



California Fair Political Practices Commission

December 8, 1993

Jeffrey G. Green
Mariposa County Counsel
P.O. Box 189
Mariposa, CA 95338

Re: Your Request for Informal Assistance
Our File No. I-93-448

Dear Mr. Green:

This is in response to your letter requesting assistance with respect to the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since your advice request is general in nature, we are treating your request as one for informal assistance.²

QUESTION

In light of the 1993 amendment to Section 54952 (Stats. 1993, Chapter 1137) which redefines "legislative body" for purposes of the "Brown Act" to include advisory bodies, are members of advisory bodies subject to the disclosure and disqualification provisions of the Political Reform Act?

CONCLUSION

The 1993 amendment to Section 54952 does not amend the Political Reform Act and has not altered its application. For

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

purposes of the disclosure and disqualification provisions of the Act, a member of a board or commission is and remains subject to the disclosure and disqualification provisions of the Political Reform Act if the board or commission may:

- (1) Make a final governmental decision;
- (2) 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 which may not be overridden; or,
- (3) The board or commission makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

DISCUSSION

The Political Reform Act

The Political Reform Act was adopted by the voters of California in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would 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).)

In furtherance of this goal, Section 87100 of the Political Reform Act 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. In addition, the Political Reform Act requires every public official to disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.)

You have asked whether members of advisory bodies are "public officials" subject to the disclosure and disqualification provisions of the Political Reform Act. Regulation 18700(a)(1) provides:

- (a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee, or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission has decision-making authority whenever:

(A) It may make a final governmental decision;

(B) 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 which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Thus, members of purely advisory committees that do not fall within the definition in Regulation 18700 are not subject to the Political Reform Act's disclosure and disqualification provisions.

Section 54952 (as amended by Stats. 1993, Chapter 1137.)

You have asked whether the application of the Political Reform Act has been altered by the amendment to Section 54952 which redefines "legislative body" for purposes of the "Brown Act" to include advisory bodies.

The amendment to Section 54952 did not expressly affect any of the provisions of the Political Reform Act. None of the provisions of the Political Reform Act were listed as amended. Furthermore the descriptions of the amendments in the bill and the analysis of the bill discuss only amendments to the Brown Act.

Moreover, implied amendment of one code section by an express amendment to another code section is not favored. (Lambert v. Conrad (1960) 185 Cal.App.2d 85, at 93.) In this case, the language you refer to, "legislative body," is not expressly set forth in the Political Reform Act. While this concept is similar to those dealt with in the provisions of the Political Reform Act that regulate disclosure and disqualification of public officials, it is not the same and thus, does not conflict with the Political Reform Act's provisions.

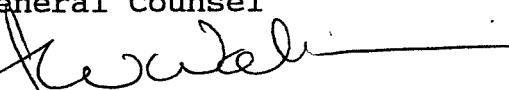
Finally, even where a statute outside the Political Reform Act does conflict with the Act, Section 81013 provides: "If any

act of the Legislature conflicts with the provisions of this title, this title shall prevail." Consequently, the Act's requirements are not affected by the amendment to Section 54952.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Steven G. Churchwell
General Counsel


By: John W. Wallace
Counsel, Legal Division

³ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.