

State of California



Fair Political Practices Commission

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

January 14, 1977

Mr. John Powell
Counsel, Bay Area Air
Pollution Control Dist.
939 Ellis Street
San Francisco, California 94109

A-77-277

Dear Mr. Powell:

Please excuse the delay in responding to your request for advice. In your letters, you ask essentially two questions: first, is the hearing board for the Bay Area Air Pollution Control District a governmental agency within the meaning of Government Code §82041 and thus required to develop a Conflict of Interest Code; and two, are the members of the District, all of whom are elected public officials, required to file disclosure statements pursuant to the District's Conflict of Interest Code?

With respect to your first question, you state:

Section 40800 of the Health & Safety Code continues in existence five member hearing boards previously created by the Legislature in each air pollution control district in the State. Such hearing boards are appointed by the local district's board of directors, and members may not be officers or employees of the district (H & S C §40803). Consequently, hearing board members are not considered employees of the district which they serve. It should be noted for purposes of distinction that H & S C §40751 specifically empowers the air pollution control officer (chief executive of each district to appoint district personnel subject to approval of the board of directors. Such personnel constitute the district's employees, while hearing board members are independent of the normal employer/employee relationship, and serve specific terms (H & S C §40804). Furthermore, the Hearing Board of this District has no staff of its own but relies on the Secretary of the Board of Directors to serve as its clerk.

Despite the statutorily imposed independence of the hearing board members from the District, it is the staff's opinion that the hearing board is a part of the District and must be included within the Conflict of Interest Code for the District submitted to the Fair Political Practices Commission. As in the case of the Agricultural Labor Relations Board or the administrative law judges of the Office of Administrative Hearings, the desirability of independent hearing examiners is supportable by considerations of sound administrative procedure. However, where as here, the hearing board is established for the specific purpose of serving the needs and answering the questions regarding the issues ultimately coming before the District, the hearing board cannot be considered for purposes of the Political Reform Act to be independent of the District. Thus, the Conflict of Interest Code for the District should include persons who are members of the District's hearing board.

This discussion obviates any necessity to consider whether the hearing board itself is a local government agency within the meaning of Government Code §82041. Please note in addition that the fact that a public official may exercise quasi-judicial functions does not render that official or agency on which he or she sits a "court or ... agency in the judicial branch of government." See Government Code §82041.

In your second question you point out that Government Code §87302(b) provides:

The provisions of the Conflict of Interest Code adopted under this subsection shall not be applicable to any designated employee who is covered by Article 2 of this chapter.

You go on to state "... even though the members of the District's Board of Directors may wish to put themselves in the category of 'designated employees' within the District's Conflict of Interest Code, they are prohibited by the Political Reform Act itself from doing so." Your observations raise two issues: first, does the provision in question preclude the members from being designated employees within the meaning of the Act? The answer is no. The cited provision applies only to subsection §87302(b), and not to §87302(a), which is a separate subsection and the subsection which requires the designation of positions within the agency.

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The second issue: Does the noted provision above prevent disclosure by Article 2 filers within the Code of the District? It is the view of the Commission that the prohibition of §87302(b) against further disclosure obligations on the part of Article 2 filers is applicable only to Codes drafted within the jurisdiction of the agency giving rise to the official's Article 2 status. Thus, a member of a board of supervisors cannot be compelled to disclose any interest in an agency within his or her county. The logic of this position flows from the fact that the member of the board of supervisors will have already disclosed fully all interests from within the county, and no other interests are capable of being disclosed pursuant to a Conflict of Interest Code within that jurisdiction.

This is not the case with respect to an agency with a geographical jurisdiction beyond that of the city or county giving rise to the official's Article 2 status. The Act contemplates that what must be disclosed within a Conflict of Interest Code is what can be materially financially affected by the official by virtue of his or her official duties. It is the view of the Commission that the apparent conflict between this standard and the cited provision of Government Code §87302(b) must be resolved in light of the purposes of the Act to require the members of the District to disclose interests pursuant to the Conflict of Interest Code of the District within the jurisdiction of the District. See Government Code §81002(d).

I regret that I have not been more expansive with regard to your questions. If you desire greater specificity or wish to challenge these interpretations of the Act, please request the opinion of the Commission.

Thank you.

