

# State of California



# Fair Political Practices Commission

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

April 1, 1977

William D. Smith  
Deputy County Counsel  
County of San Diego  
355 County Administration Center  
San Diego, California 92101

*A-77-275*

Dear Mr. Smith:

Please excuse the delay in responding to your letter of February 23, 1977, asking whether a Health Systems Agency is a "local government agency" within the meaning of Government Code Section 82041 and thus whether the HSA must adopt and promulgate a Conflict of Interest Code as required by Government Code Section 87300.

Recently, a similar question was addressed to the Commission concerning the applicability of the conflict of interest provisions of the Political Reform Act of 1974, as amended, to a Health Council established under Public Law 93-641. As you, perhaps, know, Public Law 93-641 provides for the creation of sub-area advisory councils, representing parts of a HSA service area to advise the governing boards of the HSA on the performance of its functions. We advised that "Although these local health councils possess some characteristics of a local government agency--e.g., creation and appointment by the county board of supervisors--their authority, functions, mode of operation, and the composition of their membership, are all dictated by federal statute. Accordingly, we concluded that "it is our opinion that a health council, established pursuant to the provisions of Public Law 93-641, is not a local government agency within the meaning of Government Code Section 82041.

In the course of our discussion concerning a health council we specifically dealt with a health systems agency as well, and observed that:

"Public Law 93-641 provides for the creation of a health systems agency, which has as its primary responsibility the provision of effective health planning for its health service area and the promotion and development within the area of health services, manpower, and facilities, which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency.

William D. Smith

page two

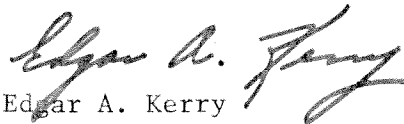
April 1, 1977

The provisions of Public Law 93-641 control the functions, mode of operations, legal structure, staff, composition and responsibility of governing boards, and the funding of a health systems agency. Though the provisions of the statute permit a health systems agency to take the legal form of a private, non-profit corporation, established pursuant to the laws of the respective state, the essential provisions governing the existence and operation of a health systems agency are dictated by federal, not state and local law."

Accordingly, it is our opinion that a health systems agency, established pursuant to the provisions of Public Law 93-641, is not a local government agency within the meaning of Government Code Section 82041 and that it is not required to adopt and promulgate a Conflict of Interest Code pursuant to the provisions of Government Code Section 87300.

I attach for your information a copy of the above referenced response to the Kern County Counsel with respect to the status of a local health council. Please let me know if I can be of further assistance to you.

Sincerely,



Edgar A. Kerry  
Staff Attorney  
Conflicts of Interest Division  
(916) 322-6444

EAK:mfa  
Attachment



# County of San Diego

## OFFICE OF COUNTY COUNSEL

355 COUNTY ADMINISTRATION CENTER  
SAN DIEGO, CALIFORNIA 92101

(714) 236-3651

February 23, 1977

DONALD L. CLARK  
County Counsel

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Fair Political Practices Commission  
1100 K Street Building  
P.O. Box 807  
Sacramento, CA 95814

Honorable Commission:

This request for a written opinion is submitted on behalf of Richard M. Peters, M.D., President of the Governing Body of the Health Systems Agency (HSA) of San Diego and Imperial Counties (a Joint Powers Agency) and on behalf of the other 29 members of the Governing Body. Our office serves as counsel for the HSA.

The question is whether the HSA is a "local government agency" within the meaning of Government Code Section 82041 and thus whether the 30 members of the Governing Body of the HSA must develop and adopt a Conflict of Interest Code as required by Government Code Section 87300 et seq.

### STATEMENT OF FACTS

The Health Systems Agency of San Diego and Imperial Counties is a public regional planning body formed under a Joint Exercise of Powers Agreement between the Counties of Imperial and San Diego pursuant to Government Code Section 6500 et seq. A copy of the December 2, 1975 Joint Exercise of Powers Agreement as amended October 12, 1976 is attached to this request. Pursuant to Government Code Section 6507, the HSA is a public entity separate and apart from the parties to the Joint Powers Agreement.

The HSA was formed as a public regional planning body pursuant to the National Health Planning and Resources Development Act of 1974 (Act) (P.L. 93-641, 42 U.S.C. 300k et seq.).

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The HSA was "conditionally designated" by the Department of Health, Education and Welfare in September of 1976. The structure and functions of the HSA are set forth in 42 U.S.C. 3007 et seq. In conformance with federal requirements for a public regional planning body, the HSA has a two tier structure consisting of a Governing Board (Board of Directors) presently composed of 5 elected officials and a Governing Body presently composed of 30 members appointed by the Board of Directors. Under the Act, the Governing Body must have a majority (but not more than sixty percent) of consumer members with the balance of the membership composed of providers of health care services (42 U.S.C. 300 (7-1)(3)(C)i, ii). It is the Governing Body which performs the HSA's health planning functions. In particular, the duties of the Governing Body of the HSA are set forth in the Act as follows:

"(B) The governing body--

"(i) shall be responsible for the internal affairs of the health systems agency, including matters relating to the staff of the agency, the agency's budget, and procedures and criteria (developed and published pursuant to section 300n--1 of this title) applicable to its functions under subsections (e), (f), and (g) of section 3007--2 of this title;

"(ii) shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 3007--2(b) of this title;

"(iii) shall be responsible for the approval of grants and contracts made and entered into under section 3007--2(c)(3) of this title;

"(iv) shall be responsible for the approval of all actions taken pursuant to subsections (e), (f), (g), and (h), of section 3007--2 of this title;

"(v) shall (I) issue an annual report concerning the activities of the agency, (II) include in that report the health systems plan and annual implementation plan developed by the agency, and a listing of the agency's income, expenditures, assets, and liabilities, and (III) make the report readily available to the residents of the health service area and the various communications media serving such area;

"(vi) shall reimburse its members for their reasonable costs incurred in attending meetings of the governing body;

"(vii) shall meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee meets at least twice in that year; and

"(viii) shall (I) conduct its business meetings in public, (II) give adequate notice to the public of such meetings, and (III) make its records and data available, upon request, to the public." (42 U.S.C. 3007-1(b)(3)B.)

