



California Fair Political Practices Commission

November 17, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Your Request for Advice
Our File No. A-86-214

Dear Mr. Francis:

This is in response to your letter dated June 20, 1986, written on behalf of the West Valley Community College District ("District"). You have asked whether the Mission-West Valley Educational Foundation ("Foundation") is required to adopt a conflict of interest code pursuant to the provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Is the Foundation an "agency" within the meaning of the Act and, therefore, required to adopt a conflict of interest code?

CONCLUSION

The Foundation is an "agency" and is subject to the conflict of interest requirements of the Act, including the requirement to adopt a conflict of interest code. However, whether or not other "auxiliary organizations" are agencies within the meaning of the Act is a determination which must be made on a case-by-case basis.

FACTS

The Foundation is a nonprofit corporation created by the District under provisions of the Education Code (Section 72670, et seq.) which authorize community college districts to establish auxiliary organizations. The Board of Trustees of the District sits as the Board of Directors of the Foundation.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code, unless otherwise noted.

Regulations established by the California Community Colleges Board of Governors authorize auxiliary organizations to operate the following facilities and perform the following functions and services:

- a) Student association or organization activities;
- b) Bookstores;
- c) Food and campus services;
- d) Student union programs;
- e) Facilities and equipment;
- f) Loans, scholarships, grants-in-aid;
- g) Workshops, conferences, institutes and federal projects;
- h) Alumni activities;
- i) Supplementary health services;
- j) Gifts, bequests, devises, endowments and trusts; and
- k) Public relations programs.

5 California Administrative Code,
Section 59259.

In its master agreement with the Foundation, the District has authorized the Foundation to perform all of the above-mentioned functions. However, the Foundation's current activities are limited to facilitating the development of a parcel of real property owned by the District. Generally, the Foundation's role is intended to enable the property to be developed without the formalities of governmental budgetary, purchasing and other fiscal procedures.

The District has leased to the Foundation a 60-acre parcel of property located in the Santa Clara Valley near the Marriotts Great America amusement park. It is anticipated that the Foundation will sublease the property for a \$300-500 million development project. The Foundation will give income from the project to the District.

ANALYSIS

Section 87300 of the Act requires every agency to adopt and promulgate a conflict of interest code. The term "agency" includes any "local government agency." Section 82003. "Local government agency" is in turn defined as:

... 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 the foregoing.

Section 82041.

In opinions requested by Samuel Siegel, 3 FPPC Opinions 62 (No. 76-054, July 6, 1977) and Charles F. Leach, 4 FPPC Opinions 48 (No. 76-092, Sept. 6, 1978), the Commission discussed criteria which are helpful for determining whether an entity is a "local government agency." Applying these standards, we conclude that the Foundation is a local government agency. However, our decision is limited to the particular facts and circumstances presented in this request. The determination of whether other auxiliary organizations are local government agencies must be made by applying these same standards to the particular facts surrounding each organization.

The first criterion outlined in Leach and Siegel is whether the impetus for formation of the entity was with a governmental body.^{2/} In the present situation, the Foundation was established by the District, and the Board of Trustees of the District sits as the Board of Directors of the Foundation.^{3/}

^{2/} In Leach, we concluded that the Downtown Business Association and the Chamber of Commerce did not meet this criteria because they were in existence well before they began their contractual affiliation with the City, and because their primary purpose was nongovernmental in character and unrelated to the contractual services they provided to the City. Similarly, auxiliary organizations which were in existence prior to their affiliation with a community college district, or whose primary purpose is nongovernmental in nature (such as auxiliary organizations whose primary purpose is academic fundraising), do not meet this criteria.

^{3/} In your September 9, 1986, letter to the Commission, you addressed this criterion by arguing that creation of an auxiliary organization by a community college district pursuant to provisions of the Education Code "should be perceived in a different light than was the case in either Siegel or Leach." You also quoted the following language from an Attorney General's Opinion (47 Ops. Cal. Atty. Gen. 8 (1966)):

Both [the auxiliary organizations] are created, not under laws pertaining to governmental entities, but under general provisions applying to private, as distinguished from governmental, entities.

These comments do not alter our conclusion on the issue addressed by this criterion, i.e., whether the impetus for formation of the Foundation was with a governmental body.

The second criterion is whether all or most of the entity's funds are received from public sources. In the present situation, you have indicated that the District has leased to the Foundation, for a token amount, a valuable piece of commercial property. In turn, the Foundation will generate virtually all of its income by subleasing this public asset and having the property developed. Thus, all or most of the Foundation's funds are derived from the grant of a lease of a public resource at less than fair market value. We do not believe this is distinguishable from a direct grant of public funds.^{4/}

The third criterion is whether the entity is performing a function which public agencies are legally authorized to perform or which they traditionally have performed. In the present situation, it is clear that the Foundation's role of having the District's property developed is one which the District has the legal authority to perform.^{5/}

The last criterion is whether the entity is treated as "public" by other statutory provisions. In the present situation, auxiliary organizations like the Foundation have been treated as public in some situations and have not been treated as public in others. In support of your position that the Foundation is not a public agency, you have cited an Attorney General's opinion and a Court of Appeal case dealing with auxiliary organizations for California State University.

