

February 20, 2015

Dawn Haggerty
30717 Emperor Drive
Canyon Lake, CA 92587

Re: Your Request for Advice
Our File No. A-15-018

Dear Ms. Haggerty:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as assistance on any conduct that may have already taken place (Regulation 18329(c)(4)(A)), and is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code Section 1090.

QUESTION

Do the Act's conflict of interest provisions prohibit you from serving as a member of the Public Safety Ad Hoc Committee (the "Committee") while serving on the City Council?

CONCLUSION

No. Members of the Committee are not considered public officials subject to the Act's conflict of interest provisions.

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.

FACTS

You were recently elected to the Canyon Lake City Council and you are also serving out the last three months as the Director of the Canyon Lake Homeowner's Association ("HOA").² Canyon Lake primarily consists of a gated community where 11,000 of the 12,500 people living in the City actually live within the gates. The HOA has a private security company and the City is served by the County Sheriff.

Subsequent to your election, the City Council voted to create the Committee to determine if it would be financially and operationally feasible to convert the provision of its law enforcement services from the County Sheriff to a City Police Department. You are the Chair of the Committee, which also consists of another councilmember, the HOA General Manager, the HOA President and two retired police chiefs. The Committee had its first meeting last week to discuss how to proceed with this potential conversion, and a second meeting has been scheduled for February 2015.

You describe the Committee as simply a fact-finding body that will ultimately report its findings to the City Council. As such, once the Committee determines the feasibility of the conversion, it will report its findings to the City Council, which will then determine the next appropriate action.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A conflict of interest exists whenever a public official makes, participates in making, or uses his or her official position to influence a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her interests as specified by Section 87103.

The threshold inquiry in determining whether you have a conflict of interest under the Act is whether you, in your capacity as a member of the Committee, are a "public official" who will be making, participating in making, or influencing a governmental decision.

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. The term "public official" is further defined by Regulation 18701(a)(1) as follows:

² You state that both the City Attorney and attorney for the HOA have provided you letters indicating you can legally serve on both entities. In any event, you plan to resign from the HOA at the March 3, 2015 HOA meeting.

“(a) For purposes of Government Code section 82048, which defines “public official,” and Government Code section 82019, which defines “designated employee,” the following definitions apply:

“(1) “Member” shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.

“(A) A committee, board or commission possesses decisionmaking authority whenever:

“(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.

“(B) A committee, board, or commission does not possess decisionmaking authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.”

Thus, a committee, board or commission may be deemed to have decisionmaking authority whenever it has the ability to 1) make a final decision, 2) compel or prevent a decision, or 3) make substantive recommendations that are, over an extended period of time, regularly approved without significant amendment or modification. If the Committee satisfies any of these factors, it possesses decisionmaking authority, and its members are considered public officials who are subject to the Act’s conflict of interest provisions and financial disclosure requirements. Alternatively, if the Committee does not have decisionmaking authority under Regulation 18701, the Committee’s members are not considered public officials under the Act and are not subject to the Act’s conflict of interest provisions and financial disclosure requirements.³

Initially, looking to the provision under 18701(a)(1) (A)(iii), you state that the Committee has only met on one occasion and is planning a second meeting to be scheduled in February 2015. This would suggest that the Committee has not had the opportunity to make substantive recommendations that, over an extended period of time, have been regularly approved without significant amendment or modification. Traditionally, where there is a history of recommendations from an advisory body being regularly accepted without amendment or modification, often referred to as “rubber stamping,” the body converts from a solely advisory function to one of making or participating in the making of a governmental decision, and its members are considered public officials subject to the Act’s conflict of interest provisions.

³ In this case, you would obviously still be considered a public official in your capacity as a member of the Canyon Lake City Council who is subject to the Act.

However, in this situation, as a new body with no history of making recommendations that have been rubber stamped, the Committee would not have decisionmaking authority under this provision.

Turning to the remaining two provisions under Regulation 18701(a)(1)(A)(i)-(ii), you indicate that the Committee is simply gathering facts to determine the feasibility of changing the provision of the City's law enforcement services from the County Sheriff to a City Police Department. Once the Committee has sufficient information in this regard, it will then report its findings to the City Council for action. Importantly, the Committee has no authority make a final decision, or to compel or prevent a decision, on this subject.

Because you have provided no facts to demonstrate that the Committee has decisionmaking authority, you are not a "public official" in your capacity as a Committee member, and you are not prohibited from participating on the Committee, which will ultimately make recommendations to the City Council.⁴ If, however, in the future, the Committee's powers or authority are changed, or the Committee's recommendations are regularly approved by another body, you will need to revisit the question of whether the Committee has decisionmaking authority that would cause its members to become subject to the Act's conflict of interest and financial disclosure provisions.

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

Sincerely,

John W. Wallace
Assistant General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

JW:jgl

⁴ You asked whether you can report on the Committee's developments to the City Council at public meetings. Nothing under the Act would prohibit you from doing this. However, we urge you to consult with the City Attorney to ensure compliance with legal provisions outside of the Act.