Federal regulations require the HSA to develop:

"Requirements relating to conflicts of interest which shall be designed to preclude the use of membership on the governing body, the executive committee, if any, or any other subcommittee or advisory group (including subarea advisory councils) for purposes which are, or give the appearance of being, motivated by private gain on the part of any individual." (Fed. Reg. Vol. 41, No. 60, § 122:104(b) (IX).)

The HSA has developed such requirements which have been tentatively approved by the federal authorities. A copy of these conflict of interest requirements is attached. In the course of developing these requirements, a question arose as to whether the HSA was subject to the conflict of interest provisions of the Political Reform Act of 1974 concerning the adoption of conflict of interest codes (Gov. Code, § 87300 et seq.).

#### DISCUSSION

Government Code Section 87300 provides:

"Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter."

February 23, 1977

The word "agency" is defined by Section 82003 as follows:

"'Agency' means any state agency or local government agency."

The term "state agency" is defined as follows:

"'State agency' means every state office, department, division, bureau, board and commission, and the Legislature, but does not include the courts or any agency in the judicial branch of government."

It is clear both from the above-cited statute and from your Commission's regulations that HSA is not a state agency.

Section 82041 defines "local government agency" as follows:

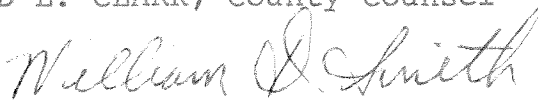
"'Local government agency' means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of these, but does not include any court or any agency in the judicial branch of government."

It is clear that HSA is not a county, city or district. Furthermore, it is questionable whether HSA can be classified as a "local or regional political subdivision." HSA as a joint powers entity is essentially an empty shell unless designated by the federal government (42 U.S.C. 300(7-4)(c)(1)). Once so designated, HSA performs essentially a federal function under extensive federal regulation. The issue is thus presented whether an entity such as HSA, which performs no function until "designated" by the federal government is a "local or regional political subdivision" within the meaning of Government Code Section 82041. We are, therefore, requesting your opinion to clarify this issue. If you have any questions regarding this opinion request, please contact the undersigned at (714) 236-4148.

Very truly yours,

DONALD L. CLARK, County Counsel

By

  
WILLIAM D. SMITH, Deputy

WDS:mm

Encs.

cc: Richard M. Peters, M.D.

JOINT EXERCISE OF POWERS AGREEMENT  
BETWEEN THE COUNTY OF SAN DIEGO  
AND THE COUNTY OF IMPERIAL CREATING  
THE HEALTH SYSTEMS AGENCY OF SAN DIEGO  
AND IMPERIAL COUNTIES

THIS AGREEMENT, dated for convenience as of November 2,  
1975 by and between the County of San Diego, a political  
subdivision of the State of California and the County of  
Imperial, a political subdivision of the State of California.

W I T N E S S E T H:

WHEREAS, each County is empowered by law to provide health  
services to its residents and to participate in federal programs  
relating to health; and

WHEREAS, each County is of the opinion that there should be  
regional planning for the foregoing purposes; and

WHEREAS, the National Health Planning and Resources Development  
Act of 1974 (hereinafter called "Act") provides that each  
state shall establish health service areas and each such  
area shall have a health systems agency for that area; and

WHEREAS, the geographical area encompassing the County of  
San Diego and the County of Imperial has been designated as a  
health service area for purposes of the Act; and

WHEREAS, the Act provides that a health systems agency for  
a health service area may be a public regional planning body  
if it has a governing board composed of a majority of elected  
officials of units of general local government and its planning  
area is identical to the health service area;

WHEREAS, the parties to this Agreement deem it necessary  
and proper to create a separate public entity by joint exercise  
of powers agreement to devise and create an organizational and  
administrative structure for the operation of an area-wide  
health system agency encompassing the geographical territory of  
the parties to this Agreement and to secure approval of the  
federal government for designation as the Health System  
Agency, pursuant to the Act and to apply to the federal and  
state government for grants, funds and assistance;

NOW, THEREFORE, the County of San Diego and the County  
of Imperial, for and in consideration of the mutual promises  
and agreements herein contained, do agree as follows:

SECTION 1. PURPOSE.

This Agreement is made pursuant to the provisions of Article  
1 (commencing with Section 6500), Chapter 5, Division 7, Title  
1 of the Government Code of the State of California relating  
to the joint exercise of powers common to public agencies,  
in this case being the County of San Diego and the County of  
Imperial. The County of San Diego and the County of Imperial each  
possess the powers referred to in the recitals hereof. The  
purpose of this Agreement is to exercise such powers for the  
purpose of:

- (1) improving the health of residents of the health  
service area, which is defined by the geographical  
boundaries of the County of San Diego and the County  
of Imperial;
- (2) increasing the accessibility (including overcoming  
geographic, architectural, and transportation  
barriers), acceptability, continuity, and quality

of the health services provided such residents,

(3) restraining increases in the cost of providing such residents health services, and

(4) preventing unnecessary duplication of health resources.

