



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 20, 2015

Shayna M. van Hoften
Partner
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Re: Your Request for Advice
Our File No. A-15-141

Dear Ms. van Hoften:

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

QUESTION

Under the Act, is i-GATE a governmental agency required to adopt and promulgate a conflict of interest code?

CONCLUSION

Yes. i-GATE is a local government agency under the Act. Therefore, it is required under Section 87300 to adopt a conflict of interest code for its employees and board members or be included within an existing code.

FACTS

Your office represents “i-GATE,” a non-profit corporation formed to support technology entrepreneurs in the Tri-Valley region (the Livermore area). The City of Livermore, Lawrence Livermore National Laboratory, and Sandia National Laboratories’ California site founded it in 2010. The nonprofit’s mission is to support the development of groundbreaking technologies by serving as an incubator for tech start-ups. i-GATE was formed as a non-profit with municipal participation in the funding and governance of the corporation.

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.

i-GATE members typically fall into one of three camps: founders of tech startups in need of some key resource; aspiring entrepreneurs in need of perspective and guidance; and the makers, developers, designers, and technologists in need of community.

For founders and startup teams, i-GATE offers startups resources to accelerate the path from the idea stage to the first round of funding. Resources provided include workspace, mentoring, tools and services. i-GATE also provides “coworking space” for makers, developers, designers and other technologists that provide them a place to connect and collaborate with likeminded peers.

i-GATE also hosts technology showcases, startup education, and the new LabCorps entrepreneurship pilot program. New LabCorps program teaches lab scientists and engineers to think and act like entrepreneurs. New LabCorps is a partnership among Lawrence Livermore National Laboratory (LLNL), Sandia-California Laboratories (SNL-CA), and UC Davis. The program provides scientists and engineers from both national laboratories with the opportunity to participate in weekly entrepreneur information sessions at the i-GATE Innovation Hub in downtown Livermore to learn about how business works and what it takes to be an entrepreneur. The program also provides free, hands-on entrepreneur training sessions at UC Davis offering training on entrepreneurial skills from defining a market and business model to pitching ideas.

The City of Livermore was a primary impetus for the formation of i-GATE. In 2009, the City adopted a resolution “authorizing to the City Manager to sign Memorandums of Understanding (MOUs) to formalize the partnerships and to reaffirm the planned role of the City as a lead partner in this proposal and designating Rob White, Economic Development Director, as the iHub Coordinator for the i-GATE Innovation Hub.” The non-profit corporation was formed sometime later.

Approximately \$120,000, or half of i-GATE’s funding for this year, is expected to come from three local government partners (the cities of Livermore, Dublin, Danville, and Pleasanton). The other half will consist of funds from the Sandia and Lawrence Livermore national labs, as well as some service contracts and membership dues. The City of Livermore pays the salary and benefits of the one staff person. The City also provides office space free of charge. This funding mix may change over time.

While cities generally have broad powers to act in the area of economic development, you believe the operation of a tech “incubator” or “hub” is not a traditional governmental function, nor one that would be expected of government. It is an effort to harness the technical expertise of residents and workers in this particular community to stimulate private sector economic development.

California has an Innovation and Entrepreneurship unit (part of the Governor’s Office of Business and Economic Development). The Innovation and Entrepreneurship unit is “primarily responsible for the administration of California’s Innovation Hub (iHub) Program.” i-GATE is part of the iHub program, being one of 16 iHubs statewide.

i-GATE has complied with the notice and agenda requirements of the Brown Act because of the City of Livermore’s funding of and involvement in the founding of i-GATE, as well as the participation of City elected officials on the board.

The City Managers from each of Livermore's "partner" cities sit as non-voting, ex officio members, while an elected official from each of the four member cities sits as a voting member on the Board. With the exception of a councilmember from Dublin, the other three city members are the mayors of the respective cities.

You wish to know whether i-GATE is a government agency required to adopt and promulgate a conflict of interest code.

ANALYSIS

I. What Entities Are Subject To The Act

The Act prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) The conflict of interest provisions of the Act apply only to "public officials." A "public official" is defined as every member, officer, employee or consultant of a state or local government agency. (Section 82048.) In addition, Section 87300 of the Act states that "[e]very agency shall adopt and promulgate a Conflict of Interest Code" applicable to its "designated employees." For the purposes of the Act, "agency" is interpreted to mean any state agency or local government agency.²

A "local government agency" is defined in the Act 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." (Section 82041.)

You ask whether i-GATE is considered a local government agency, and therefore required to adopt a conflict of interest code for its board members and employees under Section 87300 or be included within an existing city or county code.

The Commission established criteria for determining whether an entity is governmental in character in its opinion *In re Siegel* (1977) 3 FPPC Ops. 62. The *Siegel* factors determine whether local entities are public or private in character.

