



California Fair Political Practices Commission

June 9, 1992

Roberta M. Fesler
Assistant County Counsel
Public Services Division
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-92-237

Dear Ms. Fesler:

This letter is in response to your request for advice regarding the disclosure and disqualification requirements of members of the Los Angeles County Employee Retirement Association ("LACERA") under the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

LACERA appoints its officers or employees to serve, as a part of their positions or employment with LACERA and for no additional compensation, as directors and officers of wholly-owned title holding corporations. These corporations have no business or function other than the holding and management of LACERA's real property assets.

1. Must officers or employees of LACERA disclose their positions in the wholly-owned title holding corporations on their Statements of Economic Interests?
2. Must these officers or employees of LACERA disqualify themselves from participating in decisions of LACERA regarding its title holding corporations?

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.

CONCLUSIONS

1. The officers or employees of LACERA who serve on the board of directors of a title holding corporation wholly-owned by LACERA need not disclose these positions in their Statements of Economic Interests.

2. A position as an officer of a title holding corporation wholly owned by LACERA is not an economic interest because these title holding corporations are public entities. In addition, members of LACERA who serve on the boards of directors of these title holding corporations do not receive additional compensation for their services. Consequently, the conflict-of-interest provisions of the Act do not require disqualification when officers or employees of LACERA, who also serve on the boards of directors of its title holding corporations, make decisions regarding these corporations.

FACTS

LACERA is a county pension association established under the County Employees Retirement Law of 1937. (Section 31450, et seq.) The purpose of LACERA and its counterparts is to provide retirement and disability benefits to county and district employees.

LACERA has made certain investments in real property. LACERA has determined that it is prudent to hold title to these real property investments in title holding corporations. These title holding corporations are wholly-owned and controlled by LACERA. The title holding corporations are established for administrative convenience and to afford an additional level of protection to the general assets of LACERA from liabilities specific to the properties held by its title holding corporations. The purpose of these title holding subsidiaries is to hold and operate real property investments for the benefit of LACERA and its beneficiaries. You have advised us that under both federal and California law, these title holding corporations are not subject to income taxation or property tax assessment. Moreover, under applicable federal tax law, these title holding corporations are prohibited from engaging in any trade or business. (I.R.C. Section 501(c)(2) and (c)(25).)

LACERA assigns its senior officers to serve as the officers and directors of its wholly-owned title holding corporations. These individuals serve as officers of the title holding corporations as a corollary to their responsibilities with LACERA. They receive no additional compensation as directors and officers of the wholly-owned title holding corporations.

ANALYSIS

The Act specifically requires every state and local government agency to adopt a conflict of interest code enumerating

designated positions with filing and disclosure obligations. (Sections 87300 and 87302.) LACERA is a local government agency and has adopted a conflict of interest code. (Section 82041.)

In its conflict of interest code, a local government agency must designate those positions which involve the making of, or participation in, decisions which may foreseeable affect a financial interest. (Section 87302.) The code must set forth the types of investments, business positions, income and real property which must be reported by those designated employees. The types of economic interests which are subject to disclosure in a designated employee's Statements of Economic Interests are those which may be affected by the employee's decision making in the course of his or her work. (Section 87302, Vinson Advice Letter, No. A-91-355.) The officers of LACERA who serve on the boards of directors of its title holding corporations are subject to broad disclosure requirements under the conflict of interest code of LACERA.

You have asked whether officers of LACERA who serve on its title holding corporations must disclose their positions with the title holding corporations as business positions in their Statements of Economic Interests. We conclude that these positions need not be disclosed. This is so because these title holding corporations are public entities. Consequently, officers of LACERA who serve on the boards of directors of these corporations do not hold "business positions" for purposes of the disclosure requirements of the Act.²

The Commission has delineated criteria to determine whether an entity is private or public for purposes of the Act. (In re Siegel (1977) 3 FPPC Ops. 62.) In Siegel, a city created a water development corporation for the purpose of acquiring, maintaining and operating a water system. Based on the following four criteria, the Commission concluded that this corporation was a public entity:

1. Whether the impetus for formation of the corporation originated with a government agency;
2. Whether it was substantially funded by, or its primary source of funds was, a government agency;

² In your request for advice, you state that you believe the analysis in In re Sherwood (1976) 2 FPPC Ops. 168 would be applicable to LACERA's title holding corporations. In Sherwood, supra, the County of Los Angeles entered into an agreement with a private nonprofit corporation to manage and develop the Los Angeles County Museum of Art. Your facts indicate that LACERA's title holding corporations are not private, independent entities but rather are wholly owned and managed by LACERA. Thus, Sherwood is inapplicable to these title holding corporations.

3. Whether one of the principal purposes for which it was formed was to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and

4. Whether the corporation was treated as a public entity by other statutory provisions.

These four criteria are met by the wholly-owned title holding corporations created by LACERA for purposes of holding title to real property owned by LACERA. In finding that these title holding corporations are public entities, we apply the Siegel criteria as follows:

1. The impetus for formation of the title holding corporations originated with LACERA, a public entity;

2. The corporations are wholly-owned and operated by LACERA. LACERA is the sole source of funding, through real estate holdings, of these title holding corporations.

3. The principal purpose for which these title holding corporations have been formed is to hold title to real property, collect revenues for LACERA, and reduce LACERA's exposure to liability, all functions which a public entity is legally authorized to perform and which public entities traditionally have performed; and

4. The title holding corporations are treated as public entities under various statutory provisions.³

Accordingly, these title holding corporations are public entities. Thus, positions on the boards of directors of these corporations are not "business positions" for purpose of disclosure in the officials' Statements of Economic Interests.⁴ In addition, these corporations are not sources of income to the LACERA officials and thus, they are not economic interests of these officials.


³ For example, as real property owned by a local government, the holdings of Gateway Property, Inc., one of LACERA's title holding corporations, are exempt from real property taxation under Article XIII, Section 3(b), of the California Constitution.

⁴ It would appear that since these title holding corporations are public entities, they should enact their own conflict of interest codes, particularly since the jurisdiction of these corporations may extend beyond that of LACERA. Please contact Jeanette Turvill, at (916) 322-5901, for information regarding adoption of conflict of interest codes.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.⁵

Sincerely,

Scott Hallabrin
Acting General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

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⁵ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.