BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by Richard E. Sherwood, President, Board of Trustees Los Angeles County Museum of Art	No. 76-038 Dec. 15, 1976

BY THE COMMISSION: We have been asked the following question by Richard E. Sherwood, President of the Board of Trustees of the Los Angeles County Museum of Art:

Will employees of the Los Angeles County Department of Museum of Art who receive salary supplements and discretionary funds from Museum Associates (a nonprofit corporation) violate Government Code Section 87100 when they perform their official functions?

CONCLUSION

The receipt of salary supplements and other monies from Museum Associates by employees of the Los Angeles County Department of Museum of Art will not preclude those employees from making, participating in making or using their official position to influence most of the decisions related to the management and operation of the museum.

ANALYSIS

Museum Associates, Inc., is a nonprofit, tax-exempt corporation which administers the management and development of the Los Angeles County Museum of Art. The working relationship between Museum Associates and the county may be best described as a "joint venture" of the public and private sectors in maintaining and developing museum facilities for use by the general public. The details are set forth in contracts entered into by the county and Museum Associates on December 9, 1958, and March 4, 1960, and by the provisions of Sections 210.1 - 210.4 of the Los Angeles County Administrative Code. These documents give Museum Associates the power, within certain prescribed limits, to regulate and control

matters relating to the management, operation and maintenance of the museum.[1] Among the powers delegated to Museum Associates is the authority to select and supervise the Director of the Museum of Art and certain other museum employees. However, once these persons are hired, they are county employees, subject to civil service rules and regulations. They are, therefore, "public officials" within the meaning of Government Code Section 82048.[2]

Although the employees selected by Museum Associates receive a salary from the county (the amount of which is determined by the County Board of Supervisors), Museum Associates has deemed it necessary to pay "salary supplements" to certain of these employees in order to remain competitive in the market for qualified art museum personnel. The amount of the salary supplement is determined as follows. The Budget and Finance Committee of the Board of Trustees of Museum Associates recommends a total salary for each employee that will receive a supplement based on that employee's performance and comparable salaries paid by other major art museums. The salary paid by the Board of Supervisors is then subtracted from the recommendation of the Committee and the difference is paid to the employee by Museum Associates as a "salary supplement."

In addition to the salary supplement, certain members of the museum's professional staff receive "nonsalary benefits." These nonsalary benefits are used by the

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1/ The type of arrangement entered into by the parties in this matter, as generally described herein, is specifically authorized by Public Resources Code Section 5136 which provides:

> Whenever any donation of real property has been made to a city or county for museum or art gallery purposes, or any building or improvements therefor have been erected upon public lands by an individual or a corporation without cost to the city or county, the governing body of the city or county may delegate the management, operation, maintenance and regulation thereof to the donor or his successors, or to the boards of trustees or directors nominated by the donor and appointed by the governing body of the city or county, upon such terms and conditions as the governing body may prescribe.

2/ All statutory references are to the Government Code unless otherwise noted. Section 82048 provides:

> "Public official" means every member, officer, employee or consultant of a state or local government agency.

professional staff in connection with activities for which the county will not reimburse them, such as meetings with potential donors and benefactors and purchases of necessary books, periodicals and other "tools of the trade."

The receipt of the salary supplements and non-salary benefits from Museum Associates makes Museum Associates a "source of income" to the affected county employees. See Sections 82030 and 87103. We are unpersuaded by the argument to the contrary, advanced in the opinion request, that the salary supplements and other benefits received from Museum Associates are excluded from the definition of "income" by Section 82030(b)(2).

Section 82030(b)(2) provides:

(b) "Income" does not include:

...

> (2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization; ....

This exclusion distinguishes between monies received from state and local government agencies and monies received from bona fide educational, academic and charitable organizations. Salary is expressly excluded from the definition of income when it comes from the former sources but is not so excluded when paid by the latter sources. We think this distinction evidences an intention to have a narrower exclusion in the case of bona fide educational, academic and charitable organizations and conclude that salary from such organizations is income and the organization providing the salary is a source of income to the recipient public official.

Having concluded that Museum Associates is a "source of income" to those employees receiving salary supplements, we must decide whether these employees "make, participate in making or in any way attempt to use [their] official position to influence a governmental decision in which they know or have reason to know they have a financial interest." Section

87100.[3/] We have been advised by Mr. Sherwood that we may assume, arguendo, for purposes of this opinion that the Director and the Deputy Director of the museum "make or participate in making" governmental decisions. While the exact nature of the decisions made or participated in by these individuals is not specified, it appears that the Director and Deputy Director are in complete charge of the day to day administration of the museum. It also appears that fund raising and the control of certain expenditures for museum purposes fall within the ambit of their responsibilities; and presumably their fund raising activities include making decisions relative to raising funds for Museum Associates.

Despite the fact that the Director and Deputy Director apparently make and participate in decisions which will have a financial impact on Museum Associates, their source of income, we do not conclude that disqualification from these decisions is required by Section 87100. We think that under the facts of the present case the strictures of Section 87100 were not intended to be, and are not, applicable to most of the decisions in which the Director and Deputy Director will be involved.

Section 87100 is designed to insure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests." Section 81001(b). See also 2 Cal. Adm. Code Section 18702(a). In light of the nature of the relationship between the county

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[3/] Section 87103 provides in pertinent part:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

...

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars ($250) or more in value received by or promised to the public official within twelve months prior to the time when the decision is made; ....

and Museum Associates, we do not perceive any reason to expect that, in general, the receipt of income by the Director and Deputy Director from Museum Associates might interfere with the performance of their duties "in an impartial manner, free from bias." Indeed, the facts presented suggest a contrary inference.

It is undoubtedly true the Director and Deputy Director will make many decisions and devote much effort to the task of raising funds for Museum Associates. It is also true that their continued employment and the level of their salaries may depend on the success of these efforts, as well as other aspects of their performance in managing the museum. However, these facts do not necessarily create a conflict of interest, because although Museum Associates is a "source of income" it is also part and parcel of the museum itself. In reality, Museum Associates is not an outside, private entity with whose interests the interests of the museum will conflict. Rather, it is, as we have indicated, involved in a "joint venture" with the museum and the interests of the two entities are, in fact, congruent. Accordingly, to the extent that Museum Associates raises funds (by reason of "decisions" of the Director and Deputy Director), those funds "flow through" to uses in the public interest, the cost of which might otherwise have to be borne by the county.

In addition, while the fact that Museum Associates is a nonprofit entity engaged in educational work does not, in and of itself, preclude a finding of the existence of a conflict of interest, it does appear relevant to our analysis herein. When, as in the present case, a county decides to operate a museum as a "joint venture" with a nonprofit organization established solely for that purpose, the persons employed to manage the museum necessarily will attempt to further the joint goal of both the county and the nonprofit organization, namely the successful operation of the museum. In pursuing that joint goal, these persons generally will not be confronted with a conflict of interest when making decisions, but instead will be pursuing the common interests of both entities free from the type of bias comprehended by the Political Reform Act.

We do not mean to suggest that a conflict of interest could never arise under the arrangement we review herein. For example, we do not consider whether the Director and Deputy Director could participate in a decision concerning a proposal to abandon the contractual agreement between the

county and Museum Associates and to place the museum completely under county management. We do conclude, however, that, in general, participation in decisions concerning the administration and management of the museum, including decisions concerning raising funds for Museum Associates, is permissible.

Approved by the Commission on December 15, 1976. Concurring: Brosnahan, Carpenter, Quinn and Lowenstein. Commissioner Lapan was absent.

Daniel H. Lowenstein
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Chairman