The Commission has applied the following four-part test:

- (1) Whether the impetus for formation of the entity originated with a government agency;
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency;
- (3) Whether one of the principal purposes for which the entity was 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

² Section 82003; *Maas* Advice Letter, No. A-98-261.

(4) Whether the entity is treated as a public entity by other laws.

The Commission's subsequent advice letters and an opinion state that it is not necessary that all four of the Siegel factors be satisfied for an entity to be considered a local government agency.³ It is only necessary that the entity satisfy enough of the four factors for its overall character to correspond to that of a local government agency.⁴ Therefore, the Siegel factors are not intended to be a definitive litmus test for determining whether an entity is public for purposes of the Act. Ultimately, the test must still be a factual analysis on a case-by-case basis.⁵

II. Application of the Siegel Criteria to i-GATE

We apply the *Siegel* test to the detailed facts you have provided to determine whether i-Gate should be considered a "local government agency" under the Act.

1. *Did the impetus for formation of the entity originate with a government entity?*

In your letter, you state that the City of Livermore was a primary impetus for the formation of i-GATE. The City in 2009 adopted a resolution authorizing MOUs to formalize partnerships and to reaffirm the City's role as a lead partner in -GATE. The non-profit corporation was formed sometime later. Based on your facts, it appears that the initial impulse for the formation of i-GATE was from the City itself. Therefore, we conclude that the Siegel formation criterion is met.

2. *Is the entity substantially funded by, or is its primary source of finds, a government agency?*

You indicate that approximately half of i-GATE's funding this year is expected to come from three cities (Livermore, Dublin, Danville, and Pleasanton), with the other half consisting of funds from the Sandia and Lawrence Livermore national labs and proceeds from service contracts and membership dues. The City pays the salary and benefits of the one staff person. The City also provides office space free of charge. This funding mix may change over time.

i-GATE's funding appears to be a mix of public and private funds. However, city government provides a substantial portion of the funding, including operating capital, staff salary and office space. Therefore, we conclude that this criterion is met.

3. *Is one of the principal purposes for which the entity is formed to provide services or undertake obligations that public agencies are legally authorized to perform and which, in fact, they traditionally have performed?*

³ *In re Vonk* (1981) 6 FPPC Ops. 1; *O'Shea* Advice Letter, No. A-91-570.

⁴ *Rasih* Advice Letter, No. A-01-020.

⁵ *In re Vonk*, *supra*.

In the *Siegel* opinion, this third criterion is a two-part inquiry that examines whether an entity performs a public function and whether the service provided is one that is traditionally performed by public agencies.⁶

A. Public Function:

We first look at factors considered by the *Siegel* opinion to be relevant to determining whether an entity performs a public function. One such factor is the degree to which government actors control or are involved in its operations.

City managers from each of i-GATE's three partner cities sit as non-voting, ex officio members, while an elected official from each of the four member cities (Livermore, Dublin, Danville and Pleasanton) sits as a voting member on the Board. Your facts indicate that there is substantial governmental control and involvement in i-GATE's operations, and the salary of the i-GATE employee is paid for by the City of Livermore. Therefore, we find that i-GATE is performing a public-private function, with involvement and input from city officials.

B. Service Traditionally Performed by Public Agencies:

Secondly, we look at factors considered by the *Siegel* opinion to be relevant in determining whether an entity performs a function that has traditionally been performed by public agencies.

You state that while cities have broad powers to act in the area of economic development, the operation of a technology "incubator" or "hub" is not a traditional governmental function. However, we note that promoting long-term economic growth and facilitating job creation is a traditional governmental function. Moreover, the fact that California has an Innovation and Entrepreneurship unit in Governor's Office suggests that the state recognizes its role in encouraging entrepreneurship. As one of the iHubs, i-GATE is part of the state's Innovation and Entrepreneurship program.

Under the facts presented, it appears that i-GATE is performing a semi-public function with significant input and involvement by city officials, and it is providing a service that government agencies have a role in and have traditionally performed. Therefore, this factor is also met.

4. *Is the entity treated as a public entity by other statutory provisions?*

The final factor that is considered in evaluating an entity's status under the Act is whether the entity is treated as a public entity by other provisions of law. Your facts indicate that i-GATE has voluntarily complied with the state's Brown Act. Consistent with prior advice, the requirement to follow the open meeting laws weighs in favor of the fourth criterion of the *Siegel* analysis.⁷ Therefore, this factor is also met.

⁶ Stark Advice Letter, No. A-03-015.

⁷ Kranitz Advice Letter, No. A-03-204; Stark, *supra*; Alperin Advice Letter, No. A-95-118.

Conclusion:

In applying the *Siegel* test to the facts presented in your letter, we find that all four factors are met. Thus, we conclude that i-GATE is a local public agency within the meaning of the Act and is required to have a conflict of interest code for its Board and employees or be included within a code pursuant to Section 87300.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Emelyn Rodriguez
Senior Counsel, Legal Division

ER:jgl