^{4/} You have argued that this criterion is not met because, in a typical agreement between an auxiliary organization and a college or university, there are provisions for reimbursement of expenses incurred by the college or university for utility costs, custodial services, maintenance, supplies, and similar services. However, in the present situation, the Foundation is not reimbursing the District for the full value of the property which is being subleased to the Foundation.

^{5/} Regarding this criterion, you have pointed out that one of the reasons auxiliary organizations were created was because some activities cannot be operated effectively and without undue difficulty under the usual governmental budgetary, purchasing and other controls. You have argued that the issue, therefore, in its historical context, is whether the District could perform this function as well under the usual governmental budgetary, purchasing and other fiscal controls. We disagree. This criterion is intended to analyze whether or not the entity is performing governmental functions, not to analyze the reason that those functions have been delegated to the entity.

In the Attorney General's opinion, 47 Ops. Cal. Atty. Gen. 8 (1966), the issue was whether, for Social Security purposes, the Cal Poly Bookstore and the San Jose State Foundation were instrumentalities of the State of California. The procedure for placing employees of governmental entities under Social Security differs from that where coverage is sought for employees of nonprofit institutions. The Attorney General concluded that, for the purposes of the Social Security law, the bookstore and the foundation were not instrumentalities of the State:

Auxiliary organizations, not being political entities, simply do not fall within the definition of "public agency." They are nongovernmental bodies created to promote the welfare of the sponsoring State College.

The District also relies on Wanee v. Board of Directors of the Associated Students of California State University, Chico (1976) 56 Cal.App.3d 64. In Wanee, a case dealing with the status of employees who work for auxiliary organizations of the California State University system, the court approved of the reasoning in the Attorney General's Opinion referred to above. The court reached this conclusion:

There appears no doubt that employees such as petitioner are not employees of the College or of a governmental entity, but instead are employees of a private corporation.

While the language quoted from these two opinions is very broad, it is clear in each case that the conclusion reached is that auxiliary organizations are not governmental entities for purposes of the specific issue dealt with in the opinion.

Auxiliary organizations have been treated as public agencies in certain circumstances.^{6/} For example, auxiliary organizations are expressly authorized to enter into joint powers agreements. Education Code Section 72671. Furthermore, meetings of the board of directors of auxiliary organizations are required to comply with open meeting laws applicable to public agencies. Education Code Section 72674. Thus, at least to some extent, the last criterion is met.

^{6/} In your September 9, 1986, letter to the Commission, you commented that the only statutory provisions which treat auxiliary organizations as public entities are those which have been enacted at the request of such organizations. Nonetheless, we believe the Legislature's willingness to enact such provisions indicates that, at least in some contexts, these entities may be considered to be public.

John W. Francis
November 17, 1986
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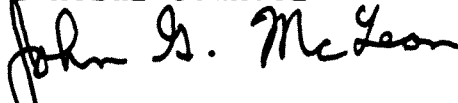
We believe that the functions being performed by the Foundation are governmental in nature and create opportunities for individuals to affect their personal economic interests through the decisions in which they participate. One of the purposes of the Act is to assure that public officials perform their duties in an impartial manner, free from bias. Section 81001(b). The Act is to be liberally construed to accomplish this purpose. Section 81003. With this in mind, we believe that the Foundation sufficiently meets the Siegel criteria to be considered a local government agency within the meaning of the Act.^{7/}

On the other hand, we have learned that the term "auxiliary organization" applies to a tremendous variety of entities which perform different roles and functions. We believe many of these entities are not "local government agencies" within the meaning of the Act. This determination is one which must be made by applying the above-mentioned criteria to the particular facts and circumstances surrounding each auxiliary organization.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

JGM:km

^{7/} By this conclusion, we make no determination regarding whether the Foundation or any other auxiliary organization is a government agency outside of the context of the Act.

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

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June 20, 1986

Ms. Jeanette E. Turvill
Legal Assistant
Legal Division
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

RE: Conflict of Interest Code
Mission-West Valley Educational Foundation

Dear Ms. Turvill:

The West Valley Community College District has asked me to respond on their behalf and protest the determination made on October 1, 1985 that the subject organization (hereafter "Foundation") is subject to the provisions of Government Code Section 87300, which requires governmental agencies to adopt a conflict of interest code (see attached copy).

The essential element of this protest is our view that the Foundation is not a public agency and, therefore, not subject to the provisions of Government Code Section 87300. The basis for this assertion is as follows:

The Foundation is an auxiliary organization as authorized by Education Code Section 72670 et. seq., a copy of which is enclosed for ease of reference. At Section 72672(c) there is the requirement that, prior to the establishment of an auxiliary organization, a community college district must develop implementing regulations for approval by the Chancellor's Office in Sacramento. These regulations were developed and approved and official recognition of the Foundation by the District was effected.

