

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
(916) 322-5662 322-5660 322-5901 322-6441

September 7, 1984

Bud Cormier
Secretary
Hawthorne Cable Usage Corporation
4455 West 126th Street
Hawthorne, CA 90250

Re: Your Request for Advice
Our File No. A-84-202

Dear Mr. Cormier:

Thank you for your letter requesting advice from this office on whether the Hawthorne Cable Usage Corporation is a "local government agency" within the meaning of the Political Reform Act, and if so, whether it is required to adopt a conflict of interest code pursuant to the Act.^{1/}

CONCLUSION

The Hawthorne Cable Usage Corporation is a "local government agency" within the meaning of the Act, and it is required to adopt a conflict of interest code.

FACTUAL BACKGROUND

The Hawthorne Cable Usage Corporation ("Corporation") was formed in 1983 pursuant to the Cable Television Franchise Agreement ("Agreement") between the City of Hawthorne ("City") and Group W Cable, Inc. ("Group W"), a wholly owned subsidiary of Westinghouse Electric Corporation. The Agreement provides that Group W will fund the nonprofit Corporation with a minimum grant of \$100,000 per year or 3% of their annual gross revenues

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91014. All statutory references are to the Government Code.

from the Hawthorne Cable System operation. This funding represents the total revenues of the Corporation.

According to the Articles of Incorporation enclosed in your letter, the purpose of the Corporation is to promote and support public access to cable television in the City. The responsibilities and goals of the Corporation are set forth in the Bylaws (also enclosed in your letter) and include the following:

- 1) To conduct projects furthering the literary, educational, and scientific applications of cable television within the City of Hawthorne.
- 2) To conduct publicly-available scientific research in the City of Hawthorne in order to encourage the development of non-profit uses of cable television and attract new participation and investment in that industry in a fair, just and equitable manner.
- 3) To be responsible for program production and management of Public Access channels, the Community Access channels, Community channels, and all other channels as may in the future be designated under the control of this corporation.
- 4) To assure that channel capacity under the control of this corporation is made available to all residents of the City of Hawthorne on a non-discriminatory basis.
- 5) To assure that no censorship or control over program content exists, except as necessary to comply with FCC prohibition of material that is obscene, or constitutes a lottery.
- 6) To devise, establish, and administer all rules, regulations and procedures pertaining to the use and scheduling of the Public Access and Community channels.
- 7) To prepare, in conjunction with all cable television franchisees, such regular or special reports as may be required or desired by the City of Hawthorne.
- 8) To hold public hearings regarding Public Access and other Community channels and determine the need for additional channel(s).

9) To conduct surveys of CATV subscribers, hold public hearings or otherwise determine the need or market for two-way services as provided in any cable television franchise ordinance.

10) To encourage and facilitate interconnection of CATV systems and interjurisdictional programming.

11) To give advice to the City Council of the City of Hawthorne, if requested thereby, regarding any controversy arising from the operations of a cable television system, or on any other matter relating to the regulation of cable television.

12) Provide an annual report to the City of Hawthorne of the corporation's achievements in community-based programming and services.

13) To administer and operate the facilities for cable casting provided by franchisees.

The corporation is governed by a seven-member Board of Directors who serve one-year terms. The Directors are elected by a majority of the city councilmembers (who are considered the members of the Corporation). Group W and the City Fine Arts Commission may nominate persons for the Board of Directors, and at least one director shall be a representative of Group W and at least one director shall be a member or representative of the City Fine Arts Commission. The President of the Corporation is the City Manager or his designee; the Treasurer is the chief financial officer of the City; and the Secretary is chosen by the President.

ANALYSIS

The conflict of interest provisions of the Act (including financial disclosure and disqualification) apply to the members, employees, consultants, etc. of state and local government agencies. Section 82041 defines the term "local government agency" to mean "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 ..." The Commission has determined that a nonprofit corporation falls within this definition if the corporation is intrinsically "public" rather than "private" in character and provided the following four criteria to assist in this determination:

- (1) The impetus for the formation of the corporation originated with a government agency;
- (2) The Corporation is substantially funded, or its primary source of funds, a government agency;
- (3) One of the principal purposes of the corporation is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact they have traditionally performed; and
- (4) The corporation is treated as a public entity by other statutory provisions.

See Seigel Opinion 4 FPPC
Opinions 13 (No. 76-054,
July 6, 1977).

The Corporation clearly satisfies all of these criteria. The impetus for its formation was the City's interest in providing public access to the cable television system. The City also arranged for the funding of the Corporation through the Agreement, and the Corporation is managed by City employees; this satisfies the second criterion. The purpose of the Corporation is one which the City is legally authorized to perform under the laws concerning community antenna television systems. (Government Code Sections 53066-53077; see specifically Section 53066.1(j)). While the type of services the Corporation is performing are not necessarily traditional of public agencies since cable television systems are a relatively recent phenomenon, it is true that both the law and many other cities view the role of providing community access to cable television and monitoring the operations of the system as a public function. Based on all of these factors, the Corporation is essentially a entity created by the City to accomplish governmental purpose and is therefore a "local government agency" within the meaning of Section 82041.

Whether the Corporation must adopt a conflict of interest code depends on whether it can make decisions which could affect private financial interests. This includes decisions on grants or contracts for the expenditure of Corporation's funds. This determination is the responsibility of the City Council as the code reviewing body for the Corporation. (Section 82011(c).)

Bud Cormier
September 7, 1984
Page 5

Please feel free to contact me if I can be of further assistance at (916) 322-5901.

Sincerely,

Diane Maura Fishburn by ISM

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh



HAWTHORNE CABLE USAGE CORPORATION

4455 West 126th Street, Hawthorne, California 90250
(213) 970-7243, 970-7907

AUG 1 1984

August 1, 1984

BOARD OF DIRECTORS

Chairman

REESE WALTON

Vice Chairperson

PAULA WEINER

BETH BORLAND

PASTOR CHET GEAN

BILLIE HAYES

DAVE MUSIAL

BUDDY TAKATA

OFFICERS

President

HARRY A. REEVES

Treasurer

SAMU (SAM) TAKATA

Secretary

BUD CORMIER

Barbara Milman, General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Milman:

I am requesting an opinion as to whether the Hawthorne Cable Usage Corporation is a "local government agency" within the meaning of the Political Reform Act of 1974 (Government Code Section 81000) and if so, is the Corporation required to adopt a conflict of interest code pursuant to Government Code Section 87300.

The Hawthorne Cable Usage Corporation was formed in 1983 pursuant to a Cable Television Franchise Agreement between the City of Hawthorne and Group W Cable Inc., a wholly-owned subsidiary of Westinghouse Electric Corporation. As part of the Franchise Agreement, Group W Cable agreed to fund a non-profit Cable Usage Corporation with a minimum grant of \$100,000.00 a year or 3% of their annual gross revenues from the Hawthorne cable system operation. This funding from Group W Cable represents the total revenues from the Hawthorne Cable Usage Corporation.

As stated in the Articles of Incorporation (copy enclosed), the purpose of the Hawthorne Cable Usage Corporation is to promote and support public access to cable television within the City of Hawthorne. To accomplish this purpose the Corporation provides grants to community groups and individuals interested in producing local interest programming to appear on public access channels of the cable system.

Also enclosed is a copy of the By-Laws which describe the structure of the Hawthorne Cable Usage Corporation. The Corporation is governed by a seven (7) member Board of Directors who serve one (1) year terms (Article IX, p. 9). The directors are appointed by the "members" of the Corporation (Article VIII, p. 8) who

Page 2
Barbara Milman, General Counsel
August 1, 1984

in turn are the members of the Hawthorne City Council
(Article VI, p. 3).

I trust this information will assist you in making
a determination. If additional information is needed,
however, please do not hesitate to call me at (213)
970-7243.

Sincerely,



Bud Cormier
Secretary,
Hawthorne Cable Usage
Corporation

BC/kc

Att: