



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 18, 2018

Brian Doyle  
City Attorney Stadium Authority Counsel  
Santa Clara City Attorney's Office  
1500 Warburton Avenue  
Santa Clara, CA 95050

Re: Your Request for Advice  
Our File No. A-18-039

Dear Mr. Doyle:

This letter responds to your request for advice on behalf of the Santa Clara Stadium Authority ("Authority") regarding the conflict of interest code provisions of the Political Reform Act (the "Act").<sup>1</sup> This advice solely pertains to the conflict of interest code provisions of the Act, and does not address other conflict of interest prohibitions such as common law conflict of interest or Section 1090. Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. Please also note that we do not provide advice regarding past conduct. (Regulation 18329(b)(8)(A).)

#### QUESTION

Does the Act require the Authority to include as a "consultant" in its Conflict of Interest Code an individual who works for the Forty Niners Stadium Management Company LLC ("Stadium Manager" or "ManCo") and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement?

#### CONCLUSION

Yes. The Act requires the Authority to include that individual as a "consultant" in its Conflict of Interest Code.<sup>2</sup>

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<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.

<sup>2</sup> Section 87302(b) requires a "designated employee," as defined in Section 82019, to file Statements of Economic Interests ("Form 700") as required by the Act.

## FACTS AS PROVIDED BY REQUESTOR

You are the City Attorney for the City of Santa Clara and the Stadium Authority Counsel for the Authority, a joint powers agency established pursuant Section 6500 et seq. On March 28, 2012, the Authority, ManCo, and the Forty Niners SC Stadium Company, LLC ("StadCo") entered into the Stadium Management Agreement. The purpose of the Stadium Management Agreement was to secure management services for the then-under-construction Levi's Stadium. Completed in 2014, Levi's Stadium is located in the City of Santa Clara, owned by the Authority, managed by ManCo, and leased to StadCo.

On November 13, 2012, the Authority approved the First Amendment to the Stadium Management Agreement, authorizing ManCo to enter into contracts on behalf of the Authority for the purchase of supplies, materials and equipment, and services relating to the Levi's Stadium and its operations. You note that it appears that the Authority did not examine the issue of whether the Act's conflict of interest provisions applied to any individuals that work for ManCo at that time. The Authority's initial Conflict of Interest Code did not include a consultant designation, and no individual who worked for ManCo was designated in that Code.

The Authority recently amended its Code to include a consultant designation. You have requested formal written advice confirming the accuracy of your analysis that an individual who works for ManCo and makes procurement decisions on behalf of the Authority pursuant to the amended Stadium Management Agreement is a "consultant" under the Act, required to be included in the Authority's Code and to file Form 700.

## ANALYSIS

Section 87100 of the Act prohibits a public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. Section 82048 defines "public official" as "every member, officer, employee or consultant of a state or local government agency." Regulation 18700.3 defines "consultant" for purposes of Section 82048 and provides in pertinent part as follows:

- (a) For purposes of Sections 82019 and 82048, "consultant" means an individual who, pursuant to a contract with a state or local government agency:
  - (1) Makes a governmental decision whether to:
    - (A) Approve a rate, rule, or regulation;
    - (B) Adopt or enforce a law;
    - (C) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
    - (D) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
    - (E) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
    - (F) Grant agency approval to a plan, design, report, study, or similar item;
    - (G) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(2) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

Thus, there are two ways that an individual may become a "consultant" under the Act. First, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, makes a governmental decision described in Regulation 18700.3(a)(1). Alternatively, an individual is a "consultant" if he or she, pursuant to a contract with a state or local government agency, (1) serves in a staff capacity and (2) either participates in governmental decisions, as defined,<sup>3</sup> or performs the same or substantially all the same duties that would otherwise be performed by an individual in a position listed in the agency's code.

Section 2.1 of the of the amended Stadium Management Agreement delegates substantial procurement authority to ManCo and provides as follows:

2.1 Stadium Procurement Contracts. In addition to contracting authority that may be granted to the Stadium Manager from time to time pursuant to Section 6.4 of the Existing Management Agreement, the Stadium Authority hereby agrees that the Stadium Manager shall have full authority and discretion to select the providers, and to negotiate, approve, enter into and administer contracts on behalf of the Stadium Authority, for the purchase of supplies, materials and equipment, and for services, relating to the Stadium and its operations ("Stadium Procurement Contracts"), as and to the extent the Executive Director has authority to enter in such Stadium Procurement Contracts pursuant to Sections 17.30.180 of the Santa Clara City Code ("SCCC"), as approved on first reading by the Santa Clara City Council on November 13, 2012.

Thus, the amended Stadium Management Agreement delegates to ManCo the full authority of the Authority's Executive Director under the Santa Clara City Code to approve and enter into "Stadium Procurement Contracts" for the purchase of supplies, materials and equipment, and services relating to Levi's Stadium and its operations.

ManCo is not a "consultant" for purposes of the Act because only an individual may be a "consultant" under Regulation 18700.3(a). An individual who works for ManCo is a "consultant" if that individual meets that regulation's definition of the term.

As noted above, Regulation 18700.3(a)(1) provides that an individual is a "consultant" if he or she makes a governmental decision pursuant to a contract with a local government agency to,

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<sup>3</sup> Regulation 18704(a) provides that an official "makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency," and Regulation 18704(b) states that an "official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."

among other things, enter into a contract of the type requiring agency approval (subparagraph (D)), or grant agency approval to a contract—or the specifications for a contract—which requires agency approval and to which the agency is a party (subparagraph (E)).

An individual who works for ManCo and exercises the authority granted to ManCo pursuant to Section 2.1 of the amended Stadium Management Agreement makes governmental decisions pursuant to a contract with the Authority, including decisions to approve and enter into contracts of the types described in Regulation 18700.3(a)(1)(D) and (E). Therefore, that individual is a “consultant” under the Act, the Authority must include that individual as a “consultant” in its Conflict of Interest Code, and that individual must file Form 700 as required by the Act.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Matthew F. Christy  
Counsel, Legal Division

MFC:jgl