

State of California



Fair Political Practices Commission

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

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

82003
82011
82041

March 10, 1981

Samuel Siegel, Esq.
Todd & Seigel
Suite 300
4909 Lakewood Blvd.
Lakewood, CA 90712

A-81-03-015

Re: Southeast Area Animal Control Authority

Dear Mr. Siegel:

I understand that you represent the Southeast Area Animal Control Authority, an agency formed pursuant to a Joint Powers Agreement on November 25, 1975, by three cities in Southern California. The purposes of the Authority are to provide comprehensive animal control services to the signatory cities and other cities by service contract. The Authority is governed by a Commission, which is composed of one member from the City Council of each signatory city. The Commission has the power to contract; incur debts, liability or obligations; acquire, hold or dispose of property; sue and be sued, and exercise all other necessary powers to carry out the Agreement. The Authority employs a full-time Director.

You raised the following questions for our advice:

1. Is the Authority required to adopt a Conflict of Interest Code pursuant to Section 87300?
2. If the Authority is so required, is the Fair Political Practices Commission the code reviewing body for the Authority?
3. If the Authority must adopt a Conflict of Interest Code, when must it submit a Code to the Code reviewing body?

Our conclusions are:

1. The Authority is an "agency" within the meaning of Sections 82003 and 82041 and is thus required by Section 87300 to adopt a Conflict of Interest Code.

2. The Fair Political Practices Commission is the Code reviewing body for the Authority pursuant to Section 82011.

3. The Act provides that the deadline for any agency not in existence on April 1, 1975, shall be six months after it comes into existence. Section 87303. Since this deadline has passed for the Authority, a Conflict of Interest Code for the Authority must be adopted and submitted to the Commission for review by June 1, 1981.

1. Section 87300 requires that all agencies adopt and promulgate a Conflict of Interest Code. An "agency" is defined by the Act to include any "local government agency," which in turn is defined as "a county, city or district of any kind ... or any other local or regional political subdivision..." Sections 82003 and 82041.

The Commission has traditionally treated agencies formed pursuant to Joint Powers Agreements between governmental entities as local governmental agencies. I agree with your analysis that the factors set out in the Siegel Opinion, 3 FPPC 62 (No. 76-054, July 6, 1977) as applied to the Authority indicate that it is an "agency" within the meaning of the Act. However, I would also like to point out that it is not necessary to go through an analysis of the Siegel factors to determine that the Authority is an "agency" which is required to adopt a Code. The Pico Rivera Water Development Corporation was formed as a nonprofit corporation for the purpose of acquiring and operating a water system. Thus, on its face, the Pico Rivera Water Development Corporation was a private entity. Nevertheless, the Commission held that whether an entity is private or public within the meaning of the Act would depend on the true nature of the entity and developed four criteria for determining an entity's true nature. In the case of the Authority, however, we have an entity that is clearly public on its face; Sections 6500, et seq., authorize public agencies to enter into an agreement for the joint exercise of a common power. Accordingly, the Siegel criteria are not necessary to determine that the Authority is an "agency" within the meaning of the Act.

2. Since the Authority has jurisdiction to serve cities in more than one county, and it is likely that it will serve cities in other counties, the Fair Political Practices Commission is the Code reviewing body. Section 82011. This is true despite the fact that the cities presently served by the Authority are all located in one county.

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3. The Authority was required to adopt and promulgate a Conflict of Interest Code within six months after it came into existence. Since the statutory deadline has passed, a new deadline of June 1, 1981, is hereby established for the Authority. If a Code is not adopted by this deadline, the Commission has the authority to adopt a Code for the agency. Section 87304.

If I can be of any assistance to you or if you would like to discuss this letter, please feel free to contact me.

Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:kp

LAW OFFICES

TODD AND SIEGEL

A PROFESSIONAL CORPORATION

4909 LAKEWOOD BOULEVARD, SUITE 300
LAKEWOOD, CALIFORNIA 90712

JOHN SANFORD TODD
SAMUEL SIEGEL
SCOTT E. NICHOLS

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AREA CODE 213
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January 30, 1981

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

Re: Southeast Area Animal Control Authority - Request for Opinion

Gentlemen:

I am legal counsel for the Southeast Area Animal Control Authority, 977 SEAACA Street, Downey, California. The Commission of said Agency has requested that I obtain an opinion from your Agency on the following issues:

1. Is the Authority an agency, as defined in Section 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, or should it wait until such time as the Fair Political Practices Commission should establish a deadline for the filing of such codes?
3. If the Authority is an agency required to have a Conflict of Interest Code, and since the Joint Powers Agreement by which the Authority was established authorizes it to extend its service area to other cities by service contract, would the Code Reviewing Body be the Fair Political Practices Commission since its authorized jurisdiction could be in more than one county?

An opinion is requested pursuant to Section 83114 of the Government Code, and subject to regulations contained in No. 2 California Administrative Code, Sections 18320-18326. If, however, you or your 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 Section 83114 of the Government Code and Administrative Regulations Section 18329-18351.

