

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration (916) 322-5660 ••• Executive/Legal 322-5901 ••• Enforcement/Conflict of Interest 322-6441

March 4, 1977

A-77-276

Mr. Marvin G. Haun
Quaresma, Avera, Benya,
Hall & Haun
Law Offices
37323 Fremont Blvd. at Peralta Blvd.
Fremont, California 94536

Dear Mr. Haun:

You request written advice with respect to the applicability of the Political Reform Act to the Washington Hospital Authority Board and its Board members. More specifically, you ask whether the Hospital Authority is a "local government agency" within the meaning of Government Code §82041 and whether the members of the Authority's Board of Directors are "public officials" within the meaning of Government Code §§82048 and 87100.

The Washington Hospital Authority is a joint powers entity established for the purpose of issuing revenue bonds and constructing improvements in certain facilities on behalf of the Washington Hospital District. As is typical of such arrangements, certain leaseback provisions are included in the joint powers agreement between the Washington Township Hospital District and the County of Alameda.

The issues raised in your request for advice are virtually identical to the issues presented in the matter of Samuel Siegel, City Attorney for the City of Pico Rivera, Opinion Request No. 76-054. The Commission's determination regarding the issues in Siegel will govern staff advice in the Washington Hospital Authority situation. Siegel will come on for a second hearing before the Commission in early April. I am placing you on the mailing list for interested persons regarding the Siegel Opinion, and you will be apprised of the hearing date and receive a copy of the second draft of Siegel.

Sincerely,

Delbert L. Spurlock, Jr.
Delbert L. Spurlock, Jr., Chief
Conflicts of Interest Division

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February 25, 1977

Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Request for Written Advice

Gentlemen:

This office represents the Washington Township Hospital District of Alameda County, California. We have been asked to seek your advice as to whether or not the Washington Hospital Authority of Alameda County, California is a "local government agency" within the meaning of Government Code Section 82041 and whether or not its separate Board of Directors are "public officials" within the meaning of Government Code Sections 82048 and 87100 due to the limited capacity in which they presently function.

On April 1, 1970 the Washington Township Hospital District and the County of Alameda entered into a joint exercise of powers agreement creating a separate entity, the Washington Hospital Authority. (See Exhibit "A") The Board of Directors of said Authority is composed of 5 members, four appointed by the District and one appointed by the County. No member can be a member of the Board of Directors of the District, or a member of the Board of Supervisors of the County. The appointments are for staggered terms of four years.

The Authority was created to provide a funding vehicle for constructing additions to and expansion of the existing Washington Hospital, owned and operated by the District. The expansion of the hospital was approved by the electors of the District by a 72% majority.

The Authority leased the hospital sites and facilities from the District (see Exhibit B Site Lease), issued Revenue Bonds in the amount of \$9,700,000, constructed the improvements thereon and leased the hospital site, facilities and improvements back to the District for an annual rental sufficient to pay principal and interest on the Bonds and all administrative costs. (See Exhibit C Project Lease)

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Re: Request for Written Advice

During the construction period the Authority was required to employ the District as its Agent for construction of the improvements in accordance with the plans and specifications approved by the District. The Authority had no staff personnel of its own. All staff functions were performed by District staff personnel. The issuance of the Bonds, the approval of the Corporate Trustee, the Resolution of Issuance, the Site and Project Leases, all contracts entered into and all monies disbursed were approved by the District prior to approval of the Authority.

The proceeds from the sale of the Authority Bonds were deposited with the Bank of America National Trust and Savings Association, Corporate Trustee in trust, pursuant to the Resolution of Issuance (see Exhibit D). All other revenues including rentals of the Authority are paid directly to the Corporate Trustee. The Corporate Trustee disbursed all Authority funds for the construction of the improvements and now disburses all funds of the Authority for the payment of principal and interest directly to the bondholders. At no time has the Authority or will it in the future directly receive or disburse funds on its own.

On March 6, 1974 the construction of said hospital improvements were accepted as completed by the District as Agent for the Authority. Pursuant to the Project Lease, the District commenced payments of rent to the Corporate Trustee on behalf of the Authority. In accordance with the terms of the construction contracts all costs and expenses of said improvements were paid. During the course of construction the District had physical possession of the entire premises and operated and maintained the hospital. After construction and at the present time the District has full use and benefit of the entire premises and facilities and pursuant to the Project Lease is obligated to maintain and operate the hospital, site and facilities, including fire and extended coverage, liability, earthquake and rental income insurance at its own costs.

Also, pursuant to the Project Lease, the District each year must take necessary action to include all rental payments in its budget and make necessary appropriations therefor to service the Bonds.

Now that the project is complete the Authority Board of Directors meets annually to review the District's approved budget and reviews the audit report of the Authority by an independent Certified Public Accountant.

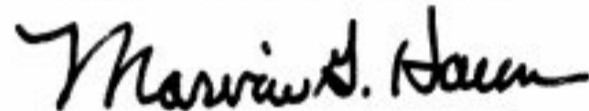
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Until the expiration of the Leases and payment of the Revenue Bonds in full, which is projected to occur in 1997, the District carries the full burden of operating and maintaining the hospital site and facilities and the payment of the Revenue Bonds.

Although the Authority is in the position of sublessor and must review from time to time the financial status of the Trust Accounts and the District's budget it would appear the Authority functions in a very limited capacity and is not making the kind of governmental decisions contemplated by Chapter 7 of the Political Reform Act of 1974.

There is no question the District must comply with the Act and has in fact adopted its own Conflict of Interest Code more restrictive than the law requires, which Code is presently being reviewed by Alameda County.

Very truly yours,



MARVIN G. HAUN

MGH:ve
Encls.

cc: Mr. Richard M. Warren
Washington Hospital