek election to the commission. As described above, Section 87302.3 provides that candidates must file, in conjunction with their declarations of candidacy for office, Statements of Economic Interests that are consistent with the agency’s conflict-of-interest code filing requirements for that elected position. However, as also mentioned, Section 87302.3 is silent on the filing requirements for individuals elected to an agency that will only go into existence on voter approval and does not currently have a conflict-of-interest code.

In the *Morton* Advice Letter, No. I-08-036, we concluded that, under Section 87302.3, a candidate for election to a position that is designated in the agency’s conflict-of-interest code must file a Statement of Economic Interests with his or her declaration of candidacy that is consistent with the filing requirements for that position even though the code does not provide a

² We distinguish this from the *Biddle* Advice Letter, No. A-93-390, in which we concluded that a “Charter Advisory Committee” formed by the Grass Valley City Council did not have “decisionmaking authority.” There, the city council formed the committee itself and deliberated on the committee’s proposed charter revisions before the council decided to place the proposed revisions on the ballot. The committee went out of existence once it submitted its proposals to the city council. In that case, we concluded there was no decisionmaking authority because the committee was merely an advisory body to the council with no pattern of having its recommendations followed by the council. (See former Regulation 18700(a)(1)(C), now incorporated into existing Regulation 18701(a)(1)(A)(iii)).

specific filing requirement for “candidates” for that position. Our conclusion in *Morton* was based on a review of the legislative history of Section 87302.3, in which the Senate Floor Analysis (see Senate Rules Committee Office of Senate Floor Analyses, Senate Floor Analysis of Senate Bill 512, August 29, 2007) expressed concern that, without the bill, the public is deprived of information about candidates’ personal financial interests that may affect their ability to perform when elected to office.

We think the same concern exists when candidates are running for elective office in an agency whose existence is contingent on voter approval and thus does not yet have a conflict-of-interest code. Furthermore, as noted above, Section 87302.6 provides a stop-gap rule that requires members of newly created boards and commissions to file Statement of Economic Interests under the provisions applicable to positions listed in Section 87200 until their agency adopts its own conflict-of-interest code. Given the legislative intent expressed in the passage of Section 87302.3 that voters should have information about a candidate’s potential in-office conflicts of interest, and Section 87302.6’s intent that the public should not be deprived of this information simply because the candidate, once elected, is not yet covered in the agency’s conflict-of-interest code, we think Sections 87302.3 and 87302.6 should be read together to bridge any potential technicalities that will deprive the voters of this information.

Therefore, we conclude that candidates seeking election to offices in newly or soon-to-be created agencies that do not yet have conflict-of-interest codes, including agencies whose existence is dependent on voter approval such as Sacramento’s charter commission, must file Statements of Economic Interests in conjunction with their declarations of candidacy in accordance with the provisions of Section 87302.6. Specifically, these candidates must file Statements of Economic Interests in conjunction with their declarations of candidacy as if they are Section 87200 filers. If the voters thereafter approve establishment of the charter commission and, as discussed below, either the charter commission adopts its own conflict-of-interest code or the charter commission members and appropriate staff are included in the City of Sacramento’s code, the elected members must continue to file their Statements of Economic Interests consistent with the filing requirements of Section 87200 until their positions are placed in the conflict-of-interest code, after which they must file as provided in that code. We believe this conclusion is not only consistent with the legislative intent in adopting Sections 87302.3 and 87302.6, but also adheres to our duty to liberally construe the Act to accomplish its purposes (see Sections 81003 and 81002(c)).

Inclusion of Charter Commission Members and Staff in Conflict-of-Interest Code

Each state and local government agency is required to adopt a conflict-of-interest code that sets forth the agency positions in which officials make or participate in government decisions having financial impacts. Officials in these positions are required to file Statements of Economic Interests disclosing financial interests tailored to the duties of the position. (Sections 87300 - 87302.) All questions concerning whether an entity is a “department” of an agency or a separate agency that has to adopt its own conflict-of-interest code are to be resolved by the

department's or agency's code reviewing body. (Section 87301.) Section 82011(c) provides that the city council is the code reviewing body of any city agency other than the city council.

As stated above, the City of Sacramento charter commission, if established by approval of the voters at the November 6, 2012 election, would be a municipal body that has decisionmaking authority. Therefore, the charter commission members and appropriate staff must be included in a conflict-of-interest code and the City of Sacramento is the commission's code reviewing body. As the code reviewing body for the charter commission, the City of Sacramento has the discretion under Section 87301 to either require the commission to adopt the code or determine the commission is essentially a city "department" and include commission members and appropriate staff in its own conflict-of-interest code.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

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