Sincerely,


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

DLS:glb

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BAY AREA AIR POLLUTION CONTROL DISTRICT

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DEC 29 08 AM '76

November 30, 1976

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CONTRA COSTA COUNTY
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James Lemos

SONOMA COUNTY
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Robert Theiller

Fair Political Practices Commission
926 J Street
Sacramento, California 95814

Gentlemen:

On June 26, 1975 we wrote to you requesting information and guidance regarding the promulgation of a conflict of interest code for the Hearing Board of this District. To our knowledge no response to our letter was ever received. We should like to request your assistance so that we may properly advise the Hearing Board of the action it should take.

Section 40800 of the Health & Safety Code continues in existence five member hearing boards previously created by the Legislature in each air pollution control district in the State. Such hearing boards are appointed by the local district's board of directors, and members may not be officers or employees of the district (H & S C §40803). Consequently, hearing board members are not considered employees of the district which they serve. It should be noted for purposes of distinction that H & S C §40751 specifically empowers the air pollution control officer (chief executive) of each district to appoint district personnel subject to approval of the board of directors. Such personnel constitute the district's employees, while hearing board members are independent of the normal employer/employee relationship, and serve specific terms (H & S C §40804). Furthermore, the Hearing Board of this District has no staff of its own but relies on the Secretary of the Board of Directors to serve as its clerk.

It appears that the Hearing Board need not adopt a conflict of interest code for its five members unless the Hearing Board is considered a "local government agency" within the definition of your §82041. Although §82041 exempts courts and judicial

agencies from the definition of "local government agency", it does not explicitly state whether quasi-judicial bodies such as this District's Hearing Board are exempted.

If the Hearing Board is determined not to be exempt from the filing of a conflict of interest code, please advise when you desire its code to be submitted.

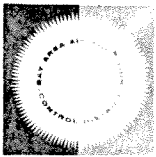
Very truly yours,



Richard W. Grieves
Assistant Counsel

RWG:tmc

cc Charles Kruger



BAY AREA AIR POLLUTION CONTROL DISTRICT

November 30, 1976

Re: Conflict of Interest Code for
Bay Area Air Pollution Control
District

DEC 2 5 15 AM '76

Mr. Delbert L. Spurlock, Jr., Chief
Conflicts of Interest Division
Fair Political Practice Commission
P. O. Box 807
Sacramento, California 95804

Dear Mr. Spurlock:

A Conflict of Interest Code for the Bay Area Air Pollution Control District has been drafted by my office and is currently undergoing revision prior to its submittal to the Board of Directors of the District. I anticipate that a revised draft will be submitted to the Board within the next two weeks with a request that the Board set a hearing on the Code for its second meeting in January (January 19, 1977) or, at the latest, for its first meeting in February (February 2, 1977). Adoption of a Code at either of these meetings will enable the District to submit its Code to you by the February 10, 1977 deadline.

A question has arisen during the preparation of our Code relative to the inclusion of members of our Board of Directors as "designated employees." Our Board comprises 18 members, all of whom are elected public officials. Some Board members are county supervisors and some are mayors or members of city councils. All nine counties which comprise the District are represented on the Board of Directors.

Article 2 of Chapter 7 of the Political Reform Act of 1974 requires specific disclosures by designated officials, including members of county boards of supervisors, mayors and members of city councils. Article 2 thus covers all of the members of the Board of Directors of the Bay Area Air Pollution Control District. The disclosures required by Article 2 are, however, limited jurisdictionally with respect to investments and interests in real property. These jurisdictional limitations do not extend much beyond the boundary of their city for a mayor or member of a city council and do

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not extend much beyond the boundary of their county for members of a county board of supervisors.

With respect to the Conflict of Interest Code being prepared for the Bay Area Air Pollution Control District, Section 87302 of the Political Reform Act appears to prohibit the District's Code from being made applicable to the District's Board of Directors. The statute seems clearly to prohibit the provisions of the District's Conflict of Interest Code from being applicable "to any designated employee who is covered by Article 2 of this Chapter." It therefore appears, that even though the members of the District's Board of Directors may wish to put themselves in the category of "designated employees," within the District's Conflict of Interest Code, they are prohibited by the Political Reform Act itself from doing so.

I would greatly appreciate your comments relative to this matter and respectfully request a prompt reply.

Very truly yours,



John F. Powell
Counsel

JFP:js

cc: Alfred Nelder
D. J. Callaghan