Such purpose will be accomplished and said common power exercised in the manner hereinafter set forth.

SECTION 2. TERM.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by either of the parties to this Agreement. Any party to this Agreement may terminate the Agreement by giving written notice of its intention to terminate to the other at least 90 days prior to the end of the fiscal year in which such notice is given. This Agreement may be terminated at any time by mutual agreement of the parties hereto.

SECTION 3. AUTHORITY.

A. Creation of Authority.

Pursuant to Section 6506 of the Government Code, there is hereby created a public entity to be known as "Health Systems Agency of San Diego and Imperial Counties" (hereinafter called the "Agency"), and said Agency shall be a public entity separate and apart from the County of San Diego and the County of Imperial.

B. Board of Directors.

The Agency shall be administered by a Governing Board of 5 members, each serving in their individual capacities as members of the Governing Board, which shall be known herein

as the Board of Directors. At a regular meeting following the execution of this Agreement, the Board of Supervisors of the County of San Diego shall appoint 3 members to the Board of Directors and the Board of Supervisors of the County of Imperial shall appoint 2 members to the Board of Directors. Such Board of Directors shall be called the "Board of Directors of the Health Systems Agency of San Diego and Imperial Counties." All members of the Board of Directors and alternates thereto shall be elected officials of units of general local government and shall be residents of either the County of San Diego or the County of Imperial. Each Board of Supervisors may appoint by resolution of the Board of Supervisors an alternate member for each member appointed to the Board of Directors by that Board of Supervisors.

Members of the Board of Directors shall serve for a two year term; provided, however that the terms of the first members shall be staggered as follows: At the first meeting of the Board of Directors, members shall draw lots to determine which two members will serve one year terms and which three members will serve two year terms. The initial term of all members shall be deemed to commence on January 1, 1976. Members of the Board of Directors shall serve at the pleasure of their appointing board and until their respective successors are appointed and qualified.

The Board of Directors shall have authority to:

- 1) Select and remove members of the Governing Body;

- 2) Establish Agency personnel policies and review the appointment of the Executive Director and Staff;
- 3) Establish, execute, and revise the Agency's budget;
- 4) Set rules and regulations for the functioning of the Agency;
- 5) Review and comment on any proposed action of the Governing Body.

C. Meetings of Board of Directors.

(1) Regular Meetings.

The Board of Directors of the Agency shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting in each calendar quarter of a year and shall meet at least two additional times in a year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board of Directors and a copy of such resolution shall be filed with each party hereto.

(2) Ralph M. Brown Act.

All meetings of the board of directors of the Agency, including, without limitation, regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code).

(3) Minutes.

The Secretary of the Agency shall cause to be kept

minutes of the regular, adjourned regular and special meetings of the board of directors and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the board of directors and to each County's Clerk of its Board of Supervisors.

(4) Quorum.

A majority of the board of directors of the Agency shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time, provided that the affirmative vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum is in attendance shall be required for the approval of any resolution as to which action of the board of directors is required.

(5) Vacancies.

A vacancy shall occur on the happening of any of the following events before the expiration of the term:

- (a) The death of the member,
- (b) The resignation of the member,
- (c) The ceasing of the member to be a resident of the County of San Diego, or the County of Imperial,
- (d) Absence from three consecutive regular meetings of the Board of Directors of Agency, or
- (e) The member loses the status which made him or her eligible for appointment to the board of directors.

Any vacancy of a regular member shall be filled by the Board of Supervisors of the County which made the appointment

of the member. Any person appointed to fill a vacancy shall serve for the unexpired term of the member being replaced.

(6) Compensation and Expenses.

Members of the board of directors of Agency shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred on official duty. No member of the board of directors may be compensated for any service to the Agency except as provided in this section.

D. Officers.

The board of directors shall appoint annually from its membership the Chairman and Vice-Chairman of the board of directors of the Agency. Said board of directors shall also appoint a Secretary who may, but need not, be a member of the board of directors. The Treasurer of the Agency shall be the duly appointed and acting Treasurer of the County of San Diego serving ex officio as Treasurer of the Agency and the Auditor of the Agency shall be the duly appointed and acting Auditor and Controller of the County of San Diego serving ex officio as Auditor of the Agency to the extent that the duties do not cause a conflict. The attorney for the Agency shall be the duly appointed, qualified and acting County Counsel of the County of San Diego as attorney for the Agency; provided that the attorney for the Agency may call upon the duly appointed, qualified and acting County Counsel of the County of Imperial or his duly authorized deputies for assistance. The County Counsel of the County of San Diego or his designated deputy shall, upon request of

the board of directors or governing body, attend meetings of the board of directors, but his absence shall not affect the validity of any meeting. The Purchasing Agent of the Agency shall be duly appointed and acting Purchasing Agent of the County of San Diego serving ex officio as Purchasing Agent of the Agency.

E. REIMBURSEMENT OF COSTS.

It is anticipated by the parties to this agreement that the Agency, through its governing body, shall make application for Federal funds pursuant to the Act and in the event that the Agency engages in activities described herein, the Agency shall reimburse the parties to this Agreement to the extent authorized by law, for the services of the Purchasing Agent, Auditor-Controller, Treasurer and Attorney, at full costs of providing the aforesaid services.

F. RULES.

The board of directors of the Agency may adopt, from time to time, such rules, regulations, and bylaws for the conduct of its meetings and affairs as may be required.

