



# California Fair Political Practices Commission

January 22, 1993

Marjorie Gelb  
Assistant City Attorney  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Your Request for Informal Assistance  
Our File No. I-92-624

Dear Ms. Gelb:

This is in response to your letter requesting advice on behalf of the City of Berkeley's public access corporation concerning their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Since you are seeking general assistance and not inquiring about a specific decision before you, your letter is considered a request for informal assistance.<sup>2/</sup>

## QUESTION

Is the City of Berkeley's public access corporation a "local government agency" subject to the provisions of the Political Reform Act?

## CONCLUSION

The public access corporation is a "local government agency" subject to the disclosure and disqualification provisions of the Political Reform Act?

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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.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

The City of Berkeley created a cable task force to help the city perform its cable assessment and to negotiate its cable franchise renewal with the cable company. Pursuant to the recommendations of the cable task force, the city negotiated for a designation of Public Education and Government ("PEG") access stations and a substantial capital commitment for equipment in order to allow the public, the government and schools to produce and broadcast cable programs.

One of the recommendations by the task force was the creation of a nonprofit public access corporation ("corporation") to administer the PEG cable stations, coordinate the production and broadcast of programming of private citizens and the government, and teach the public how to use the equipment. It is envisioned that the corporation will have a board of directors, an executive director and other employees.

ANALYSIS

"Local government agency" is defined in Section 82041 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.

In determining whether a particular entity is a private entity or a local government agency, the Commission in its Siegel Opinion (In re Siegel (1977) 3 FPPC Ops. 62), stated that certain criteria should be considered. These criteria are:

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

We will examine each criterion and see how each applies to the corporation.

Impetus for Formation

You have agreed that the first criterion has been met. The formation of the corporation originated with the city council. On the recommendation of the task force and with the concurrence of the city manager, the city council approved the creation of the corporation.

The first criterion has been met.

Funded by a Government Agency

In your letter you indicated that the city will fund the corporation.

The second criterion has been met.

Services are Legally Authorized or Traditionally Performed by a Government Agency

The third criterion is whether or not one of the principal purposes for formation is to provide services or undertake obligations which public agencies are legally authorized to perform and have traditionally performed.

It is your contention that public cable access corporations have rarely been administered by governments. You support that with a statement that the National Federation of Local Cable Programmers advised that public access corporations have always been administered by the cable operator, or private nonprofit corporations.

The Commission has considered this criterion as it relates to public cable access corporations in its Cormier Advice Letter, A-84-202, (copy enclosed). The Cormier Advice Letter cites Section 53066(a)<sup>3/</sup> in making its determination that the third criterion is met. While the cable industry has not been in existence long enough for there to be a tradition of government operated cable television systems, it appears the statutes anticipated such an occurrence.

The third criterion is met.

Treatment by Other Statutes

You have indicated that the corporation is not subject to the Brown Act or any other law which impacts government only. It is unclear from your letter whether the corporation will be formed under the Nonprofit Public Benefit Corporation Law set forth at

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<sup>3/</sup> Section 53066 previously Section 53066.1.

Corporations Code Section 5110 et seq. While such a corporation is tax exempt like a government entity, there appears to be nothing else which would demonstrate that these types of corporations are treated the same as public entities by other statutory provisions.

However, as we have previously stated, the criteria set forth in the Commission's Seigel Opinion are guidelines to assist in determining whether an organization is a "local government agency." Whether the organization meets all of the criteria is not determinative of the issue. (Albuquerque Advice Letter, No. A-88-422.) Therefore, the failure of the corporation to meet this criterion does not preclude a conclusion that it is a "local government agency."

Having considered all of these factors, we note that the corporation has been formed, is funded by, and is legally authorized to perform duties of a government agency. On this basis, we conclude that the cable access corporation is a local government agency under the Act and is subject to its disclosure and disqualification provisions.

If you have any questions, or need to discuss this further, please feel free to contact our Legal Division at (916) 322-5901.

Sincerely,

Jeff Marshner  
General Counsel



By: Jeanette E. Turvill  
Political Reform Consultant  
Legal Division

SH/JET/jt  
Enclosure