



California Fair Political Practices Commission

April 23, 1992

Steven Meyers
Windsor Town Attorney
Meyers, Nave, Riback and Silver
Gateway Plaza
777 Davis Street, Suite 300
San Leandro, CA 94577

Re: Your Request for Informal Assistance
Our File No. I-92-166

Dear Mr. Meyers:

This is in response to your letter requesting advice on behalf of the newly incorporated town of Windsor regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since you have not named a specific individual on whose behalf you have requested this advice, we are treating your request as one for informal assistance.²

QUESTION

When are members of the town council for a newly incorporated town required to file their assuming office Statements of Economic Interests?

CONCLUSION

Members of the Windsor Town Council must file assuming office Statements of Economic Interests within 30 days after the date of incorporation, as set forth in Government Code Section 57202. However, if the councilmembers begin making decisions that could affect their economic interests, they will become public officials prior to incorporation.

¹ 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

In 1991, the voters voted to incorporate the Town of Windsor. At the same election, town councilmembers were elected. According to the Local Agency Formation Commission, the incorporation will become effective in July 1992. At that time the councilmembers will begin serving their elected terms.

Prior to the effective date, the councilmembers-elect have been meeting informally to discuss issues concerning the town. You have asked whether the meetings trigger the obligation to file assuming office Statements of Economic Interests. Each member has already filed a statement of economic interests as required by all candidates.

ANALYSIS

Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency. Town councilmembers are public officials under the Act and are subject to special filing requirements of Section 87200.

Section 87202(a) provides that every person who is elected to an office specified in Section 87200 must, within 30 days after assuming the office, file a statement disclosing his or her investments and interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. You have asked on which date the newly elected town councilmembers of Windsor assume office for purposes of Section 87202(a).

Pursuant to the Government Code:

[O]n or after the effective date of an incorporation, the territory incorporated, all the inhabitants within the territory, and all persons entitled to vote in the newly incorporated city...are subject to the jurisdiction of the city and shall have the rights and duties conferred on them as inhabitants and voters of the incorporated city.

Section 57375.

If the newly incorporated city comprises territory formerly unincorporated, the city council shall, immediately following its organization and prior to performing any other official act, adopt an ordinance providing that all county ordinances previously applicable shall remain in full force and effect as city ordinances for a period of 120 days after incorporation, or until the city council has enacted ordinances superseding the county ordinances, whichever occurs first.

* * *

Enforcement of the continuing county ordinances in the incorporated area shall be by the city....

Section 57376(a).

Section 57202 provides that the effective date of incorporation is the date of execution of the certificate of completion, unless the effective date is established by the Local Agency Formation Commission at a later day not to exceed nine months after the date on which the incorporation was approved by the voters.

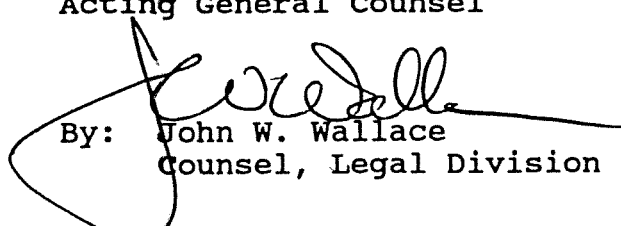
You stated that the official date of incorporation was July, 1992. Prior to the completion of the incorporation, the legislative body with jurisdiction over the area continues to be the county board of supervisors. Thus, pursuant to Section 87202(a) the members of the Windsor Town Council must file an assuming office statement within 30 days after that date.

Please note, however, that this advice is based on the fact that the town council is not making decisions that may affect their economic interests prior to incorporation. If the councilmembers are making decisions that could affect their economic interests they will become public officials prior to incorporation.³ Moreover, this discussion is limited to the disclosure provisions of the Act.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel


By: John W. Wallace
Counsel, Legal Division

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³ Although the decisions at this time would not have a legal effect, it may still be decision-making as set forth in the Act. For example, where a quorum of councilmembers decide issues in a manner that will bind the town council's actions once the town is incorporated, they will have effectively assumed their elective office.