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July 16, 1976

Mr. Daniel Lowenstein, Chairman
Fair Political Practices Commission
P.O. Box 807
Sacramento CA 95804

A-76-537

Re: Unsalariated Advisory Board Members as Designated Employees;
Proposed Amendments to 2 Cal. Admin. Code §18700(a)(1)

Dear Chairman Lowenstein:

Reference is made to your memorandum of July 9, 1976 concerning a special meeting of the Commission on July 20, 1976 to discuss the above-referenced subject. We subscribe to the view that unpaid advisory boards and commissions should not be required to adopt conflict of interest codes and we agree that an ambiguous situation has been created by the language of Regulation 18700 and the fact that it was adopted to define terms of Government Code §87100 but not §§87300 et seq.

Conversations with Mr. Delbert Spurlock of the Commission staff and others have indicated that the Commission is considering action to modify Regulation §18700(a)(1)(C) in line with either Mr. Spurlock's memorandum of May 1, 1976 or by eliminating that subparagraph entirely. While we certainly agree with the intent of this proposed action we are not certain that it goes far enough.

We feel that the same type of ambiguous situation with relation to unsalaried members of "advisory" boards which is now perceived as being raised by Regulation 18700(a)(1)(C) is also raised by §18700(a)(1)(D). The problem, of course, is that an advisory board whose recommendations are routinely followed apparently possesses decision-making authority under §18700(a)(1)(D). While this definition is not specifically applicable to the local agency conflict of interest codes mandated by Government Code §§87300 et seq., it does appear to provide some guidance as to the thinking of the Commission with regard to what is a "solely advisory function" under Government Code §82019.

The following are suggestions for improving and clarifying Regulation 18700:

no response necessary per Del 7-29-76

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Mr. Daniel Lowenstein, Chairman
Fair Political Practices Commission

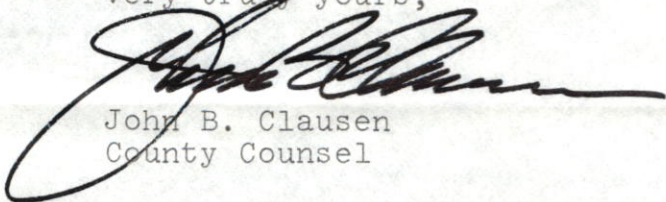
July 16, 1976

First, we think that the regulations should specifically be made applicable to the whole of Chapter 7 of the Political Reform Act of 1974 rather than just to Government Code §87100. This would be a logical extension and would clear up an ambiguous situation inasmuch as we suspect that the definitions in §18700 are, in fact, being applied throughout Chapter 7 and most specifically to the thousands of local agency conflict of interest codes now being created throughout the State.

Second, we think that Reg. 18700(a)(1) would be substantially improved by the deletion of (C) and (D) because the functions under these two sections are qualitatively different from those in (A) and (B). Whereas the latter are truly decision-making situations, the former involve nothing more than advising the ultimate decision maker.

Third, in the alternative we would endorse a regulation similar to the one proposed in Mr. Spurlock's memorandum of May 21, 1976; but feel that such regulations should also include Subsection (D) as well as (C). Alternatively, all four subsections of Regulation §18700(a)(1) could be included within such a regulation. Either of these actions would have the effect of clarifying the "designated employee" status of unpaid members of advisory boards and would more fully effectuate the intent of Government Code §82019. We feel that such a regulation would not be detrimental to the purposes of the Act, would forestall a great deal of litigation and would additionally serve to encourage thousands of people to make themselves available for unpaid public service who do not wish to subject themselves to the inconvenience and liability of "designated employee" status.

Very truly yours,



John B. Clausen
County Counsel

JBC:HEV:me

July 16, 1976

Mr. Daniel Downey, Chairman
Fair Political Practices Commission

First, we think that the regulations should specifically be made applicable to the whole of Chapter 7 of the Political Reform Act of 1974 rather than just to Government Code 84100. This would be a logical extension and would clear up an ambiguous situation inasmuch as we suspect that the definition in 84100 and, in fact, being applied throughout Chapter 7 and most specifically to the thousands of local agency conflict of interest codes now being enacted throughout the state.

Second, we think that Reg. 18700(a)(1) would be substantially improved by the deletion of (C) and (D) because the distinction under these two sections are qualitatively different from those in (A) and (B). The latter two sections are more advisory in nature, the former involve nothing more than advising the ultimate decision maker.

Third, in the alternative, we would endorse a regulation similar to the one proposed in Mr. Downey's memorandum of May 21, 1976. We feel that such regulations should also include Subsection (D) as well as (C). Alternatively, all four subsections of regulation 18700(a)(1) could be included within a regulation. The effect of these actions would have the effect of clarifying the "disinterested" status of unpaid members of advisory boards and would more fully emphasize the intent of Government Code 84100. We feel that such a regulation would not be detrimental to the purposes of the Act, would forestall a great deal of litigation and would additionally serve to encourage thousands of people to make themselves available for unpaid public service who do not wish to subject themselves to the inconvenience and liability of "designated employee" status.

Very truly yours,

Tom B. Jensen
County Counsel

TBC:HW:me