Ms. Jeanette E. Turvill
June 20, 1986
Page Two

The statutory authority for the creation of auxiliary organizations by community college districts had its antecedents in almost identical legislation relating to the California State University System and is found in Education Code Section 89900 et. seq., a copy of which is included.

Questions regarding the status of the auxiliary organizations in the California State University system were first addressed in a 1966 Attorney General's Opinion cited as 47 Ops. Cal. Atty. Gen. 8 (1966), a copy of which is included.

That opinion concludes with:

Auxiliary organizations, not being political entities, simply do not fall within the definition of "public agency." They are nongovernmental bodies created to promote the welfare of the sponsoring State College.

In 1976 a question about the status of employees who work for these auxiliary organizations concluded with litigation and ultimately a decision at the Appellate level. The case is *Wanee v. Board of Directors of the Associated Students of California State University Chico* and is cited in 56 Cal. App. 3d 644 (1976). A copy of this case is also included. The Court approved of the reasoning of the Attorney General's Opinion referred to above and then reached this conclusion:

There appears no doubt that employees such as petitioner are not employees of the College or of a governmental entity, but instead are employees of a private corporation.

There has been no California case since 1976 that has reached an opposite conclusion.

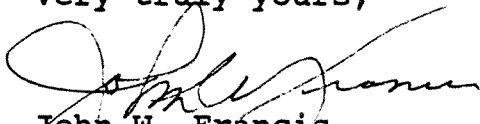
In view of the similarity between the statutory authority for both universities of the California State University System and Districts of the California Community College System to create such separate but related auxiliary organizations, the reasoning of the Attorney General's Opinion and the court in Wanee should have equal applicability. We believe that the only logical conclusion is that the Mission-West Valley Educational Foundation is not a public agency and, therefore, is not subject to the provisions of Government Code Section 87300 and should not be required to adopt a conflict of interest code.

Ms. Jeanette E. Turvill
June 20, 1986
Page Three

If further discussion of any aspect of this analysis would be useful, please let me know.

Thank you very much for your consideration of our position in this issue.

Very truly yours,



John W. Francis
Attorney at Law

Enclosures

Memorandum

Chairman Larson, Commissioners Lee,
Lemons, Montgomery and Roden

Date : October 28, 1986

From : **FAIR POLITICAL PRACTICES COMMISSION**

John G. McLean, Legal Division

Subject : Proposed Advice Letter to Mission West-Valley Educational
Foundation

At the September Commission meeting, staff presented to the Commission a proposed advice letter which concluded that the Mission-West Valley Educational Foundation ("Foundation"), an auxiliary organization of the West Valley Community College District ("District"), is an "agency" within the meaning of the Political Reform Act. Therefore, the Foundation would be subject to the Act's conflict of interest provisions. Because of the impact which the letter could have on auxiliary organizations for other community colleges and state universities, representatives of interested organizations were invited to address the Commission.

Testimony was received from representatives of the Foundation and the Los Angeles Community College District. In accordance with requests from the Los Angeles County Counsel's Office and the Los Angeles Community College District, the Commission postponed for 60 days its decision regarding whether to approve the proposed advice letter in order to allow those organizations time for further study and submission of additional comments.

Based on testimony provided at the September meeting regarding the large diversity of auxiliary organizations, the staff has revised its proposed advice letter to the Foundation. The new proposed letter indicates that while the Foundation is subject to the Act, the advice is limited to the specific factual situation involved. In this regard, it should be noted that unlike most auxiliary organizations, the Board of Trustees of the District sits as the Board of Directors of the Foundation. The proposed letter also provides that the determination of whether a particular auxiliary organization is subject to the Act must be made on a case-by-case basis. However, the letter provides guidance for dealing with various factual situations. All interested parties have been provided with copies of the revised advice letter.

A copy of the proposed advice letter is attached for your consideration.

JGM:km



California
Fair Political
Practices Commission

November 26, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Mission-West Valley
Educational Foundation
Our File No. A-86-214

Dear Mr. Francis:

This is in response to your letter of November 20, 1986. As you requested, I have enclosed a copy of the full package of the materials submitted to the Commission on this matter at its November 12, 1986 meeting. I have also enclosed a copy of the minutes for that meeting as well as for the meeting of September 9, 1986. No correspondence was received on this matter other than the letters from you and Mary Dowell.

If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel, Legal Division

JGM:plh
Enclosure

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

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November 20, 1986

John G. McLean, Esq.
Counsel, Legal Division
California Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804-0807

RE: Mission-West Valley Educational Foundation
Your File No. A-86-214

Dear Mr. McLean:

I acknowledge receipt of your letter of November 17, 1986 indicating that the subject organization is an "agency" within the meaning of the Political Reform Act of 1974 and, therefore, is required to adopt a conflict of interest code.

