

87100 ✓
87300

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

F P P C
APR 22 10 57 AM '77

March 8, 1977



77-08-223

Mr. Samuel V. McGrath
City Attorney, Richmond
Richmond, California 94804

Re: Economic Development Commission of the City of Richmond

Dear Mr. McGrath:

This is in response to your letter to Chairman Lowenstein dated January 13, 1977. The Commission will not issue a formal opinion on this matter because it does not present a substantial question of interpretation of the Political Reform Act. See 2 Cal. Adm. Code §18320(g)(2). However, I trust the following informal advice will enable you to resolve the matter.

Taking your questions together, the basic issue presented is whether or not the members of the Richmond Economic Development Commission (hereinafter the "EDC") are "public officials" within the meaning of Government Code §87100* and/or whether the Commission is an "agency" subject to the requirement that it adopt a Conflict of Interest Code pursuant to Government Code §87300, et seq.

Section 82048 defines "public official" as "every member, officer, employee or consultant of a state or local government agency". The Commission has further defined "member" in §87000 by regulation, 2 Cal. Adm. Code §18700(1), which provides:

- (1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

*All statutory references are to the Government Code unless otherwise indicated.

2A.12

Samuel V. McGrath
March 8, 1977
Page Two

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

The powers and duties of the Economic Development Commission are defined in §3.14.090 of the Municipal Code of the City of Richmond, which states:

3.14.090. Powers and duties. The specific powers and duties of the commission are as follows:

(A) Assist city officials, develop, compile and coordinate information regarding available areas suitable for economic development in the city of Richmond by reviewing staff work and providing appropriate feedback;

(b) Upon request of the city council, review proposed agreements for the lease, sale or use of city-owned land and properties for economic development in the city of Richmond by reviewing staff work and providing appropriate feedback;

(c) Work with the port director on matters related to the economic development of the port of Richmond;

(d) Review appropriate zoning ordinances and make recommendations to the planning director to encourage proper zoning and orderly development of areas suitable for economic development;

Samuel V. McGrath
March 8, 1977
Page Three

(e) Work with state and local agencies, governing bodies, public and private organizations as appropriate to encourage economic development of the city.

(f) Promote the interests of commercial and industrial development in metropolitan Richmond;

(g) Perform other tasks related to the city's economic development as requested by the city manager or the city council.

Based on these duties and powers, we cannot conclude that the EDC is "decision-making" by virtue of possessing any of the authority referred to in subsections (1) (A) or (1) (B) of the cited regulation. There remains the question whether they are the type of board or commission referred to in subsection (1) (C)* We conclude that as the EDC is currently operating they are not. We are particularly persuaded of this because it appears the EDC has not, in fact, exercised those powers referred to in subsections (b) and (d) of the cited ordinance. Furthermore, we have reviewed minutes of the meetings of the EDC for a two-year period. The tenor of those meetings can best be described as an exchange of information and views between certain city officials and the Commission members. Indeed, the minutes tend to reflect frequent "briefing" of the Commission by city officials and an information-gathering type of questioning of these officials by members of the EDC. Examples of this are the following meetings:

July 14, 1976 - presentation by the Public Works Director of the City and a representative of Standard Oil concerning oil spills and cleanup.
No votes taken.

August 13, 1975 - presentation of the City Manager concerning redevelopment events. Commission voted to recommend establishment of an Economic Development Department.

*In determining whether a board or commission is "decision-making" within the meaning of subsection (1) (C) of the regulation, we will analyze not just the apparent statutory authority of the agency, but rather the practical effects and consequences of its decisions or deliberations.

Samuel V. McGrath
March 8, 1977
Page Four

December 9, 1976 - report by a Police Captain on security in downtown areas. No votes taken.

May 12, 1976 - report by the Director of Public Works concerning the funding for and status of the Hoffman Freeway.

February 11, 1976 - presentation by the Director of Housing Department concerning statewide legislation concerning the California Housing and Finance Agency; its possible effects on the city; and what type of housing could be built pursuant to the provisions of state law. No votes taken.

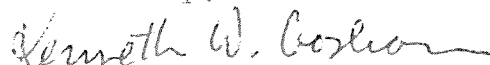
The Economic Development Director of Richmond is present at all meetings and frequently makes presentations and answers questions concerning growth and development of terminals and other port facilities.

We have similarly reviewed the minutes of the City Council to determine whether the Council, or any other city agency, has "over an extended period of time" approved the Commissions's recommendations without significant amendment or modification, 2 Cal. Adm. Code §18700, supra. There is no evidence that this is the practice of the governmental agencies of the City of Richmond. Accordingly, we do not think the members of the EDC are "members" of a decision-making board. Hence, they are not "public officials" within the meaning of §87100. Based on the facts presented in your letters of January 13 and January 21, it further appears that the members of the EDC fit within the exception to the definition of "designated employee" contained in §82019(c).

