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State of California

A-79-037



Fair Political Practices Commission

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

Technical Assistance ••• Administration ••• Executive/Legal ••• Enforcement ••• Conflict of Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

September 20, 1979

John Sanford Todd
Law Office of Todd and Siegel
4909 Lakewood Boulevard, Suite 300
Lakewood, CA 90712

Dear Mr. Todd:

Thank you for your letter of August 17, 1979, requesting an advisory opinion on behalf of the Southern California Joint Powers Insurance Authority (Authority) regarding the Conflict of Interest Code provisions of the Political Reform Act. I hope that the following informal advice is helpful.

The facts as I understand them are that the Authority was formed pursuant to a joint powers agreement between various cities in southern California. The purpose of the Authority is to provide comprehensive and economic liability coverage for the member cities. Its activities include administration of a joint protection program wherein cities will pool their losses and claims. In addition, the Authority will contract for necessary services including consultants in order to effectively administer its insurance program. The Authority has a governing board and a staff to carry out the Authority's business.

You have asked us two questions. First, is the Authority an agency within the meaning of the Political Reform Act, and therefore required to adopt a Conflict of Interest Code? Second, if the Authority is required to adopt a Code, must it prepare and submit a Code to the Commission for review at this time or wait until the Commission has established a deadline for submitting the Code.

The Authority is an agency within the meaning of the Political Reform Act, and is required to submit a Conflict of Interest Code

Mr. John Sanford Todd
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to us for review and approval. Government Code Section 87300^{1/} 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.

[Emphasis added.]

Section 82003 defines agency to include local government agencies. Local government agency as defined by Section 82041,

. . . (M) 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. . .

[Emphasis added.]

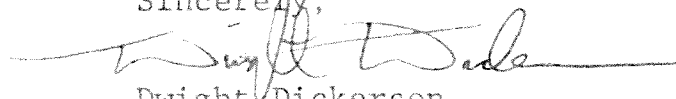
The Authority established pursuant to Government Code Section 6503.5 is a political subdivision and is thus an agency with the meaning of the Act. Because the Authority is a public agency Section 87300 requires it to adopt a Conflict of Interest Code.

The Commission is the code reviewing body for agencies whose jurisdictions extend into more than one county. See Section 82011. Your letter indicates that the Authority is made up of cities in more than one county. Because the Authority offers services to all its members, it may be reasonably concluded that its jurisdiction extends into more than one county. Therefore, the Authority must submit a Code to the Commission for review and approval.

Your second question asks when must the Authority submit its Code. The Authority may forward its Code to our office at anytime, or wait until it has received a notice to do so by an established date.

I hope that this advice is helpful. If you have any questions please do not hesitate to contact me.

Sincerely,



Dwight Dickerson
Legal Counsel
Conflicts of Interest Division

DED:nrw

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

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August 17, 1979

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

Re: Southern California Joint Powers Insurance
Authority - Request for Opinion

Gentlemen:

I am legal counsel for the Southern California Joint Powers Insurance Authority, 3662 Katella Avenue, Suite 107, Los Alamitos, California 90720. The executive committee of the Authority, at its regular meeting on July 30, 1979 requested that I obtain an opinion from your agency on the following issues:

1. Is the Authority an agency, as defined in §82003 of the Government Code, and therefore required to have a Conflict of Interest Code?
2. If the Authority is an agency required to have a Conflict of Interest Code, is it required to prepare and submit at this time for your approval a Conflict of Interest Code, should it wait until such time as the Fair Political Practices Commission should establish a deadline for the filing of such codes?

As stated the Executive Committee has requested an opinion, which your Commission is authorized to issue pursuant to §83114 of the Government Code, and subject to regulations contained in 2 California Administrative Code, §§18320-18326. If, however, you or staff should determine an opinion to be inappropriate, or because of the Commission workload, a considerable delay of time will ensue in rendering an opinion, I request written advice pursuant to §83114 of the Government Code, and Administrative Regulations §§18329-18351.

FACTUAL ANALYSIS

1. The Southern California Joint Powers Insurance Authority was formed by written Joint Powers Agreement on June 29, 1977, by various cities located in Southern California, and in more than one county. There are presently thirty-five cities that are

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members of the Authority.

2. The Authority was formed by written agreement pursuant to §§6500, et seq., of the Government Code, and its purposes as recited in the agreement were to provide comprehensive and economic liability coverage for the member cities, as well as other coverage, and to administer a joint protection program wherein cities will pool their losses and claims, jointly purchase excess insurance, and administrative and other services, including claims adjusting, data processing, risk management consulting, loss prevention, legal and related services. The agreement recites that there is hereby created a public entity separate and apart from the parties, to be known as the Southern California Joint Powers Insurance Authority, and pursuant to Government Code §6508.1 the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of any party to the agreement. Each member city is a member of the board of directors, and is required to designate one member of its city council as its voting representative. Each member city may have an alternate member, who must be an officer or employee of the city, but does not have to be a member of the City Council. The board of directors is the governing body of the Authority and is vested with the powers of the Authority, which include the power to contract, incur debts, liabilities or obligations, acquire, hold or dispose of property, sue and be sued, and to exercise all powers necessary and proper to carry out the terms and provisions of the agreement.

3. The agreement provides for an Executive Committee of the board of directors consisting of not less than five, nor more than nine members, as determined by the board of directors. One of the members of the Executive Committee is the president of the Authority, and another is the Vice President. The Executive Committee meets monthly. All meetings of the board of directors and Executive Committee are subject to the Ralph M. Brown Act. The Executive Committee is authorized to carry out the business of the Authority, subject to the supervision of the board of directors, and to hire and retain or appoint a treasurer, who may be a financial officer of one of the member cities, an insurance manager, a secretary, an attorney, as well as such other employees as the Executive Committee should determine are necessary from time to time.

4. Notice of creation of the Authority as a separate legal entity was filed with the Secretary of State after creation

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of the Authority, and notice of amendments to the agreement have been duly filed in the office of the Secretary of State.

5. The former legal counsel of the Authority has advised the Authority that no Conflict of Interest Code is required of the Authority, or if required is not required for filing until such time as the Fair Political Practices Commission, as the Code Reviewing Body, has adopted a deadline for the filing of such a Code pursuant to 2 California Administrative Code §18750(a). Therefore none of the officers or members of the Executive Committee have filed Conflict of Interest Statements in connection with their office on the Authority. Said members of the Executive Committee, however, as City Councilmembers would have been required to file Statements of Economic Interest with you pursuant to the Conflict of Interest Code of each city. Likewise, the treasurer, being a finance officer of one of the member cities, and the former attorney for the Authority, being a City Attorney, would have been required to file Statements of Economic Interest with their respective City Councils. In addition, I as City Attorney for a member city have filed Statements of Economic Interest with my City Council since adoption of the City Attorney's Conflict of Interest Code. The full time secretary of the Authority and Insurance Manager, however, do not have a Conflict of Interest Code, and have not therefore filed any Statements of Economic Interest.

LEGAL ANALYSIS

I have recently been retained as attorney for the Authority, and believe that the definition of "agency" contained in §82003 of the Government Code does include the Authority. As a result I have advised the Authority that a Conflict of Interest Code is required. I have recommended that the Authority prepare a Conflict of Interest Code covering the following:

A. Only officers and members of the Executive Committee would be required to file Statements of Economic Interest, which where appropriate could be a duplicate of the Statement of Economic Interest that officer has filed with the Fair Political Practices Commission.

B. The Insurance Manager would be a designated employee required to file a Statement of Economic Interest in the form and fashion set forth in the Code.

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C. The Secretary would be a designated employee required to file a Statement of Economic Interest to the extent required by the Conflict of Interest Code.

D. The Treasurer would be a designated employee required to file a Statement of Economic Interest to the extent required by the Conflict of Interest Code.

E. The Attorney would be a designated employee required to file a Statement of Economic Interest to the extent required by the Conflict of Interest Code.