SECTION 4. GOVERNING BODY.

A. Creation.

There shall be established a governing body as required by Section 1512(b)(3)(A) of the Act. Such governing body shall be known as the "Governing Body of the Health Systems Agency of San Diego and Imperial Counties.

B. Members of the Governing Body.

The governing body shall be composed of 30 members, who shall be appointed by the Board of Directors. Members shall

be appointed to the governing body of Agency in accordance with the following requirements:

(1) A majority (but not more than 60 per centum of the members) shall be residents of the health service area served by the entity who are consumers of health care and who are not (nor within the twelve months preceding appointment been) providers of health care and who are broadly representative of the social, economic, linguistic and racial populations, geographic areas of the health service area, and major purchasers of health care.

(2) The remainder of the members shall be residents of the health service area served by the agency who are providers of health care and who represent (a) physicians (particularly practicing physicians), dentists, nurses, and other health professionals, (b) health care institutions (particularly hospitals, long-term care facilities, and health maintenance organizations), (c) health care insurers, (d) health professional schools, and (e) the allied health professions. Not less than one-third of the providers of health care who are members of the governing body or executive committee of a health systems agency shall be direct providers of health care, as described in Section 1531(3) of the Act.

(3) The membership shall:

(a) include (either through consumer or provider members) public elected officials and other representatives of governmental authorities

in the agency's health service area and representatives of public and private agencies in the area concerned with health which is not more than 1/3 of the total membership,

(b) include a percentage of individuals who reside in nonmetropolitan areas within the health service area which percentage is equal to the percentage of residents of the area who reside in nonmetropolitan areas, and

(c) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the Veterans' Administration, include, as an ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated for such purpose, and if the agency serves an area in which there is located one or more qualified health maintenance organizations (within the meaning of section 1310 of the Act), include at least one member who is representative of such organizations.

(4) If, in the exercise of its functions, the governing body appoints a subcommittee of its members or an advisory group, it shall, to the extent practicable, make its appointments to any such subcommittee or group in such a manner as to provide the representation on such subcommittee or group described in Section 4, Subsection B, paragraphs (1), (2) and (3).

The membership on the governing body shall also reflect the population of the parties to this agreement. Each appointment shall designate the eligibility status of the appointee and each appointee must retain such status and continue to be a resident of either the County of San Diego or the County of Imperial while serving on the governing body of Agency or be subject to automatic disqualification.

Members of the governing body shall serve for a two year term; provided however that the terms of the first members shall be staggered as follows: At the first meeting of the governing body, members shall draw lots to determine which fifteen members will serve one year terms and which fifteen members will serve two year terms. The initial term of all members shall be deemed to commence on that date approved by resolution of the Board of Directors.

C. Responsibilities.

The governing body:

1. shall be responsible for the internal affairs of the agency, including matters relating to an Executive Director and other staff of the agency, the agency's budget, and procedures and criteria (developed and published pursuant to section 1532 of the Act) applicable to its functions under subsections (e), (f), and (g) of section 1513 of the Act. The Board of Directors shall review and make recommendations on any budgetary requests of the governing body to the parties to this agreement for funds or their support in excess of those funds

which are available to Agency under the Act or other federal or state statutes.

2. shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 1513(b) of the Act;

3. shall be responsible for the approval of grants and contracts made and entered into under section 1513(c)(3) of the Act;

4. shall be responsible for the approval of all actions taken pursuant to subsections (e), (f), (g), (h), of section 1513 of the Act;

5. shall (a) issue an annual report concerning the activities of the agency, (b) include in that report the health systems plan and annual implementation plan developed by the agency, and a listing of the agency's income, expenditures, assets, and liabilities, and (c) make the report readily available to the residents of the health service area and the various communications media serving such area;

6. shall, upon request of the Board of Directors or any party to this agreement, provide information relating to any aspect of the duties of agency or the governing body;

7. shall appoint a minimum of one subarea council in both the County of Imperial and in the County of San Diego.

8. shall perform such other duties as may be required or permitted under the provisions of this agreement.

9. may appoint an executive committee or other committees deemed appropriate.

D. Meetings of the Governing Body

(1) Regular Meetings.

The Governing Body of the Agency shall provide for its regular meeting in each calendar quarter of a year and shall meet at least two additional times in a year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Governing Body and a copy of such resolution shall be filed with each party hereto.

(2) Ralph M. Brown Act.

All meetings of the Governing Body of the Agency, including, without limitation, regular, adjourned regular and special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Commencing with Section 54950 of the Government Code).

(3) Minutes.

The Secretary of the Agency shall cause to be kept minutes of the regular, adjourned regular and special meetings of the Governing Body and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Governing Body, each member of the Board of Directors, each County's Clerk of its Board of Supervisors, the Auditor and the Treasurer.

(4) Quorum.

A majority of the Governing Body of the Agency shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time, provided that the affirmative vote of a majority of its members present and voting at a meeting called upon adequate notice to all its members and at which a quorum is in attendance shall be required for the approval of any resolution as to which action of the Governing Body is required.

(5) Vacancies.

A vacancy shall occur on the happening of any of the following events before the expiration of the term:

(a) The death of the member,

(b) The resignation of the member,

(c) The ceasing of the member to be a resident of the County of San Diego, or the County of Imperial,

(d) Absence from three consecutive regular meetings of the governing body of Agency, or

(e) The member loses the status which made him or her eligible for appointment to the Governing Body.

Any vacancy of a regular member shall be filled by the Board of Directors and any person appointed to fill a vacancy shall serve for the unexpired term of the member being replaced.

(6) Compensation and Expenses.

Members of the Governing Body of Agency shall serve without compensation, but shall receive reimbursement for

actual and necessary expenses incurred on official duty. No member of the Governing Body may be compensated for any service to the Agency except as provided in this section.

(7) The Governing Body of the Agency may adopt, from time to time, such rules, regulations, and bylaws for the conduct of its meetings and affairs as may be required.

E. Officers.

The governing body shall appoint annually from its membership the President and Vice-President of the governing body. The Secretary of the board of directors shall serve as the secretary of the governing body.

F. Staff and Consultants.

The governing body shall employ an executive director and other staff and may contract with consultants in accordance with the provisions of section 1512(b) (2) of the Act.

SECTION 5. SUBAREA COUNCILS.

A. Creation of Subarea Councils

(1) The Governing Body of the Agency shall create a minimum of one subarea council both in the County of Imperial and in the County of San Diego and such additional subarea councils as the Governing Body deems appropriate.

(2) Each Subarea Council shall be an advisory group to the Governing Body of the Agency.

B. Membership of Subarea Council.

(1) Each Subarea Council shall consist of 10 to 50 members, each serving in their individual capacities as members of such council.

(2) All members of each such subarea Council shall be residents of such council's geographic area.

(3) All members of each such subarea Council shall be appointed by, and shall serve at the pleasure of the Governing Body of the Agency.

(4) The membership of each such Council shall be constituted in accordance with the provisions of Section 4, Subsection B, paragraphs (1), (2) and (3).

C. Meetings of Subarea Council.

(1) Each Subarea Council shall hold regular meetings at the dates, hours and places fixed by resolution of the Governing Body of the Agency.

(2) Each Subarea Council shall hold regular, adjourned regular, and special meetings, in accordance with rules and regulations fixed by resolution of the Governing Body of the Agency.

(3) All meetings of a Subarea Council shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code).

(4) Members of a Subarea Council shall serve without compensation.

D. Responsibilities of a Subarea Council.

1. To generally advise the Governing Body of the Agency on matters pertaining to health planning and resources development within the geographic area of said council.
2. To provide a local forum for public input for health planning and resources development within the geographic area of said council.
3. To provide the Governing Body of Agency locally-developed guidelines and priorities for health planning and resources development needs and programs within the geographic area of said council.
4. To provide the Governing Body of Agency local review and locally-developed recommendations concerning needs, priorities, staffing, budgetary requirements, plans, reports, grants and related matters affecting health planning and resources development within the geographic area of said council.
5. To advise the Board of Directors at the Board's request on proposed membership to the Governing Body of the Agency.
6. To provide other advice and services as may be required from time to time by the Governing Body of the Agency.

SECTION 6. GENERAL POWERS.

The Agency shall have the power common to the County of San Diego and to the County of Imperial set forth in Section 1 of this Agreement. The Agency is hereby authorized, in its own name acting through the governing body, to do all acts necessary for the exercise of said common power for said purpose, including, but not limited, to any or all of the following: to make and enter into contracts, to employ agents and employees; to incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of either the County of San Diego or the County of Imperial; to sue and be sued in its own name; make applications to the federal government and to the state government for funds to be used for the purposes consistent with the duties of the governing body of Agency; to accept grants from and enter into contracts with the federal or state governments for such purposes and to carry out the functions described in subsections (b) through (g) of section 1513 of the Act. Such powers shall be exercised in the manner provided in the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.), and except as expressly set forth herein, subject only to such restrictions upon the manner of exercising such powers as are imposed upon a County in the exercise of similar powers.

SECTION 7. FISCAL YEAR.

For the purposes of this Agreement, the term "fiscal

year" shall mean the period from July 1 to and including the following June 30.

SECTION 8. FUNDS- DEPOSIT IN COUNTY TREASURY.

(a) The Agency may accept and expend funds from public sources for the purpose of carrying out its powers, duties, responsibilities and obligations specified in this Agreement.

(b) Subject to the provisions of this Agreement and any applicable law, the Treasurer shall receive, have custody of and disburse Agency funds (i) pursuant to the accounting procedures prescribed pursuant to Section 9 of this Agreement, and (ii) as nearly as possible in accordance with normal procedures of the County of San Diego.

SECTION 9. EXPENDITURES AND OBLIGATIONS.

(a) The board of directors and governing body and every other official or employee of the Agency shall be limited in the making of expenditures or the incurring of liabilities to the amount of the appropriations allowed by the budget as adopted by the board of directors or thereafter revised by said board.

(b) Except as otherwise provided by law, warrants issued, expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the Agency or a liability of any party to this Agreement.

SECTION 10. PURCHASES.

The Purchasing Agent of the County of San Diego shall be ex officio Purchasing Agent of the Agency and all purchases by the Agency shall be made pursuant to the laws, the Charter

of the County of San Diego and County of San Diego Administrative Code provisions applicable to purchases by the County of San Diego.

SECTION 11. RECORDS AND ACCOUNTS- CHARGE FOR SERVICES OF AUDITOR AND TREASURER.

(a) The Agency shall be strictly accountable for all funds.

(b) The board of directors of the Agency through the Auditor shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all of its transactions including all receipts and disbursements. Said books and records shall be kept in accordance with State law and rules and regulations of the State Controller and as required by the Auditor. Said books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the parties to this Agreement.