We therefore conclude, based on the facts presented, that it would be a reasonable determination for the City Council to decide that the EDC is not required to develop and submit a Conflict of Interest Code. This advice is based on currently existing facts. A change in the powers, duties or practices of the EDC would require reconsideration of this advice.

Thank you for seeking this Commission's advice. If we can be of any further assistance, please feel free to call me at (916) 322-6444.

Sincerely,



Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division

McGrath
3/2/77

OFFICE OF THE CITY ATTORNEY
CITY OF RICHMOND
CALIFORNIA 94804

SAMUEL V. McGRATH
CITY ATTORNEY

(415) 232-1212, EXTENSION 351

January 13, 1977

The Honorable Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
1100 "K" Street
Sacramento, California 95814

Dear Chairman Lowenstein:

Please find enclosed herewith a copy of Chapter 3.14 of the Municipal Code of the City of Richmond, California. This Chapter created the Economic Development Commission of this City in 1974 for the purpose of advising the "City Council and city officials on proposed activities for development of the city's port and for other overall economic development of the city." (Section 3.14.020 of Code.) The particular powers and duties of the Commission are set forth in Section 3.14.090 of that Chapter.

This is to request a written opinion on the following questions:

1. Is this City Commission a local government agency which must adopt a Conflict of Interest Code pursuant to Government Code Section 87300?
2. If the answer to the above question is in the affirmative, is each member of such Commission an individual whose position must be designated in such Code in view of the definition of "designated employee" in Government Code Section 82019(c) and in view of the fact that the City considers the Commission to be one which serves a solely advisory function?
3. Is each member of such Commission a "public official" within the meaning of Government Code Section 87100 who must comply with the requirements of that section?

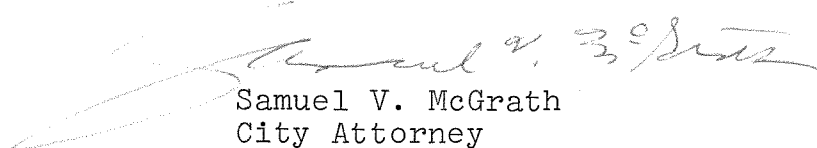
Would the answers to the above questions be the same if Sections 3.14.020 and 3.14.090 of Chapter 3.14 were amended to read as shown in the draft which I have attached to the enclosed copy of such Chapter?

The Honorable Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
January 13, 1977

Page 2

I shall be happy to provide you with such additional information as you may require in order to grant this request for a written opinion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Samuel V. McGrath".

Samuel V. McGrath
City Attorney

SVMcG:ss
Enclosure

3.08.050-3.08.080 BOARDS AND COMMISSIONS

for the exercise of the powers conferred and the performance of the duties hereby imposed upon it.

3.08.050 Special meetings. Special meetings of the committee may be called in accordance with its bylaws.

3.08.060 Chairman, vice-chairman and historian. The committee shall elect one of its members as chairman, one as vice-chairman and one as historian. Said officers shall serve for a term of one year. The chairman, or in his absence the vice-chairman, or in his absence a chairman pro tem elected by the members present, shall call to order meetings of the committee and shall act as the presiding officer thereof.

3.08.070 Meetings to be open to public - Records - Quorum. All the meetings of the committee, whether regular or special, shall be open to the public and the committee shall cause to be kept a proper record of its proceedings. A majority of the committee shall constitute a quorum for the transaction of business. Whenever a quorum shall attend any meeting of the committee, the concurrence of a majority of the committee present at such meeting shall be necessary to constitute an act of the committee.

3.08.080 Purposes and duties. The purposes and duties of the citizens urban renewal advisory committee are to:

(a) Serve in an advisory capacity to the city council on all matters pertaining to the urban renewal program and any matters related to urban development;

(b) Stimulate, educate and promote an active interest and participation by said council and the citizens of the city in community-wide development;

(c) Enlist private as well as public resources for development of the city in the best interests of its citizens; and

(d) Perform any other duties referred to it by the city council.

(Source: Ordinance No. 1669.)

Chapter 3.14

ECONOMIC DEVELOPMENT COMMISSION

Sections:

- 3.14.010 Creation of commission.
- 3.14.020 Commission purpose and operation.
- 3.14.030 Appointment and qualifications of members.
- 3.14.040 Terms of office of members
- 3.14.050 Absence from meetings.
- 3.14.060 Officers.
- 3.14.070 Meetings.
- 3.14.080 Rules and records.

3.14.090 Powers and duties.

3.14.010 Creation of commission. There is created an economic development commission.

3.14.020 Commission purpose and operation. The purpose of this commission is to advise the city council and city officials on proposed activities for development of the city's port and for other overall economic development of the city. The commission shall work with the city manager and the city planning director on projects which substantially affect overall economic development in the city. The port director, or his representative nominated by him, shall attend all regular and special meetings of the commission and shall advise the commission on any matter before it, but shall not vote on any such matter.

