

February 28, 2013

Wendy L. House  
Deputy City Attorney  
Lounsbery Ferguson  
Altona & Peak, LLP  
960 Canterbury Place, Suite 300  
Escondido, CA 92025-3870

Re: Your Request for Advice  
**Our File No. A-13-018**

Dear Ms. House:

This letter responds to your request for advice on behalf of the City of San Marcos regarding provisions of the Political Reform Act (the "Act")<sup>1</sup> that regulate agency conflict of interest code and disclosure.

### **QUESTION**

May the City of San Marcos, as a code reviewing body, exempt the San Marcos Youth Commission from the City's conflict of interest code?

### **CONCLUSION**

As code reviewing body, the City of San Marcos may exempt the San Marcos Youth Commission from the City's conflict of interest code so long as it meets the criteria for exemption established by the city which are the same or similar to the criteria for state agencies in Regulation 18751.

### **FACTS**

Members of the Youth Commission are appointed by the City Council to serve for a three-year term, meet monthly, and receive a \$15 stipend per meeting for their participation

---

<sup>1</sup> 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.

(\$30.00 for the Chairperson). Qualified members must have completed the sixth grade, but not have attained the age of 21 at the time of appointment to the Youth Commission.

The purpose of the Youth Commission is to advise and make recommendations to the city council on matters pertaining to youth facilities, activities, and programs. According to Section 9.12.070 of the San Marcos Municipal Code, the Youth Commission is “advisory in character and may not be delegated administrative authority or responsibility beyond that which the City Council may authorize.” You stated Youth Commissioners do not make or participate in the making of decisions that may foreseeably have a material effect on any financial interest, except that they do decide how monies that the Youth Commission earns from events in which it participates will be expended. The total amount expended by the Youth Commission during 2012 was \$1,501.86.

### ANALYSIS

As you are aware, the Act requires specified public officials of state and local government agencies to file Statements of Economic Interests (Form 700s) disclosing defined economic 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 (such as city councilmembers); and (2) officials holding agency positions that involve participation in governmental decisions that have foreseeable financial impacts on them. These latter filers are referred to as “designated employees.” Each government agency is required to adopt a conflict-of-interest code (Section 87300) which lists out the “designated employees” at the agency

For each agency conflict of interest code, the Act designates another agency to be the “code reviewing body.” The code reviewing body is charged with reviewing and approving an agency’s conflict-of-interest code. No code is effective unless approved by the code reviewing body. (Section 87303.) The city council serves as code reviewing body for all city agencies. (Section 82011(c).)

Section 87309 details the requirements for approval of a conflict of interest code or code amendment by a code reviewing body. It states that neither a conflict of interest code nor code amendment may be approved by the code reviewing body unless it provides all of the following:

“(a) Reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented.

“(b) A clear and specific statement to each affected person of his or her duties under the Code.

“(c) Adequately differentiation between designated employees with different powers and responsibilities.”

Consistent with these requirements, the Commission enacted Regulation 18751 to provide an exception process available to agencies for which the Commission acts as code reviewing body. Under Regulation 18751(a), exemptions from the Commission are only available if the Commission's Executive Director finds:

“(1) That if the agency were to adopt a Conflict of Interest Code, there would be no ‘designated employees,’ within the meaning of Government Code Sections 82019 and 87302(a), subject to its provisions; or

“(2) That the agency is, or within one year will be, inoperative and nonfunctioning; or

“(3) That the agency is a committee, board, or commission that does not possess decisionmaking authority as defined in 2 Cal. Code Regs. section 18701(a)(1), and both of the following apply:

“(A) The agency will not acquire real property in the foreseeable future; and

“(B) The annual operating budget exclusive of salaries for the agency is less than \$150,000; or

“(4) That good cause exists for granting an exemption due to extraordinary circumstances that indicate the burden on the agency of adopting a conflict of interest code is not warranted by the degree of likelihood that a conflict of interest may occur.”

For purposes of Regulation 18751(a)(3), “decisionmaking authority” means any of the following:

“(i) It may make a final governmental decision;

“(ii) 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 that may not be overridden; or

“(iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”<sup>2</sup> (Section 18701(a)(1)(A).)”

---

<sup>2</sup> Note that the definition in Regulation 18701(a)(1)(A)(iii) can result in the Youth Commission or other city advisory body becoming a “decisionmaking” body over a period of time. If you believe in the future that this definition may be met, you should contact us for additional advice at that time.

As discussed in the *Stadel* Advice Letter, No. I-04-101, in 1986 the Commission added language to Regulation 18751(a) to encourage local governmental agencies to adopt a similar exemption process. It provides:

“This section sets forth the procedure and standards by which the Fair Political Practices Commission will determine whether to grant an exemption from Government Code section 87300 to an agency for which the Commission is the code reviewing body. Other code reviewing bodies are encouraged to adopt the same or similar procedure and standards. Nothing in this section shall be construed to mean that a government agency is not required to adopt a conflict of interest code if it has not been granted an exemption.”

Consequently, the San Marcos City Council, as code reviewing body for the City, may exempt city boards and commissions from being in the city code so long as the process utilized by the city council has the *same or similar* safeguards as those that exist in Regulation 18751. For example:

- Regulation 18751(e), (f) and (g) set out required documentation to be submitted to support the request for exemption under any of the criteria.
- Regulation 18751 (j) sets out the requirements for a granting of the exemption, including the way the code reviewing body must publicize the granting of the exemption and options for interested persons to request reconsideration of the exemption.
- Regulation 18751(m) sets forth the duration of any exemption granted.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl