



# California Fair Political Practices Commission

September 21, 1990

Andrea Paley  
Pension Analyst  
Staff to Deferred Compensation Committee  
County of San Luis Obispo  
County Government Center, Room 306  
San Luis Obispo, CA 93408

Re: Your Request for Advice  
Our File No. A-90-583

Dear Ms. Paley:

This is in response to your letter requesting advice regarding your responsibilities pursuant to the disclosure requirements of the conflict-of-interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> as a member of San Luis Obispo County's Deferred Compensation Advisory Committee.

#### QUESTION

Are the members of the San Luis Obispo County Deferred Compensation Advisory Committee "public officials who manage public investments" subject to the disclosure and disqualification provisions of the Act?

#### CONCLUSION

Members of the San Luis Obispo County Deferred Compensation Advisory Committee are not currently public officials under the Act. However, if over an extended period of time the recommendations of the Deferred Compensation Advisory Committee are regularly approved without significant amendment or modification by the plan administrator, the members will become public officials under the Act and will be subject to the Act's disclosure and disqualification provisions.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

San Luis Obispo County is in the process of establishing a deferred compensation advisory committee (the "committee"). The committee will be made up of five to nine county employees who are invited by the plan administrator to serve as committee members. The committee will solicit proposals from prospective investment providers for the investment of the County's deferred compensation assets, review the proposals and make a recommendation to the plan administrator. The plan administrator will take the committee's recommendation into consideration, and make his own recommendation to the board of supervisors. Once a recommendation has been made to the plan administrator the committee will be disbanded.

You stated that the committee existed once before in 1987 for five months, made one recommendation and then was dissolved. The committee is currently being reestablished. You have been appointed to the new committee. This is your second appointment to the committee.

### ANALYSIS

The Political Reform Act was enacted by the people of the State of California by initiative in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own economic interests or the economic interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, the Act requires every public official to disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) Generally the Act distinguishes between those persons who must disclose all their economic interests (Section 87200) and those who may have tailored disclosure obligations in a local conflict of interest code.

Prior to January 1, 1990, city treasurers and public officials who manage public investments were not included in Section 87200. However, if such persons were "public officials" as defined in the Act, they were required to be designated in the agency's conflict of interest code and were subject to the disclosure and disqualification requirements of that code. Effective January 1, 1990, Section 87200 was amended by Assembly Bill No. 941 (Ch. 403, Stats, 1989) to include city and county treasurers and public officials who manage public

investments. Consequently, if members of the committee are "public officials who manage public investments," they are required to disclose certain statutorily specified investments, real property interests, sources of income and sources of gifts.<sup>2/</sup>

A "public official" is defined in Section 82048 and Regulation 18700(a)(1) (copy enclosed) as follows:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee, or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission has decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

According to the information you have provided, members of the committee solicit and review proposals concerning the investment of the County's deferred compensation assets. The committee then makes a recommendation to the plan administrator with respect to which proposal the administrator should choose. You stated that the committee existed once before for five months, made one recommendation and then was disbanded.

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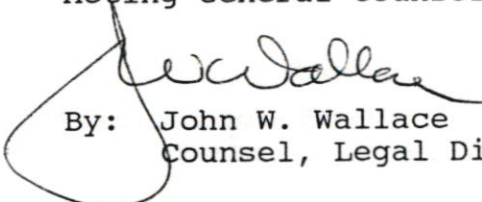
<sup>2/</sup> The Commission is in the process of considering regulations to clarify the term "other public officials who manage public investments."

Based on these facts, we conclude that the committee is an advisory body at this time and that the committee's members are not "public officials" as defined in the Act. Consequently, members of the committee are not subject to the disclosure and disqualification provisions of the Act.<sup>3/</sup> However, if in the future the committee's substantive recommendations should be regularly approved without significant amendment or modification by the plan administrator over an extended period of time, then the members of the committee will qualify as public officials within the meaning of Regulation 18700(a)(1)(C). At that time the disclosure and disqualification requirements of the Act would apply.

I trust this clarifies application of the law to your situation. Should you require further advice as the committee continues operation, please do not hesitate to contact me for follow-up advice at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: John W. Wallace  
Counsel, Legal Division

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Enclosures

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<sup>3/</sup> You asked several other questions premised on the committee's obligation to comply with the Act's disclosure requirements. Since we have concluded that the committee is not a decision-making body at this time, we have not responded to the other questions.