I have conveyed a copy of your letter to the law firm that represents the District and its Foundation on a regular basis. Any further communication from the Commission or its staff regarding this matter should be sent to:

Emma Pena, Esq.
Ferrari, Alvarez, Olsen, Ottoboni
Pacific Valley Bank Building, Suite 700
333 West Santa Clara Street
San Jose, CA 95113

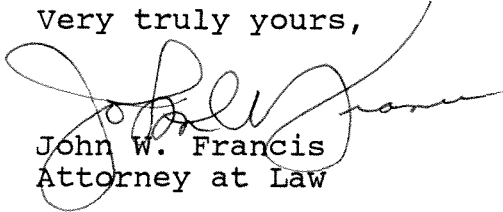
You recall that in my letter to you of October 14, 1986 (a copy of which is enclosed for ease of reference), I asked for copies of communications from other interested parties who received copies of the draft advice letter and any responses thereto. Mary Dowell did send me a copy of her letter to you. If there were others, I would appreciate receiving copies.

I also requested a copy of the full package of materials on this matter that the Commission received for its November 12, 1986 meeting and a copy of the minutes for that meeting as well as for the meeting of September 9, 1986. I hereby renew those requests.

John G. McLean, Esq.
November 20, 1986
Page Two

Again, thank you for your assistance through the lengthy process
in which we have all been engaged.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John W. Francis". The signature is written in black ink and is positioned above the typed name and title.

John W. Francis
Attorney at Law

Enclosure

cc: Emma Pena (w/ enclosure)

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

October 14, 1986

John G. McLean, Esq.
Counsel, Legal Division
California Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804-0807

RE: Mission-West Valley Educational Foundation
Your File No. A-86-214

Dear Mr. McLean:

This is in response to your letter of October 8, 1986 requesting my comments on a revised draft of a proposed advice letter regarding the subject organization. While I neither believe that the application of the criteria articulated in Siegel or Leach are necessarily appropriate in this case nor, if appropriate, have been properly applied, I acknowledge that I have had the opportunity to present my views and to have them considered. I would, however, request that the following comment found on the bottom of Page 7 of your draft be deleted:

It is equally clear that the courts are still grappling with the issue of whether auxiliary organizations are public agencies for certain purposes. See Coppernoll v. Board of Directors (1983) 138 Cal. App. 3d 915.

While the Court in Coppernoll may have grappled with the issue whether the San Diego State University Foundation was a public agency, it clearly concluded that it was not. What it did hold was that the comparability provision in Education Code Section 89900 applied to James Coppernoll and that he had the right to a due process hearing before his employment could be terminated. By the way, he had his hearing and was then terminated.

There never has been a Court that has held that an auxiliary organization was a public agency or a quasi-public agency or anything analogous to such terms. Your observation about Coppernoll is, therefore, somewhat misleading and serves no particular purpose in your analysis. Its deletion is respectfully requested.

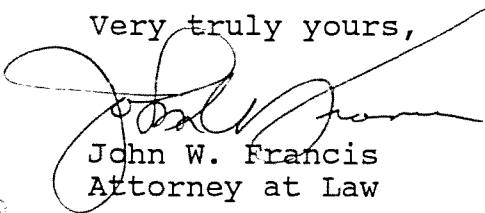
John G. McLean, Esq.
October 14, 1986
Page Two

In your consideration of the application of the criteria in Siegel and Leach to the Mission-West Valley situation, you appear to find it necessary to find that all five criteria are satisfied - at least to some extent. If this would be the approach used in a case-by-case determination of whether other auxiliary organizations are agencies within the meaning of the Political Reform Act of 1974, there is a distant probability that your expectation that "many of the entities are not 'local government agencies' within the meaning of the Act" will be realized. For example, the auxiliary organizations in The California State University System have no statutory authority to enter into joint powers agreements and are not required to comply with an open meeting law that is applicable to any public agency. As you used these characteristics as illustrations of the Mission-West Valley Educational Foundation being treated as a public agency in certain circumstances, the CSU auxiliaries may not meet that criteria.

Finally, I note that you indicated in your covering letter that, once you receive my comments, you will send the proposed advice letter to other interested parties. I would assume that one or more of these other interested parties may communicate their views on the matter to you. I would appreciate receiving copies of any such comments and your replies if any. I further assume that I will receive a copy of the full package of materials on this matter that the Commission will receive in preparation for its meeting on November 12, 1986. If there are minutes for the Commission meeting of September 9, 1986, I would also appreciate receiving a copy of them.

Thank you for all of the courtesies you have extended to me during the full consideration of this matter.

Very truly yours,



John W. Francis
Attorney at Law

JWF:ajo



California Fair Political Practices Commission

October 8, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Your Request for Advice
Our File No. A-86-214

Dear Mr. Francis:

Enclosed is a revised draft of our proposed advice letter regarding the Mission-West Valley Educational Foundation. As you can see, the letter is drafted much more narrowly than the first version and provides a basis for distinguishing between the many types of auxiliary organizations. I would appreciate it if you would review the letter and provide me with your comments (especially concerning the accuracy of the facts) by October 15, 1986.

Once I have received your comments, I anticipate that we will send the proposed advice letter to the other interested parties, and place on the Commission's November agenda the issue of whether to adopt the proposed advice letter. The Commission's November meeting is scheduled for Wednesday, November 12, 1986, in Sacramento.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

John G. McLean
Counsel, Legal Division

JGM:plh
Enclosure

Memorandum

To : Chairman Larson, Commissioners Lee,
Lemons, Montgomery and Roden

Date : August 29, 1986

From : **FAIR POLITICAL PRACTICES COMMISSION**
John G. McLean

Subject: Advice Letter to Mission West Valley Education Foundation/
Scope of Coverage Under the Political Reform Act

We have recently received a request for written advice from John W. Francis questioning on behalf of the West Valley Community College District whether the Mission-West Valley Educational Foundation is an "agency" within the meaning of the Act, and, therefore, required to adopt a conflict of interest code. The request for advice and the staff's proposed response are attached.

As indicated in the proposed advice letter, the Mission-West Valley Educational Foundation is an "auxiliary organization" of the West Valley Community College District created under provisions of the Education Code. Because of the impact which this letter may have on auxiliary organizations for other community colleges and state universities, representatives of those organizations have been invited to address the Commission.

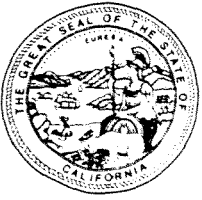
It should be noted that the Commission has received an increasing number of requests recently regarding the issue of whether certain entities are agencies covered by the Act or whether certain persons are covered by the Act because they are "members" or "consultants" of agencies. With the increasing trend toward governmental agencies contracting out activities and functions which are traditionally performed by governmental entities, it is anticipated that the Commission will be faced with many issues of this type in the coming years.

The specific question to be addressed at this meeting is whether to adopt the staff's proposed advice letter. However, the Commission may also wish to address whether its decision should have application to other auxiliary organizations. In addition, even if the Commission determines that some or all auxiliary organizations are not "agencies" within the meaning of the Political Reform Act, some of the members or employees

Chairman Larson, Commissioners Lee,
Lemon, Montgomery and Roden
August 29, 1986
Page 2

who serve in decision-making roles may be "consultants" who should be covered by the campus' or district's Conflict of Interest Code because they are making decisions on handling agency assets. See 2 Cal. Adm. Code Section 18700(a)(2), copy attached; and Advice Letters to Hayden, No. A-84-319 and Woodside, No. A-85-53, copies attached.

JGM:plh
Attachment



California Fair Political Practices Commission

DRAFT

September __, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Your Request for Advice
Our File No. A-86-214

Dear Mr. Francis:

This is in response to your letter dated June 20, 1986, questioning on behalf of the West Valley Community College District ("District"), whether the Mission-West Valley Educational Foundation ("Foundation") is required to adopt a Conflict of Interest Code pursuant to the provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Is the Foundation an "agency" within the meaning of the Act and, therefore, required to adopt a Conflict of Interest Code?

CONCLUSION

The Foundation is an "agency" and is subject to the conflict of interest requirements of the Act including the requirement to adopt a Conflict of Interest Code.

FACTS

The Foundation is an "auxiliary organization" created under the provisions of Education Code Sections 72670, et seq. Education Code Section 72672(c) requires that the purposes and operations of an auxiliary organization shall be conducted in conformity with general regulations established by the Board of Governors of the California Community Colleges (Board of Governors) and with implementing regulations which shall be established by each district governing board prior to the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

establishment of an auxiliary organization. Pursuant to regulations adopted by the Board of Governors (5 Cal. Adm. Code Sections 59250 et seq.) and the District, the Foundation is authorized to administer the following functions or activities:

1. Student association or organization activities;
2. Bookstores;
3. Food and campus services;
4. Student union programs;
5. Facilities and equipment, including parking;
6. Loans, scholarships, grants-in-aid;
7. Workshops, conferences, institutes and federal projects;
8. Alumni activities;
9. Supplementary health services;
10. Gifts, bequests, devises, endowments and trusts;
and
11. Public relations programs.

The Master Agreement between the District and the Foundation states the following purpose for creating the Foundation.

Administration by the Foundation of the functions and activities described herein, instead of administration by and through the District, is deemed to be more effective in accomplishing these functions and activities than would be possible under usual governmental budgetary, purchasing, and other fiscal procedures.

ANALYSIS

Section 87300 of the Act requires every agency to adopt and promulgate a Conflict of Interest Code. The term "agency" includes any "local government agency." Section 82003. "Local government agency" is in turn defined as:

... 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 the foregoing.

Section 82041.

John W. Francis

Page 3

In Opinions requested by Samuel Siegel, 3 FPPC Opinions 62 (No. 76-054, July 6, 1977) and Charles F. Leach, 4 FPPC Opinions 48 (No. 76-092, Sept. 6, 1978), the Commission discussed criteria which are helpful for determining whether an entity is a "local government agency." Applying these standards, we conclude that the Foundation is a local government agency and must, therefore, adopt a Conflict of Interest Code.

The first criterion is whether the impetus for formation of the entity was with a governmental body. In the present situation, the Foundation was established by the District and is regulated by the District and the Board of Governors of the California Community Colleges.

The second criterion is whether all or most of the entity's funds are received from public sources. While the Foundation is not directly funded by the District, the Foundation's income is derived from performing functions and activities which would otherwise be performed by the District. Without the approval of the District, the Foundation would not be authorized to perform the functions and activities which provide the Foundation with income. Furthermore, it is clear that if the District performed these functions and activities, the income received by the District would be considered public funds. We do not believe that these funds lose their public nature merely because they are collected by the District's delegatee.

The third criterion is whether the entity is performing a function which public agencies are legally authorized to perform or which they traditionally have performed. In the present situation, the functions and activities which the Foundation is authorized to provide are services which the District is legally authorized to provide but which the District has delegated to the Foundation.

The last criterion is whether the entity is treated as "public" by other statutory provisions. In the present situation, auxiliary organizations like the Foundation have been treated as public in some situations and have not been treated as public in others. The District, in support of its position that the Foundation is not a public agency, has cited an Attorney General's Opinion and a Court of Appeal case dealing with auxiliary organizations for universities of the California State University System.

In the Attorney General's Opinion, 47 Ops. Cal. Atty. Gen. 8 (1966), the issue was whether, for Social Security purposes, the Cal Poly Bookstore and the San Jose State Foundation were instrumentalities of the State of California. The procedure for placing employees of governmental entities under Social Security differs from that where coverage is sought for employees of nonprofit institutions. The Attorney General concluded that the bookstore and the foundation were not instrumentalities of the State stating:

Auxiliary organizations, not being political entities, simply do not fall within the definition of "public agency." They are nongovernmental bodies created to promote the welfare of the sponsoring State College.

The District also relies on Wanee v. Board of Directors of the Associated Students of California State University, Chico (1976) 56 Cal.App. 3d 64. In Wanee, a case dealing with the status of employees who work for auxiliary organizations of the California State University System, the court approved of the reasoning in the Attorney General's Opinion referred to above and reached this conclusion:

There appears no doubt that employees such as petitioner are not employees of the College or of a governmental entity, but instead are employees of a private corporation.

While the language quoted from these two opinions is very broad, it is clear in each case that the conclusion reached is that auxiliary organizations are not governmental entities for purposes of the specific issue dealt with in the opinion. It is equally clear that the courts are still grappling with the issue of whether auxiliary organizations are public agencies for certain purposes. (See Coppernoll v. Board of Directors (1983) 138 Cal.App.3d 915.)

Auxiliary organizations have been treated as public agencies in certain circumstances. For example auxiliary organizations are expressly authorized to enter into joint powers agreements. Education Code Section 72671. Furthermore, meetings of the board of directors of auxiliary organizations are required to comply with open meeting laws applicable to public agencies. Education Code Section 72674. Thus, at least to some extent, the last criterion is met.

We believe that the activities and functions performed by the Foundation create many opportunities for individuals to affect their personal financial interests through the decisions

John W. Francis

Page 5

in which they participate. One of the purposes of the Act is to assure that public officials perform their duties in an impartial manner, free from bias. Section 81001(b). The Act is to be liberally construed to accomplish this purpose. Section 81003. With this in mind, we believe that the Foundation sufficiently meets the Siegel criteria to be considered a local government agency within the meaning of the Act.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

John G. McLean
Counsel
Legal Division

JGM:plh

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

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June 20, 1986

Ms. Jeanette E. Turvill
Legal Assistant
Legal Division
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

RE: Conflict of Interest Code
Mission-West Valley Educational Foundation

Dear Ms. Turvill:

The West Valley Community College District has asked me to respond on their behalf and protest the determination made on October 1, 1985 that the subject organization (hereafter "Foundation") is subject to the provisions of Government Code Section 87300, which requires governmental agencies to adopt a conflict of interest code (see attached copy).

The essential element of this protest is our view that the Foundation is not a public agency and, therefore, not subject to the provisions of Government Code Section 87300. The basis for this assertion is as follows:

The Foundation is an auxiliary organization as authorized by Education Code Section 72670 et. seq., a copy of which is enclosed for ease of reference. At Section 72672(c) there is the requirement that, prior to the establishment of an auxiliary organization, a community college district must develop implementing regulations for approval by the Chancellor's Office in Sacramento. These regulations were developed and approved and official recognition of the Foundation by the District was effected.