(c) The board of directors of Agency through the Auditor shall cause to be prepared an annual financial and operational report, including a report of all revenues, appropriations and expenditures which shall be available at the office of the Secretary of the Agency and a copy thereof shall be delivered to each party to this Agreement. The report shall be filed within 120 days of the close of each fiscal year.

(d) The Board of Supervisors of the County of San Diego shall determine the charges, if any, to be made against the Agency for the services of the Purchasing Agent, Treasurer, Auditor and County Counsel.

SECTION 12. CLAIMS.

All claims against the Agency including but not limited to claims by public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title 1 of the Government Code or in accordance with claims procedures approved by the Auditor of the Agency and established by the board of directors of the Agency pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code. The board of directors of the Agency shall adopt a regulation requiring that all claims shall be so filed.

SECTION 13. ALLOWANCE OF CLAIMS BY AUDITOR.

(a) The Auditor of Agency shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the board of directors of the Agency in any of the following cases:

(1) Expenditures which have been authorized by purchase orders issued by the Purchasing Agent of the Agency.

(2) Expenditures which have been authorized by contract, resolution or order of the board of directors or the governing body of the Agency acting within the scope of its authority.

(b) The Auditor shall require the certificate of the requisitioning or receiving officer that the articles or services have been received or contracted for.

SECTION 14. INSURANCE - BONDS.

(a) The Agency shall at all times maintain with responsible insurers workmen's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the Agency and the parties to this Agreement.

(b) The Agency shall cause such of its officers and employees to be bonded as may be required by the Auditor of Agency.

SECTION 15. FINANCING AGENCY.

(a) The Agency shall be financed by funds made available for such purpose under the Act or other federal or state statute; provided however, that the parties to this Agreement may agree to contribute to the Agency additional funds for its operations. The Board of Directors shall review and make the recommendations on any budgetary requests of the governing body to the parties to this agreement for funds or other support, in excess of those funds which are available to Agency under the Act or other federal or state statutes.

(b) Each of the parties to this Agreement may, but shall not be required to, contribute money, office space, furnishings, equipment, supplies or services as the Board of Supervisors thereof may deem appropriate.

SECTION 16. DISPOSITION OF ASSETS ON TERMINATION OF AGREEMENT.

At the termination of this Agreement all funds on hand shall be returned to the respective parties to this Agreement as nearly as possible in proportion to the contributions,

if any, made to the fund then on hand. Any equipment, furniture or furnishings which can be identified as having been contributed by any party to this Agreement shall be transferred to and become the property of the party contributing such equipment, furniture or furnishings. Any other property of the Agency shall be distributed among the parties to this Agreement, each party to receive the proportion that the amount of money, if any, contributed to the Agency by such party bears to the total amount of money contributed to the Agency by all parties to this Agreement.

SECTION 17. ACCOUNTS AND REPORTS.

The books and records of the Agency shall be open to inspection at all reasonable times by representatives of the parties to this Agreement. The Auditor of Agency, within 120 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the parties to this Agreement.

SECTION 18. NOTICES.

Notices hereunder shall be sufficient if delivered to:  
San Diego County Clerk of the Board of Supervisors,  
Room 306, County Administration Bldg.  
1600 Pacific Highway  
San Diego, California 92101  
Imperial County - Clerk of the Board of Supervisors,  
County Courthouse  
939 Main Street  
El Centro, California 92243

Agency - Secretary - at such address as Agency shall designate for such purpose.

SECTION 19. MISCELLANEOUS.

(a) The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

(b) Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

(c) This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

(d) To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there may be operating memoranda executed and amended from time to time which will further define the rights and obligations of the parties.

SECTION 20. PARTIAL INVALIDITY.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21. SUCCESSORS.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties.

SECTION 22. INCORPORATION OF THE ACT.

Notwithstanding any other provision of this agreement it is the intent of the parties to this agreement that all actions of the Agency, the board of directors and the governing body shall be in conformance with the Actor regulations adopted pursuant thereto. The provisions of the Act and regulations adopted pursuant thereto, as they exist on the effective date of this agreement or as they may be subsequently amended, are incorporated by reference.

SECTION 23. AMENDMENTS.

This Agreement may be modified at any time through mutual written amendments by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers

thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF SAN DIEGO

Attest:

BY David Brown  
Chairman of the Board of Supervisors

Porter A. Cummings  
Clerk of the Board of Supervisors

(Seal)

Approved as to Form and Legality this  
15<sup>th</sup> day of November, 1975.

Approved by the Board of Supervisors of  
the County of San Diego

ROBERT G. BERREY, County Counsel

DEC 12 1975 #63

By

Porter A. Cummings  
Clerk of the Board of Supervisors

Anthony Ollers  
Deputy

COUNTY OF IMPERIAL

Attest:

BY James M. Spicer  
Chairman of the Board of Supervisors

Thomas M. Free  
Clerk of the Board of Supervisors  
(Seal) Mary Antreas, Deputy

Approved as to Form this  
26<sup>th</sup> day of November 1975.

JAMES HARMON, County Counsel

THE FOREGOING INSTRUMENT IS A CORRECT COPY  
OF THE ORIGINAL FILED IN THIS OFFICE.

ATTEST: \_\_\_\_\_ 19\_\_  
HARRY M. FREE COUNTY CLERK AND EX OFFICIO CLERK OF  
THE COUNTY OF IMPERIAL, CALIFORNIA

By Thomas M. Free  
Assistant County Counsel

FIRST AMENDMENT TO JOINT EXERCISE OF  
POWERS AGREEMENT BETWEEN THE COUNTY OF  
SAN DIEGO AND THE COUNTY OF IMPERIAL  
CREATING THE HEALTH SYSTEMS AGENCY OF  
SAN DIEGO AND IMPERIAL COUNTIES

THIS FIRST AMENDMENT is entered into this 12<sup>th</sup> day of October,  
1976 by and between the County of San Diego and the County of Imperial.