I have reached the aforementioned conclusion based upon the following analysis:

1. Government Code §82003 defines "agency" to mean any state agency or local government agency, and §82041 defines "local government agency" to include a city or district of any kind, or "any other local or regional subdivision, or any department, division, bureau, office, board, commission, or other agency of these.....". On the face of that definition it would appear that a joint powers entity created under the Joint Powers Act is a local government agency. In this regard the Joint Powers Agreement creating the Southern California Joint Powers Insurance Authority created a separate agency or entity pursuant to §6503.5 of the Government Code. In addition, in accordance with the provisions of §6503.5 of the Government Code the Authority has caused to be filed with the Office of the Secretary of State the statement of the creation of a separate agency or entity by the signatories to the agreement. Section 6503.5 of the Government Code specifies that such an entity is separate from the parties to the agreement, and is a public entity that may sue and be sued.

2. Of course if the entity is not an "agency" within the meaning of §82041 it would not be required to adopt a Conflict of Interest Code. Without a Conflict of Interest Code being required there is no requirement for the filing of disclosure statements. Section 87300 of the Government Code specifies that every agency shall adopt and promulgate a conflict of interest code, and therefore, if the Authority is an "agency" such a conflict of interest code is required as well as the appropriate filing of disclosure statements.

3. Opinion No. 76-054, July 6, 1977, requested by Samuel Siegel, City Attorney for the City of Pico Rivera, holds that members of the board of directors of the Pico Rivera Water Develop-

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ment Corporation, a California nonprofit corporation, were public officials within the meaning of Government Code §87100, and that said corporation was required to have a Conflict of Interest Code. In that opinion the Commission concluded that the corporation was a "department, division, bureau, office, board, commission, or other agency" of the city within the meaning of §82041, and as a result its members are public officials within the meaning of §84048 and §87100. In reaching that conclusion the Commission applied the following test on the issue of whether the corporation was a "local governmental agency":

A. Did the impetus for formation of the corporation originate with a government agency? In this regard the Joint Powers Insurance Authority was created by a committee organized initially by the California Contract Cities Association, and expanded to include other cities. All members of the California Contract Cities Association are cities. Other representatives of other cities that joined the committee were also representatives of cities. I, as City Attorney for the City of Lakewood, was in charge in drafting of the Joint Powers Agreement, and the actual drafting of the agreement was by Glenn Watson, a City Attorney for several other member cities. The agreement was reviewed by a City Manager's Committee, and ultimately adopted by a committee representing over thirty cities.

B. Is the agency substantially funded by, or is its primary source of funds a governmental agency? All funds for the agency, the joint liability pool and excess insurance, are supplied by member cities.

C. Is one of the principal purposes for which the agency is formed to provide services or undertake obligations which public agencies are legally authorized to perform, and which in fact they traditionally have performed? In this case the answer is, of course, not only in the affirmative, but must be in the affirmative. Joint power agencies can only perform those duties that the cities creating can perform individually.

D. Is the corporation treated as a public entity by other statutory provisions? We would answer that question in the affirmative because the agreement specifies and §6503.5 provides that such an agency is a separate legal entity, and may sue and be sued.

4. Applying the Siegel Opinion the Authority is an agency within the meaning of Proposition 9, required to have a Conflict

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of Interest Code with the result its members are public officials within the meaning of Government Code §82048 and §87100. Section 82048 defines a "public official" to mean each member, officer, employee, consultant of a local government agency. Section 87100 provides that such officer shall not make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which he knows, or should have reason to know, he has a financial interest.

5. Section 82011 provides that the Commission is the code reviewing body of any local governmental agency within jurisdiction in more than one county. Although the Southern California Joint Powers Insurance Authority was created by agreement in Los Angeles County, its members include cities of more than one county, and it therefore has jurisdiction in more than one county. Pursuant to 2 California Administrative Code 18750(a) the Fair Political Practices Commission shall by resolution establish a deadline for the submission of Conflict of Interest Codes for among other agencies each local government agency with jurisdiction in more than one county, for which it is the code reviewing body. I am aware, of course, that the Commission has established such a deadline for City Councils, and assume that the same deadline is applicable to local governmental agencies with jurisdictions in more than one county.

Thank you for your kind and considerate attention.

Sincerely yours,



John Sanford Todd, Legal Counsel
Southern California Joint Powers
Insurance Authority

JST:ft

cc: James Patronite, President
Executive Board
Insurance Manager
Secretary