3.14.030 Appointment and qualifications of members. From September 16, 1974, inclusive, the commission shall consist of fifteen commissioners who shall not be officers or employees of the city and who shall be appointed by the mayor with the approval of the city council and shall serve without compensation. Any vacancies on the commission shall be filled by appointment by the mayor with the approval of the city council for the unexpired portion of the term of the appointee's predecessor. Each individual considered for appointment to the commission shall either reside or work in the city and shall have a background which provides the commission with expertise in a field related to economic development of the city.

(Amended by Ord. 44-74 N.S.)

3.14.040 Terms of office of members. The term of each member of the commission shall be for three years; provided however, that of the members first appointed after the effective date of this section, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of three years. The number of years that the members first appointed shall serve shall be determined by those members by lot at the first meeting at which they are all assembled.

(Amended by Ord. 44-74 N.S.)

3.14.050 Absence from meetings. The absence of any member of the commission from more than three regularly scheduled meetings of the commission within any twelve-consecutive-month period shall constitute an automatic resignation from the commission. Such a resignation shall not, however, disqualify an individual from subsequently being appointed to the same or any other city commission or board. The provisions of this section shall operate prospectively so as to apply only to absences which occur after December 30, 1974. Any and all absences of members occurring prior to that date which did not result in resignations are excused. In the event of any

3.14.060—3.14.090 BOARDS AND COMMISSIONS

such resignation, the vacancy shall be filled by appointment for the unexpired portion of term of the appointee's predecessor in the manner prescribed in Section 3.14.030 hereof.

(Amended by Ordinance No. 56-74 N.S.)

3.14.060 Officers. The commission shall elect from among their own number a chairman and vice-chairman who shall serve in such capacity for one year. In the case of a vacancy in the position of chairman or vice-chairman, the commission shall elect a successor who shall serve for the balance of the predecessor's term. The commission shall appoint a secretary who may be, but need not be, a member of said commission.

3.14.070 Meetings. The commission shall hold its first meeting within thirty days after all of its members have been appointed. At such meeting, the commission shall fix the time and place of regular meetings of the commission which shall not be less frequent than once each month. All meetings of the commission shall be open to the public.

3.14.080 Rules and records. The commission shall adopt rules for the transaction of the business of the commission, which rules shall, among other things, include the term of the secretary of the commission, the manner of calling and giving notices of special meetings and hearings, and the appointment and powers of standing committees. The commission shall keep records which shall be open to the public of its resolutions, transactions, motions, orders, findings and determinations.

3.14.090 Powers and duties. The specific powers and duties of the commission are as follows:

(a) Assist city officials, develop, compile and coordinate information regarding available areas suitable for economic development in the city of Richmond by reviewing staff work and providing appropriate feedback;

(b) Upon request of the city council, review proposed agreements for the lease, sale or use of city-owned land and properties for economic development and make recommendations to the city council;

(c) Work with the port director on matters relating to the economic development of the port of Richmond;

(d) Review appropriate zoning ordinances and make recommendations to the planning director to encourage proper zoning and orderly development of areas suitable for economic development;

(e) Work with state and local agencies, governing bodies, public and private organizations as appropriate to encourage economic development of the city;

(f) Promote the interests of commercial and industrial development in metropolitan Richmond;

(g) Perform other tasks related to the city's economic development as requested by the city manager or the city council.

(Source: Ordinance No. 25-74 N.S.)

3.14.020 Commission purpose. The purpose of this commission is solely to advise the city council and certain city officials concerning the matters set forth in Section 3.14.090 pertaining to the development of the city's port and the overall economic development of this City. The Economic Development and Renewal Administrator or a representative nominated by him, shall attend all regular and special meetings of the commission.

3.14.090 Advisory duties.

(a) The commission shall advise the City Council, City Manager, and Economic Development and Renewal Administrator concerning the following matters:

(1) Available areas suitable for economic development in the City of Richmond;

(2) Proposed agreements for the lease, sale or use of City-owned land and properties for economic development;

(3) The economic development of the Port of Richmond;

(4) Proper zoning and orderly development of areas suitable for economic development; and

(5) Promotion of the interests of commercial and industrial development in metropolitan Richmond.

(b) The acts of the commission shall be solely advisory and the commission shall not, therefore, have any authority to:

(i) Make any final governmental decision or compel any governmental decision pertaining to any of the above matters or to any other governmental matter; or

(ii) Prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden.

(c) Neither the City Council nor any of the above-named officials shall be obligated whatsoever to approve any recommendation which the commission may make in carrying out its duties. Such Council and officials shall have full authority, in relation to any commission recommendation, to disregard the recommendation or to make significant amendments or modifications thereof.