



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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March 22, 2021

Michele Rodriguez  
San Francisco International Airport  
Community Roundtable Coordinator  
455 County Center, 4th Floor  
Redwood City, CA 94063

Re: Your Request for Advice  
**Our File No. A-21-024**

Dear Ms. Rodriguez:

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

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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Is the San Francisco International Airport/Community Roundtable (“Roundtable”) a public agency required to develop a conflict of interest code and are the members required to file Statements of Economic Interests (Form 700s)?

### CONCLUSION

In applying the test identified in the Commission opinion *In re Siegel* (1977) 3 FPPC Ops. 62 we find that the Roundtable is a public agency subject to the conflict of interest code requirements of the Act. Therefore, it is required under Section 87300 to adopt a conflict of interest code.

### FACTS AS PRESENTED BY REQUESTER

San Francisco International Airport is owned and operated by the City and County of San Francisco but is located entirely within neighboring San Mateo County. Because of the shared impacts that result from airport operations, the two counties entered into a Joint Powers Agreement

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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.

in 1978 to quantify the impacts and to identify possible mitigation actions. The implementation of the mitigations noted by the Joint Powers Board, in its Joint Action Plan, called for the formation of a formal structure and process to oversee the implementation of the numerous mitigation actions outlined in the Plan.

The Airport/Community Roundtable was established in 1981 by an MOU between San Francisco and San Mateo Counties as a voluntary committee to address community noise impacts from aircraft operations at San Francisco International Airport (“SFO”).<sup>2</sup> The Roundtable has facilitated numerous aircraft noise mitigation achievements to improve the quality of life in communities near the Airport. The overall purpose of the Roundtable is to continue to foster and enhance this cooperative relationship to develop, evaluate, and implement reasonable and feasible policies, procedures, and mitigation actions that will further reduce the impacts of aircraft noise in neighborhoods and communities in San Francisco and San Mateo Counties.

You note that the authority to control aircraft in flight and on the ground is vested exclusively in the FAA. The FAA, however, cannot control the number of flights nor the time of day of aircraft operations. Federal law preempts any local government agency from implementing any action that is intended to control the routes of aircraft in flight. Neither the Roundtable, local elected officials nor airport management can control the routes of aircraft in flight or on the ground.

The Roundtable is funded by its voting member agencies. The County of San Mateo has established a Roundtable Trust Fund that contains the funds from the member agencies and acts as the keeper of the Trust Fund. All Roundtable expenses are paid from the Roundtable Trust Fund.

There are currently 23 members, who are elected or appointed officials from the constituent cities, towns, counties, and government entities, and file their Form 700 pursuant to the requirements of their respective agencies.<sup>3</sup> All Representatives and Alternates who serve on the Roundtable must be elected officials (i.e., Council Members, Supervisors, etc.) from the agencies/bodies they represent and serve at the pleasure of their appointing agency/body, except Representatives and Alternates from the City and County of San Francisco Mayor’s Office, the City and County of San Francisco Airport Commission, and the City/County Association of Governments of San Mateo County Airport Land Use Committee. Staffing is provided by San Mateo County, and funding is from the Membership dues, and San Francisco Airport Commission thru the City-County of San Francisco.

We also note the Roundtable bylaws provide that all agendas and meeting notices for each Regular Meeting, Special Meeting, and certain Subcommittee Meetings, as defined in Article VII, must be posted, as prescribed by law (Brown Act, California Government Code Section 5490 et seq.). All Roundtable Regular Meetings and Special Meetings, as well as Roundtable Standing

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<sup>2</sup> We note that you provided a copy of the current MOU and Roundtable bylaws by email on March 3, 2021.

<sup>3</sup> Current membership consists of the: City and County of San Francisco Board of Supervisors, City and County of San Francisco Mayor’s Office, City and County of San Francisco Airport Commission, County of San Mateo Board of Supervisors, City/County Association of Governments of San Mateo County Airport Land Use Committee, Town of Atherton, City of Belmont, City of Brisbane, City of Burlingame, City of Daly City, City of Foster City, City of Half Moon Bay, Town of Hillsborough, City of Menlo Park, City of Millbrae, City of Pacifica, Town of Portola Valley, City of Redwood City, City of San Bruno, City of San Carlos, City of San Mateo, City of South San Francisco, and Town of Woodside.

Subcommittees, are to be conducted per the relevant provisions in the Brown Act, California Government Code Section 54950 et seq.

### ANALYSIS

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.” In addition, certain state and local public officials must file periodic Statements of Economic Interests (Form 700) disclosing those personal assets and interests that may be affected during the performance of their official duties. (Sections 87200 - 87350.) Public officials who are required to file statements of economic interests are either identified in Section 87200 (statutory filers) or designated in an agency's conflict-of-interest code (designated employees or code filers). (See Sections 87300 and 87302.)

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 Roundtable board members are public officials that are subject to the disclosure requirements of the Act. The answer turns on whether the Roundtable is considered a local government agency and therefore required to adopt a conflict-of-interest code for its employees and board members under Section 87300.<sup>4</sup>

The Commission-established criteria for determining whether an entity is governmental in character are found 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.
- (4) Whether the entity is treated as a public entity by other laws.

The Commission subsequently clarified that it is not necessary that all four of the *Siegel* factors be satisfied for an entity to be considered a local government agency. (*In re Vonk* (1981) 6

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<sup>4</sup> The Commission is the code reviewing body for any agency with jurisdiction in more than one county. (Section 82011(a).)

FPPC Ops. 1.) 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. 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.

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

Generally, the first factor has been met where an entity is created by some official action of another governmental agency. For example, in the *Siegel* Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. (See also *Maas* Advice Letter, No. A-98-261; *Moser* Advice Letter, No. A-97-400a.)

The Roundtable was created by an MOU between San Francisco and San Mateo Counties. As government agencies were parties to the MOU creating the Roundtable, we conclude that the *Siegel* formation criterion is met.

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

As noted above, the Roundtable is funded by its voting member agencies. The County of San Mateo has established a Roundtable Trust Fund that contains the funds from the member agencies and acts as the keeper of the Trust Fund. Staffing is provided by San Mateo County.

Thus, the Roundtable is funded by members that are all government agencies and the second *Siegel* factor 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?*

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

“[W]e consider it significant that the acquisition and operation of a water system is a service commonly provided by municipalities in their public capacities. The Corporation itself apparently recognizes the ‘public function’ it is serving, as evidenced by its effort to qualify its bond offering for tax-exempt status under Section 103(a) of the Internal Revenue Code of 1954, as amended. That provision exempts from federal income tax interest earned on bonds which have been issued by a nonprofit corporation acting “on behalf” of a political subdivision of the state.”

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.

The Roundtable has 23 voting members of the Board. All votes are held by public agency representatives. Thus, the Roundtable is ultimately controlled by representatives acting on behalf of governmental entities. Consequently, it can be concluded that the Roundtable does serve a public function.

**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.

The Roundtable was formed to address community noise impacts from aircraft operations at SFO. The Roundtable has facilitated numerous aircraft noise mitigation achievements to improve the quality of life in communities near the Airport. The overall purpose of the Roundtable is to continue to foster and enhance this cooperative relationship to develop, evaluate, and implement reasonable and feasible policies, procedures, and mitigation actions that will further reduce the impacts of aircraft noise in neighborhoods and communities in San Francisco and San Mateo Counties. We note that mitigation efforts to address noise related issues in communities surrounding large infrastructure projects is a traditional governmental function.

Under the facts presented, it appears that the Roundtable is performing a public function with significant input and involvement by government 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. The corporation at issue in the *Siegel* Opinion was recognized as a public body in both tax and securities law. The Roundtable bylaws provide that all agendas and meeting notices for each Regular Meeting, Special Meeting, and certain Subcommittee Meetings, as defined in Article VII, must be posted, as prescribed by law (Brown Act, California Government Code section 5490, et seq.), and that all Roundtable Regular Meetings and Special Meetings are to be conducted per the relevant provisions in the Brown Act, California Government Code section 54950, et seq.

Consistent with prior advice, the requirement to follow the open meeting laws weighs in favor of the fourth criterion of the *Siegel* analysis. (*Kranitz* Advice Letter, No. A-03-204; *Alperin* Advice Letter, No. A-95-118.)

In applying the *Siegel* test to the facts presented, we find that all four factors are met. Thus, we conclude that the Roundtable is a local public agency within the meaning of the Act, it is required to have a conflict of interest code for its members pursuant to Section 87300, and its members are subject to regulation under the Act. Since the Roundtable is a multicounty entity, the

Commission is the Roundtable's code reviewing body under Section 82011(a). You may wish to contact the Commission's Education and Outreach Division for assistance in developing a Conflict of Interest Code.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Zachary W. Norton*

By: Zachary W. Norton  
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