FACTUAL ANALYSIS

1. The Southeast Area Animal Control Authority was formed by written

Joint Powers Agreement on November 25, 1975, by three cities located in Southern California and designated signatory cities. Pursuant to the aforesaid authority set forth in the agreement, the Authority is presently providing services to approximately ten other cities by service contract.

2. The Authority was formed by written agreement pursuant to Sections 6500, et seq., of the Government Code and its purposes as recited in the agreement were to provide comprehensive animal control services, including the licensing of animals, providing of animal patrol services, impounding of animals and other related activities and services. Said services are provided for the signatory cities and other cities by service contract. Each signatory city is a member of the Commission, and is required to designate one member of its City Council as its voting representative. Said Commission is the governing body of the Authority, and is vested with the Powers of Authority, which include the Power to Contract, incur debts, liability or obligations, acquire, hold or dispose of property, sue and be sued and exercise all the powers necessary and proper to carry out the terms and provisions of the agreement.
3. The position of legal counsel of the Authority is rotated on an annual basis among the City Attorneys of the signatory cities. Although no filings of Conflict of Interest statements in connection with the Authority has been made to date, the Commissioners as City Council members, are and have been filing Statements of Economic Interest 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 Authority counsel, being a City Attorney, have been required to file Statements of Economic Interest with their respective councils. The full-time Director of the Authority does not have a Conflict of Interest Code, and has not therefore filed any Statements of Economic Interest.
4. There is a divergence of opinion among the staff and officers of the Authority as to the requirement of a Conflict of Interest Code for the Authority, which is the basis for the opinion requested from your Commission on behalf of the Southeast Area Animal Control Authority.

LEGAL ANALYSIS

I 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:

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- A. The members of the Commission would be required to file Statements of Economic Interest, which, where appropriate, could be a duplicate of the Statement of Economic Interest that that office has filed with the Fair Political Practices Commission.
- B. The Authority Director would be a designated employee required to file a Statement of Economic Interest in the form and fashion set forth in the Code.
- C. 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.
- D. 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.
- E. The City Manager/Administrator, representing the Manager/Administrators of the signatory cities 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. On the face of the definition of "Agency" and "Local Government Agents" set forth in Sections 82003 and 82041, respectively, of the Government Code, it would appear that the Joint Powers Entity, created under the Joint Powers Act, is a local government agency. In this regard the Joint Powers Agreement creating the Southeast Area Animal Control Authority created a separate agency or entity pursuant to Section 6503.5 of the Government Code.
 2. In Opinion Number 76-054, July 6, 1977, requested by myself as the attorney of the Pico Rivera Water Development Corporation, a test was developed and applied upon the issue of whether the corporation was a "local governmental agency." In applying said test to the present situation, it appears that the Authority would be a public agency and that its officers were public officials within the meaning of Government Code Section 87100 and that said Authority would be required to have a Conflict of Interest Code.
 - A. The impetus for the formation of the Authority originated with a government agency, in that, it was created by a committee composed of City Councilmen, City Manager/Administrators, and City Attorneys of the signatory cities. The agreement was reviewed by a City Manager's Committee, and ultimately approved and adopted by the City Councils

of each of the signatory cities.

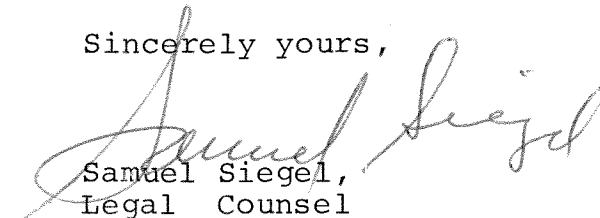
- B. The primary source of the funds is from governmental agencies in that, all of the service contracts provide for the payment by any service city of the amounts necessary to cover the total expense in providing the authorized service. In addition, advance operating and capital funds are provided by the signatory cities from their respective treasuries or through approved in-kind service/profit on a pro rata basis.
- C. The principal purpose for which the Authority was formed was to provide services which public agencies traditionally performed, namely, animal control services. Joint Power Agencies can only perform those duties that the cities could create in them and perform individually. The Authority is treated as a public entity in that the agreement specifies in Section 6503.5 provide that such an agency is a separate legal entity, and may sue and be sued.

Thus, applying the Siegel opinion, the Authority appears to be an agency within the meaning of Proposition 9, required to have a Conflict of Interest Code with the result its members are public officials within the meaning of Government Code Section 82048 and Section 87100.

- 5. Section 82011 of the Government Code provides that the Commission is the Code-reviewing body of any local governmental agency with jurisdiction in more than one county. Although the Southeast Area Animal Control Authority was created by agreement in Los Angeles County, and its signatory cities as well as the cities presently serviced by the Authority are located in Los Angeles County, by the enabling authorities set forth in the agreement the Authority may, and is likely that they will, include cities in other counties in the future. It would therefore appear that the Authority would be considered as an agency having jurisdiction in more than one county and thus have the Commission as the Code-reviewing body.

Thank you for your kind and considerate attention.

Sincerely yours,



Samuel Siegel,
Legal Counsel

Southeast Area Animal Control Authority