

March 1, 2013

Marian M. Johnston, Legal Counsel
Commission on the Status of Women and Girls
900 N Street, Suite 390
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-13-023

Dear Ms. Johnston:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May the Executive Director of the Commission on the Status of Women and Girls ("Commission") fundraise for the Commission for the purpose of decreasing the Commission's reliance on governmental funding as mandated by state law?
2. Do the Act's conflict of interest provisions limit or restrict the Executive Director from fundraising if, as mandated by state law, funds received through the fundraising efforts will help support the Commission programs and staff including the Executive Director's salary?

CONCLUSIONS

1. The Act does not prohibit the Executive Director from participating in fundraising activities that are mandated in state law.
2. According to the facts, the Executive Director's position is a state civil service position administered through the personnel department of the California State Library.

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.

The position is subject to the same personnel procedures and terms and conditions as an Executive Director position in other state agencies. In this instance, the Act will not prohibit the Executive Director from fundraising even if the funds raised will also be allocated to the Commission's programs, including the Director's salary. Other provisions of the Act's conflict of interest provisions will apply as noted in the Analysis.

FACTS

The California Commission on the Status of Women and Girls is an independent, non-partisan agency working to advance the causes of women and girls. The legislation that created the Commission is found at Chapter 3.1 of Government Code Sections 8240-8250. (SB 1038, enacted as Ch. 46, Stats. 2012.)

On January 5, 2012, the Governor released his 2012/2013 Budget Proposal. The Budget eliminated funding for the Commission on the Status of Women (Budget Item 8820) as of July 1, 2012. On or about April 30, 2012, Assembly Speaker John A. Perez announced that the Assembly was transferring \$150,000 from the State Assembly to the Commission on the Status of Women. An interagency agreement between the Assembly Committee on Rules and the Commission provided for the restructuring of the Commission on the Status of Women, subject to authorizing legislation, as the Commission on the Status of Women and Girls.

SB 1038 restructured the mission and construct of the Commission as a state agency under statutory authority. The legislation directed the Commission to seek funding from private entities to reduce its reliance on state funding. (Section 8245(d).)

The State Budget for 2013-2014 specifically authorized 2.1 positions for the Commission, and includes \$275,000 in special funds to be raised from donations to support the Commission's activities in 2013-2014. Consistent with that mandate, Budget Item 8820 creates a special fund within the state budget to support the Commission, citing the mandate.

The Commission is mandated by statute to study policy areas for the purpose of examining any laws, practices, or conditions concerning or affecting women and girls which impose special limitations or burdens upon them or upon society. It is also mandated to act as an information center encouraging organizations to institute local self-help activities designed to meet women's educational, employment and related needs. The Commission will also make recommendations to the Legislature.

An important statutorily-created duty of the Commission is also the mandate in Section 8245(a) to create strategies for funding. Specifically, that subdivision states, "[t]he commission shall develop a strategy to attract financial support for private donors in order to reduce the commission's dependence on state funding."

In order to execute its mandates, major responsibilities of the Executive Director will be to reduce the Commission's dependence on state funding and implement a strategy to attract

financial support from private donors. The Executive Director shall also perform other duties to direct and monitor proper management, fiscal and personnel controls. It is anticipated that the Commission will make all decisions about the use of funds, review all of the reports and recommendations of the Executive Director, and be the final decision maker with respect to his or her work, and specifically the allocation of public funds.

On February 21, 2013, Zackery Morazzini, General Counsel of the Fair Political Practices Commission (FPPC), William J. Lenkeit, Senior Commission Counsel, and I met with you to seek additional information. At that meeting, and later confirmed in email communications, it was clarified that the Executive Director's position has a fixed salary and the salary will not be tied to the amount of funds received through the Commission's fundraising activities and programs. In other words, the Executive Director's salary is not based on a commission or bonus basis. Furthermore, the position is subject to the same rules and conditions as other state employees in similar positions at other state agencies. The Commission is also subject to financial oversight by the Department of Finance.

ANALYSIS

Section 87300 requires every agency, unless the agency is solely advisory, to adopt and promulgate a conflict-of-interest code. (Section 87303.) The Commission's new mandates outlined in SB 1038, enacted as Chapter 46 of the Statutes of 2012, clearly provide that the Commission is not solely advisory and that the Executive Director and Commissioners will make final governmental decisions. (Regulation 18701(a)(1)(A)(i).) As we discussed at the February meeting, FPPC staff will help prepare a conflict-of-interest code for the Commission.

Once the code is adopted, it will require specified public officials, including the Executive Director and the board members of the Commission, to periodically file Statements of Economic Interests (FPPC Form 700) disclosing defined financial interests.

The defined economic interests in the code relate to the economic interests that may give rise to a conflict of interest. Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).)

The Act does not prohibit an agency from developing programs to solicit grants and private funding for a state program. In fact, as you note the Legislature specifically mandates that the Commission solicits such funds.

The second question addresses whether a provision of the Act will limit or restrict the Executive Director's activities in fundraising. The Commission has adopted a series of regulations to determine if a conflict of interest exists for an official. For example, Regulation 18705.5 addresses whether an official's decisions will affect the personal income he will receive.

Based upon the facts, the Executive Director's salary is not determined by the Executive Director nor is the Director receiving a commission or additional benefit directly tied to the fundraising efforts. Because the Director's actions will not foreseeably affect the salary, the Executive Director would not have a conflict of interest under Regulation 18705.5.

I caution that the Act's conflict of interest rules apply to other economic interests held by the Executive Director. For example, the Director may have investments and other sources of income that might be affected by the Director's decisions; such as the disbursement of public funds to a contractor. Moreover, there may be additional reporting requirements in connection with the monies received from private entities. The Executive Director should contact the FPPC for guidance in such instances.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Lynda Cassady
Chief, Technical Assistance Division

LC:jgl