WHEREAS, by agreement dated December 2, 1975 the County of  
San Diego and County of Imperial entered into a joint exercise of  
powers agreement creating the Health Systems Agency of San Diego and  
Imperial Counties in order to improve the health of the residents of  
said counties; and

WHEREAS, said Health Systems Agency was designated on September 10,  
1976 by the Federal Government as the Health Systems Agency within the  
two counties and;

WHEREAS, it is desirable for the subject agreement to be amended  
to provide for advance payments and a repayment method for advance  
payments;

NOW, THEREFORE, the County of San Diego and the County of Imperial  
agree to amend the subject joint exercise of powers agreement to read  
as follows:

SECTION 1. The following language is added to constitute the  
second section of subsection (b) of section 15 of said Agreement:

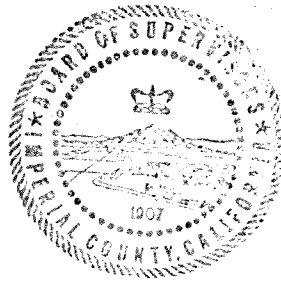
"Each of the parties to said Agreement may make  
advances of public funds for the purposes set forth in  
said Agreement and any such advances shall be repaid in  
the manner agreed upon by the Agency and the party making  
such advance."

2. All other terms and conditions of said agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF SAN DIEGO

BY *Robert A. Cremans*  
Clerk of the Board of Supervisors  
COUNTY OF IMPERIAL



BY *Samuel Williams*  
Chairman,  
Imperial County Board of Supervisors

proved by the Board of Supervisors of  
the County of San Diego

OCT 12 1975 #46

*Robert A. Cremans*  
Clerk of the Board of Supervisors

ATTEST AND LEGALITY  
County of San Diego  
*Anthony Cozzas*  
10/12/75

APPROVED AS TO FORM  
JAMES H. HARMON, County Counsel

By *Thomas M. Fries*  
THOMAS M. FRIES, Assistant  
County Counsel

AA:cl

HEALTH SYSTEMS AGENCY  
OF SAN DIEGO AND IMPERIAL COUNTY

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POLICY ON  
CONFLICT OF INTEREST  
AND INCOMPATIBLE ACTIVITIES

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HEALTH SYSTEMS AGENCY  
OF SAN DIEGO AND IMPERIAL COUNT

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POLICY ON  
CONFLICT OF INTEREST  
AND INCOMPATIBLE ACTIVITIES

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I. INTRODUCTION

Federal regulations require that a Health Systems Agency membership for purposes which are, or give the appearance of being, motivated by private gain on the part of any individual. California state regulations also require that Agency members perform their duties impartially, free from bias caused by financial interests, and extend this requirement to Agency employees who participate substantially in the making of Agency decisions, whenever such decisions may foreseeably have a material financial effect, distinguishable from its effect on the public generally, upon them. Planning for the health needs of this area's residents is a community responsibility dependent upon the establishment and preservation of the public's trust. In order to ensure the integrity of the health planning process, it is imperative that it be conducted openly, fairly, and under conditions excluding conflicts of interest and incompatible activities. This Policy on Conflict of Interest and Incompatible Activities is adopted to comply with the foregoing federal and state regulations and to promote disinterested service to the citizens of San Diego and Imperial Counties.

## II.

The Health Systems Agency is a community-based public regional planning body formed by a joint sharing of powers between the Counties of San Diego and Imperial. While the Agency has principal responsibility for identifying and encouraging the appropriate fulfillment of local health needs and goals, it is organized and designated under federal law, and most of its functions are advisory to California's State Health Planning and Development Agency. Formulation of a Health Systems Plan and an accompanying Annual Implementation Plan are general Agency functions which provide a context for the following specific decisions and recommendations:

(a) approval or disapproval of each proposed use within the health service area of federal funds appropriated under the National Health Planning and Resources Development Act of 1974, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970;

(b) recommendations to the state concerning the need for new institutionalized health services, the appropriateness of existing health services, and the desirability of projects for modernization, construction, and conversion of medical facilities;

(c) award of grants and formation of contracts with individuals and public and nonprofit private entities to assist them in planning and developing projects necessary to achieve the goals of the Agency's Health Systems Plan.

Whenever the Agency is considering any of these specific decisions or recommendations which may materially affect the financial interests of an Agency member or employee, or whenever some other Agency activity has a comparably specific impact on the financial

interests of such a member or employee, the affected member or employee shall disclose the nature of his or her financial interest and disqualify himself or herself from participation in the decision, recommendation, or activity. Compliance with these requirements of disclosure and disqualification shall be assured by the procedures specified in Article III of this Policy. In addition to this prohibition on specific conflicts of interest, it shall also be required that Agency members and employees refrain at all times from participation in the Incompatible Activities delineated in Article IV.

