



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 9, 2022

Roger Formanek
California Transportation Commission
1120 N Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-22-113

Dear Mr. Formanek:

This letter responds to your request for advice on behalf of the Equity Advisory Committee members regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also 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

Are the members of the newly created interagency Equity Advisory Committee “public officials” and thus required to file Statement of Economic Interest (SEI) forms?

CONCLUSION

No. The Committee members are not required to file SEI forms because they do not meet the definition of a “public official” under the Act as the Committee’s role is solely advisory at this time and the Committee does not have decisionmaking authority.

FACTS AS PRESENTED BY REQUESTER

You are an attorney for the California Transportation Commission (Commission). The Commission, California State Transportation Agency (CalSTA), and California Department of Transportation (CalTRANS) are forming an interagency Equity Advisory Committee (EAC). You

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 18104 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.

have been asked to seek advice regarding whether the EAC members of will be required to file SEI forms.

The purpose of EAC is “to elevate diverse and historically marginalized voices to advise our agencies on how to achieve meaningful outcomes in transportation equity, environmental justice, and equitable economic opportunities, especially as related to transportation planning and programming.” EAC will make recommendations to the departments focused on tools and guidelines for transportation planning and funding programs. The agencies will then independently review the recommendations made by EAC. These recommendations will not be binding, and any recommendations made by EAC would be subject to substantive review by the agencies prior to adoption.

EAC will consist of 15 members for staggered two-year terms. The overall budget for EAC is over \$200K per year. Members of EAC will receive nominal compensation. The total allowable compensation is \$15K annually, which equates to \$1K per member per year. The remainder of the budget will provide for meeting venues, travel/lodging costs, and expenses related to operating the business of EAC.

ANALYSIS

The Act’s conflict of interest provisions ensure that public officials will “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).) Section 87100 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. A conflict of interest exists whenever a public official makes, participates in, or uses his or her official position to influence a governmental decision that has a reasonably foreseeable material financial effect on one or more of his or her interests as specified by Section 87103. Section 87302(a) requires that a conflict of interest code specify the economic interests public official’s must report on their SEI forms.

The threshold question here is whether the Committee members meet the definition of a “public official” under the Act. Section 82048 defines a “public official” as every member, officer, employee, or consultant of a state or local government agency. The term “member is further defined by Regulation 18700(c)(2), which states:

- (2) ‘Member’ does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.
- (A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:
 - (i) It may make a final governmental decision;
 - (ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may nor be overridden; or

- (iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.
- (B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(iii).

To summarize, a committee is deemed to have decisionmaking authority if it (1) makes a final decision, (2) can compel or prevent a decision, or (3) makes substantive recommendations over an extended period of time that are regularly approved without significant amendment or modification. Additionally, a committee does not possess decisionmaking authority when it is formed for the sole purpose of researching and preparing a report for submission to another government agency that has final decisionmaking authority.

Thus, if the Committee has decisionmaking authority under any of the above tests, its members would be considered public officials and are subject to the Act's conflict-of-interest provisions. Alternatively, if the Committee does not have decisionmaking authority, its members are not considered public officials under the Act and are not subject to the Act's conflict-of-interest provisions.

Based upon the facts presented, the Committee will be serving a solely advisory role. The Committee will not take final action on matters before them. The Committee will review, advise and make recommendations on transportation related plans. The departments will independently review the recommendations and decide which recommendations to adopt. The Committee does not make or compel governmental decisions through any initiation or veto powers. As a new committee it cannot be determined if the Committee makes the type of recommendations contemplated in subsection (iii). For these reasons, the Committee members do not currently meet the definition of a public official, will not be subject to the conflict of interest provisions in the Act, and will not be required to file SEI forms.

Nonetheless, we must caution that the Committee members could meet this definition at a later date if the Committee begins making recommendations that are regularly approved by the departments over an extended period of time without significant modification or amendment by the departments. If there is indication that this has occurred, you should seek further advice regarding whether the Committee has decisionmaking authority at that time.

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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