Ms. Jeanette E. Turvill
June 20, 1986
Page Two

The statutory authority for the creation of auxiliary organizations by community college districts had its antecedents in almost identical legislation relating to the California State University System and is found in Education Code Section 89900 et. seq., a copy of which is included.

Questions regarding the status of the auxiliary organizations in the California State University system were first addressed in a 1966 Attorney General's Opinion cited as 47 Ops. Cal. Atty. Gen. 8 (1966), a copy of which is included.

That opinion concludes with:

Auxiliary organizations, not being political entities, simply do not fall within the definition of "public agency." They are nongovernmental bodies created to promote the welfare of the sponsoring State College.

In 1976 a question about the status of employees who work for these auxiliary organizations concluded with litigation and ultimately a decision at the Appellate level. The case is *Wanee v. Board of Directors of the Associated Students of California State University Chico* and is cited in 56 Cal. App. 3d 644 (1976). A copy of this case is also included. The Court approved of the reasoning of the Attorney General's Opinion referred to above and then reached this conclusion:

There appears no doubt that employees such as petitioner are not employees of the College or of a governmental entity, but instead are employees of a private corporation.

There has been no California case since 1976 that has reached an opposite conclusion.

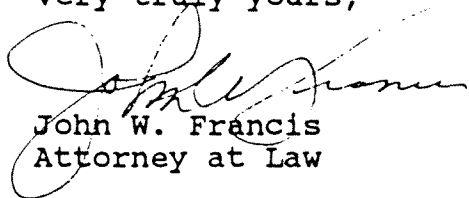
In view of the similarity between the statutory authority for both universities of the California State University System and Districts of the California Community College System to create such separate but related auxiliary organizations, the reasoning of the Attorney General's Opinion and the court in Wanee should have equal applicability. We believe that the only logical conclusion is that the Mission-West Valley Educational Foundation is not a public agency and, therefore, is not subject to the provisions of Government Code Section 87300 and should not be required to adopt a conflict of interest code.

Ms. Jeanette E. Turvill
June 20, 1986
Page Three

If further discussion of any aspect of this analysis would be useful, please let me know.

Thank you very much for your consideration of our position in this issue.

Very truly yours,



John W. Francis
Attorney at Law

Enclosures

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

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June 20, 1986

Ms. Jeanette E. Turvill
Legal Assistant
Legal Division
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

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Ms. Jeanette E. Turvill
June 20, 1986
Page Two

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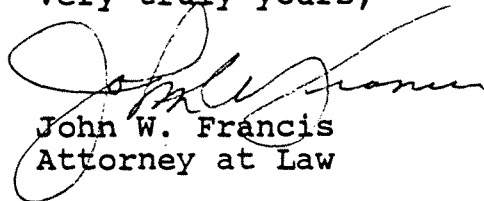
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Ms. Jeanette E. Turvill
June 20, 1986
Page Three

If further discussion of any aspect of this analysis would be useful, please let me know.

Thank you very much for your consideration of our position in this issue.

Very truly yours,



John W. Francis
Attorney at Law

Enclosures



California Fair Political Practices Commission

October 8, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Your Request for Advice
Our File No. A-86-214

Dear Mr. Francis:

Enclosed is a revised draft of our proposed advice letter regarding the Mission-West Valley Educational Foundation. As you can see, the letter is drafted much more narrowly than the first version and provides a basis for distinguishing between the many types of auxiliary organizations. I would appreciate it if you would review the letter and provide me with your comments (especially concerning the accuracy of the facts) by October 15, 1986.

Once I have received your comments, I anticipate that we will send the proposed advice letter to the other interested parties, and place on the Commission's November agenda the issue of whether to adopt the proposed advice letter. The Commission's November meeting is scheduled for Wednesday, November 12, 1986, in Sacramento.

If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

John G. McLean
Counsel, Legal Division

JGM:plh
Enclosure

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

October 14, 1986

John G. McLean, Esq.
Counsel, Legal Division
California Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804-0807

RE: Mission-West Valley Educational Foundation
Your File No. A-86-214

Dear Mr. McLean:

This is in response to your letter of October 8, 1986 requesting my comments on a revised draft of a proposed advice letter regarding the subject organization. While I neither believe that the application of the criteria articulated in Siegel or Leach are necessarily appropriate in this case nor, if appropriate, have been properly applied, I acknowledge that I have had the opportunity to present my views and to have them considered. I would, however, request that the following comment found on the bottom of Page 7 of your draft be deleted:

It is equally clear that the courts are still grappling with the issue of whether auxiliary organizations are public agencies for certain purposes. See Coppernoll v. Board of Directors (1983) 138 Col. App. 3d 915.

While the Court in Coppernoll may have grappled with the issue whether the San Diego State University Foundation was a public agency, it clearly concluded that it was not. What it did hold was that the comparability provision in Education Code Section 89900 applied to James Coppernoll and that he had the right to a due process hearing before his employment could be terminated. By the way, he had his hearing and was then terminated.

