



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 03, 2022

Julian Gross
Renne Public Law Group
350 Sansome Street | Suite 300
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-21-172

Dear Mr. Gross:

This letter responds to your request for advice regarding the Conflict of Interest Code and Statement of Economic Interests (“Form 700”) filing provisions of the Political Reform Act (the “Act”).¹ 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.

QUESTIONS

1. What is the appropriate code reviewing body pursuant to the Act for purposes of approving the San Pablo Economic Development Corporation’s (“Corporation”) conflict of interest code (“code”)?
2. If the Fair Political Practices Commission (“Commission”) is the appropriate code reviewing body, which entity, the Commission or the Corporation should serve as the filing officer?

CONCLUSIONS

1. Since the Corporation is considered a multi-county agency, its code reviewing body is the Commission.
2. The Corporation’s filers should file their statements with the Commission until the code approval is complete.

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 18109 through 18998 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.

FACTS AS PRESENTED BY REQUESTER

The Corporation is a nonprofit public benefit corporation established by the City of San Pablo to create economic opportunities for residents of the City of San Pablo and the surrounding counties. The Corporation is headquartered in the City of San Pablo. While the Corporation's physical facilities and the provision of services are located solely in the County of Contra Costa, the Corporation does not impose a geographic limitation on who can access its services. In a follow-up email dated January 19, 2022, it was provided that the Corporation receives federal funding from the Workforce Innovation and Opportunity Act ("WIOA") program, which reportedly prohibits recipients of the federal funds from imposing geographic limitations on who they serve. The Corporation estimates that approximately 85 percent of its services are provided to Contra Costa County residents and businesses.

The Corporation is in the process of adopting an independent code pursuant to the Act. However, the Corporation has been unable to determine which entity should serve as the code reviewing body for purposes of Section 87303. The Corporation therefore now seeks formal advice concerning which entity – the County of Contra Costa, or the Commission – is legally obligated to review the Corporation's code. If the Commission determines that it will serve as the code reviewing body, then the Corporation further queries whether the Commission will exercise its discretion to act as the filing officer.

ANALYSIS

The Act requires every state and local government agency to adopt a code. (Section 87300.) The code must enumerate the positions within the agency that involve the making, or participation in the making, of decisions that may foreseeably have a material financial effect on any financial interest held by the person filling the position.² Further, the code specifies which financial interests must be disclosed by persons holding those positions designated in the code. (Sections 87300-87302.) The code must be approved by the agency's code reviewing body. (Section 87303.)

Pursuant to Section 82011, "code reviewing body" as it relates to a county agency versus a multi-county agency, means the following:

"(a) The [C]ommission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

"(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county."

The jurisdiction of a local government agency is "... the region, county, city, district or other geographical area in which it has jurisdiction ..." (Section 82035.) Thus, to answer the question of whether the Corporation's code reviewing body is a multi-county agency subject to the

² An agency must follow the procedures outlined in Regulation 18750 in order to have a code approved.

Commission's review or a single-county agency subject to the Contra Costa County Board of Supervisors' review, we must ascertain the meaning of "jurisdiction" as it applies to an agency.

In determining whether an agency principally located within one county has jurisdiction in another county, previous advice has assessed whether the agency owns real property in another county and to what extent it has authority in another county. (*See e.g., Sperling* Advice Letter, No. A-18-025 [advising that a preschool that received funding from several counties and provided services in those counties was a multi-county agency]; *Gong* Advice Letter, No. A-14-092 [concluding that a Workforce Investment Board that was reconfigured to include the geographical area of another county, that received federal funds, and that provided services to another county's residents was considered a multi-county agency].)

In this case, although the Corporation's physical facilities and the provision of services are located solely in the County of Contra Costa, and the Corporation estimates that approximately 85 percent of its services will be provided to Contra Costa residents and businesses, the Corporation does not impose a geographic limitation on who can access services by the terms of the WIOA program in order to receive federal funding. Thus, as the Corporation must, by the terms of its federal funding, provide services without regard to county geographical boundaries, we conclude that the Corporation is a multi-county agency whose code must be reviewed and approved by the Commission.

Section 87500(l) provides that where the Commission is the code reviewing body, the local agency, board or commission shall be the filing officer, "unless, at its discretion, the Fair Political Practices Commission elects to act as the filing officer." Here, the Corporation's filers should file their statements with the Commission until the code approval is completed

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

Sincerely,

Dave Bainbridge
General Counsel

Katelyn L. Greene

By: Katelyn L. Greene
Counsel, Legal Division

KG:dkv