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State of California



Fair Political Practices Commission

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

June 1, 1977

Donald E. Parks
516 Mar Vista Drive
Solana Beach, CA 92075

A-77490

Re: Opinion Request
No. 77-008

Dear Mr. Parks:

Thank you for your letter of April 22, 1977, requesting an opinion with respect to the applicability of Chapters 4 and 7 of the Political Reform Act to members of Citizens' Planning Committees formed pursuant to the San Diego County Board of Supervisors Policy I-1. Since your letter raises no substantial questions of interpretation under the Act, no formal opinion will be issued. However, I hope the following informal comments will be helpful.

Citizens' Planning Committees are formed to provide a mechanism for citizens and local organizations to advise County staff, the Planning Commission and the Board of Supervisors on various matters related to the preparation and adoption of the County's General Plan for communities and subregions located in unincorporated areas of the County. Each Committee's membership consists of not more than twenty-five members who are elected at-large and representatives of various "community organizations," the number of which may not exceed the number of at-large members. Specifically, you have asked whether members of these Committees are subject to the disqualification and financial disclosure provisions of Chapter 7 of the Political Reform Act and whether the elected members are subject to the campaign finance disclosure provisions of Chapter 4 of the Act.

Both Chapters 4 and 7 of the Act apply to persons who hold county offices. Chapter 7 is applicable to "public officials," the definition of which includes members of county boards and commissions (Government Code Sections 82048 and 82041),^{1/} and Chapter 4 is applicable to candidates seeking "elective office," the definition of which includes candidates for any county office (Sections 82007 and 82023).

^{1/}All statutory references are to the Government Code unless otherwise noted.

Accordingly, the decisive inquiry in determining the applicability of Chapters 4 and 7 to members of the Citizens' Planning Committees is whether membership on the Committees constitutes holding a county office. We conclude that it does not.

Before discussing this conclusion, we should note that we think it would be anomalous to construe the concept of what constitutes holding a county office differently for Chapter 4 than we do for Chapter 7. Accordingly, only if the members of the Citizens' Planning Committees are "public officials" within the meaning of Chapter 7 (and hence hold a county office) will they be seeking election to a county office within the meaning of Chapter 4 when they are candidates for the at-large seats on the Planning Committees.

The Commission has clarified the definition of "public official,"^{2/} and in particular who is a "member" of a board or commission, in 2 Cal. Adm. Code Section 18700(a)(1), which provides, in pertinent part, that:

"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:

(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.

^{2/}The definition of "public official" also includes officers, employees and consultants of local government agencies. Section 82048. We think, however, that the applicable designation for individuals serving on the Citizens' Planning Committees is "member," and we therefore limit our analysis to that term.

Based on the information provided to us, we do not think the Citizens' Planning Committees are decision-making boards or commissions within the meaning of 2 Cal. Adm. Code Section 18700(a)(1). It is our understanding that the group does not make any final decisions but rather is limited to an advisory function. Moreover, although the Board of Supervisors and the Planning Commission are required to consult with the Citizens' Planning Committees, the Committees cannot compel or prevent governmental decisions. Finally, we have been informed that virtually none of the advice submitted by the Planning Committees is routinely approved, either by the Board of Supervisors or by the Planning Commission. Rather, the advice is generally the subject of vigorous debate before both bodies and is often rejected.

Accordingly, the members of the Citizens' Planning Committees are not members of a decision-making board or commission and, hence, they are not "public officials" within the meaning of Chapter 7.^{3/} They therefore are not subject to the disqualification and financial disclosure provisions of the Political Reform Act. Moreover, as we have previously indicated, because they are not "public officials," they also are not "candidates" within the meaning of Chapter 4 of the Act when they seek election to the Planning Committees.

We note that our reasoning herein regarding whether Planning Committee members hold a county office is consistent with the standards developed by the California courts for determining whether a person is a public officer. The prevailing standard was set forth in Coulter v. Pool, 187 Cal. 181 (1921), in which the court stated that a public officer holds a tenure of office which may be succeeded by others and exercises some sovereign function of government. Moreover, the California Supreme Court has stated in dicta that the power to formulate and submit proposals to the Legislature for its consideration is not the degree of sovereign authority

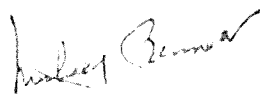
^{3/}We note that in an opinion involving whether members of Project Area Committees are "public officials" the Commission concluded that they are not because they serve a solely advisory function. See Opinion requested by Donald Bonfa, 2 FPPC Ops. 146 (No. 76-033, Oct. 5, 1976). Significantly, Project Area Committees function in a manner which is very similar to the way in which the Citizens' Planning Committees function. See Health and Safety Code Sections 33385, 33386.

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necessary to make one a public officer. Parker v. Riley, 18 Cal. 2d 82, 87 (1941). Although we do not consider Parker dispositive of the question you have posed, it does suggest that the courts, like the Commission, require that members of a board or commission must exercise decision-making authority before they will be deemed to be public officers.

If you wish to appeal the denial of your opinion request, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact Ted Prim, an attorney in the Commission's Legal Division.

Sincerely,



Michael Bennett
Executive Director

MB:TP:plh