There never has been a Court that has held that an auxiliary organization was a public agency or a quasi-public agency or anything analogous to such terms. Your observation about Coppernoll is, therefore, somewhat misleading and serves no particular purpose in your analysis. Its deletion is respectfully requested.

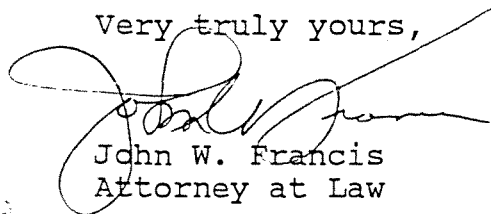
John G. McLean, Esq.
October 14, 1986
Page Two

In your consideration of the application of the criteria in Siegel and Leach to the Mission-West Valley situation, you appear to find it necessary to find that all five criteria are satisfied - at least to some extent. If this would be the approach used in a case-by-case determination of whether other auxiliary organizations are agencies within the meaning of the Political Reform Act of 1974, there is a distant probability that your expectation that "many of the entities are not 'local government agencies' within the meaning of the Act" will be realized. For example, the auxiliary organizations in The California State University System have no statutory authority to enter into joint powers agreements and are not required to comply with an open meeting law that is applicable to any public agency. As you used these characteristics as illustrations of the Mission-West Valley Educational Foundation being treated as a public agency in certain circumstances, the CSU auxiliaries may not meet that criteria.

Finally, I note that you indicated in your covering letter that, once you receive my comments, you will send the proposed advice letter to other interested parties. I would assume that one or more of these other interested parties may communicate their views on the matter to you. I would appreciate receiving copies of any such comments and your replies if any. I further assume that I will receive a copy of the full package of materials on this matter that the Commission will receive in preparation for its meeting on November 12, 1986. If there are minutes for the Commission meeting of September 9, 1986, I would also appreciate receiving a copy of them.

Thank you for all of the courtesies you have extended to me during the full consideration of this matter.

Very truly yours,



John W. Francis
Attorney at Law

JWF:ajo



California Fair Political Practices Commission

November 26, 1986

John W. Francis
Attorney at Law
1901 E. Lambert Road, Suite 102
La Habra, CA 90631

Re: Mission-West Valley
Educational Foundation
Our File No. A-86-214

Dear Mr. Francis:

This is in response to your letter of November 20, 1986. As you requested, I have enclosed a copy of the full package of the materials submitted to the Commission on this matter at its November 12, 1986 meeting. I have also enclosed a copy of the minutes for that meeting as well as for the meeting of September 9, 1986. No correspondence was received on this matter other than the letters from you and Mary Dowell.

If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel, Legal Division

JGM:plh
Enclosure

JOHN W. FRANCIS
ATTORNEY AT LAW
1901 E. LAMBERT ROAD, SUITE 102
LA HABRA, CALIFORNIA 90631
TELEPHONE (213) 694-8811

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November 20, 1986

John G. McLean, Esq.
Counsel, Legal Division
California Fair Political Practices
Commission
P. O. Box 807
Sacramento, CA 95804-0807

RE: Mission-West Valley Educational Foundation
Your File No. A-86-214

Dear Mr. McLean:

I acknowledge receipt of your letter of November 17, 1986 indicating that the subject organization is an "agency" within the meaning of the Political Reform Act of 1974 and, therefore, is required to adopt a conflict of interest code.

I have conveyed a copy of your letter to the law firm that represents the District and its Foundation on a regular basis. Any further communication from the Commission or its staff regarding this matter should be sent to:

Emma Pena, Esq.
Ferrari, Alvarez, Olsen, Ottoboni
Pacific Valley Bank Building, Suite 700
333 West Santa Clara Street
San Jose, CA 95113

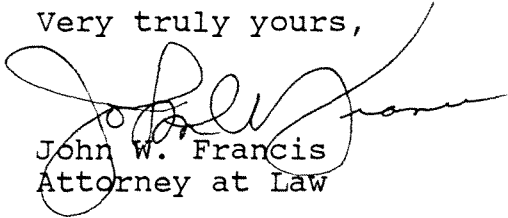
You recall that in my letter to you of October 14, 1986 (a copy of which is enclosed for ease of reference), I asked for copies of communications from other interested parties who received copies of the draft advice letter and any responses thereto. Mary Dowell did send me a copy of her letter to you. If there were others, I would appreciate receiving copies.

I also requested a copy of the full package of materials on this matter that the Commission received for its November 12, 1986 meeting and a copy of the minutes for that meeting as well as for the meeting of September 9, 1986. I hereby renew those requests.

John G. McLean, Esq.
November 20, 1986
Page Two

Again, thank you for your assistance through the lengthy process
in which we have all been engaged.

Very truly yours,

A handwritten signature in black ink, appearing to read "John W. Francis". The signature is fluid and cursive, with a large initial "J" and "F".

John W. Francis
Attorney at Law

Enclosure

cc: Emma Pena (w/ enclosure)