ARTICLE III. CONFLICTS OF INTEREST:

DISCLOSURE AND DISQUALIFICATION PROCEDURES

Disclosure of a potential conflict of interest and disqualification from participation in the related Agency decision, recommendation, or activity shall be required in the circumstances described in Article II of this Policy. A conflict of interest shall exist whenever it is reasonably foreseeable that an Agency decision, recommendation, or activity will have a material financial effect, distinguishable from its effect on the public generally, on:

- (a) any business entity in which an Agency member or employee has a direct or indirect investment;
- (b) any real property in which a member or employee has a direct or indirect interest;
- (c) any source of income, other than loans by a commercial lending institution in the regular course of business, aggregating two hundred fifty dollars (\$250) or more in value received by or promised to the member or employee within twelve months prior to the time of the Agency decision,

recommendation, or activity;

(d) any business entity in which the member or employee is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this Article, indirect investment or interest means any investment or interest owned by a spouse or dependent child, by an agent, by any business entity controlled by an Agency member or employee or by a trust in which he or she has a substantial interest. A business entity is controlled by a member or employee if he or she, his or her agents, spouse and dependent children hold more than fifty percent of the ownership interest in the entity. A member or employee has a substantial interest in a trust when the member or employee, his or her spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1,000).

Prior to participation in any of the decisions, recommendations, or activities described in Article II, each member or employee shall be required to sign, in duplicate, an affidavit attested by two witnesses, which disclaims any of the potential conflicts enumerated above. One copy of each affidavit shall be a permanent part of the Agency's records regarding the related decision, recommendation, or activity. The other copy shall be forwarded to the Agency's Public Accountability Committee for its records and such review as may be necessary. Any person may inspect the affidavits, upon request to the Chairperson of the Committee, and comment to the Committee or challenge any affidavit in accordance with Article VI of this Policy.

#### IV. INCOMPATIBLE ACTIVITIES

Members and employees of the Agency shall refrain at all times from participation in the following activities which are deemed incompatible with the Agency's integrity:

(a) direct or indirect acceptance of gifts, favors, personal loans, special discounts, employment, or remuneration for personal gain, in any form, from any individual, agency, corporation, or other organization which does or may foreseeably do business with the Agency, or which is or may foreseeably become, an applicant subject to the review responsibilities of the Agency (not to include employment by a provider entity legally represented by a member);

(b) direct or indirect acceptance of money or other consideration for the performance of services required by membership or employment;

(c) performance of an act in a capacity other than as a member or employee which may later be subject to Agency review (not to include duties required by a provider entity legally represented by a member, if the affected member refrains from participation in such subsequent review);

(d) possession of a financial interest in a provider entity subject to Agency review, if the interest is large enough to create the potential for improper financial gain (including, in addition to employees, consumer members legally classified as such because they receive, directly or through their spouse, not more than one-tenth of their gross annual income from provider entities; not to include members legally representing providers);

(e) use for private gain of the prestige or influence of Agency membership or employment.

V. APPLICABILITY

Article III of this Policy shall apply to all Agency members, including members of the Governing Board, Governing Body, Agency Subarea Advisory Councils, Committees, Task Forces, Review Panels, and such other component entities as the Agency may establish and to all employees on the Agency's professional staff. These members and employees are deemed to make or to participate in the making of decisions which may foreseeably have a material financial effect, distinguishable from an effect on the public generally, upon them. In order to identify professional staff positions, and to notify each employee of his or her duty to avoid conflicts of interest, a current list of professional staff positions shall be included as a permanent Appendix to this statement.

Article IV of this Policy shall apply to all Agency members, as enumerated above, and to all Agency employees, both professional and nonprofessional, except for those members specifically excluded by the terms of that Article. Article IV shall be construed liberally, to preserve the integrity of the Agency, but shall not be interpreted to restrict the scope of legal provider representation mandated by the National Health Planning and Resources Development Act of 1974.

VI. PUBLIC ACCOUNTABILITY

This Policy statement will be on permanent file for public inspection at the Agency's offices. Upon request, single copies of the statement will be provided to interested individuals; multiple copies will be available at reasonable cost. Suggestions for the improvement of the Policy may be reported to the Chairperson of the Public Accountability Committee of the Agency's Governing Body. Any person

shall have a right to attend a regular meeting of this Committee and to address issues pertinent to the Policy.

Alleged violations of the Policy's provisions shall be reported to the Chairperson of the Public Accountability Committee, who shall notify the Chairperson of the Personnel Committee whenever an alleged violation concerns an Agency employee, rather than a member. Alleged Policy violations regarding a member shall be considered by the Public Accountability Committee; alleged violations regarding an employee shall be considered by the Personnel Committee, with the Chairperson of the Public Accountability Committee sitting as an ex-officio Committee member. The applicable Committee may recommend to the Governing Body, or, as appropriate, to the Governing Body for transmittal to the Governing Board, or (in the case of a Governing Board member) to the Governing Body for transmittal to the member's appointor, that the alleged violation be dismissed, or that it be affirmed as a violation of this Policy and suitably acted upon.

Sanctions for a violation of this Policy by an Agency member may include removal of the member from his or her Agency position, or an official reprimand or resolution of censure. Governing Board members shall be sanctioned by their appointors; Governing Body members shall be sanctioned by the Governing Board; all other members shall be sanctioned by the Governing Body. Sanctions for a violation of this Policy by an Agency employee may include termination or appropriate discipline in accordance with Agency Personnel Policies. Employees will be sanctioned by the Governing Body, or, if authorized by the Governing Body, by the Personnel Committee or Executive Director. Additional remedial actions, such as the voidance and reconsideration of an Agency decision, recommendation, or activity made possible or determined by a conflict of interest or tainted by an incompatible activity, may be afforded, as necessary, by the appropriate Agency component. Nothing in this Policy is intended to limit the effect of any other laws, regulations, or Agency policies defining the duties of Agency members and employees.