



California Fair Political Practices Commission

February 16, 1995

James Phipps
Commission on Improving Life
Through Service
1121 L Street, Ste. 600
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-95-40

Dear Mr. Phipps:

This is in response to your request for advice regarding whether the Commission on Improving Life Through Service ("CILTS") is an "agency" subject to the provisions of the Political Reform Act ("the Act").¹

QUESTIONS

1. Must CILTS adopt a conflict of interest code?
2. Must members of CILTS and its staff file statements of economic interests?

CONCLUSIONS

1. CILTS must adopt a conflict of interest code.
2. The members of CILTS and some staff must be designated in the code and will be required to file statements of economic interests.

FACTS

On September 21, 1993 President Clinton signed the National and Community Service Trust Act of 1993 (PL 103-82). This law merged two federal agencies, ACTION and the Commission on National and Community Service, creating the new Corporation for National

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.

and Community Service (now called the Corporation for National Service). The Corporation for National Service oversees the operation of programs serving three age groups: Learn and Serve America, K-12 and Higher Education - programs involving grammar school aged children through college aged youth; AmeriCorps - programs involving young people, 17 years old and older; National Senior Service Corps - programs involving senior citizens and retired persons. Multi-state organizations apply for competitive Americorps grants directly to the Corporation for National Service and organizations active in only one state apply for Americorps grants with their own State Commission.

The National and Community Service Trust Act requires the governor of each state to create and appoint a commission through which the AmeriCorps state program will be administered. In California, Governor Pete Wilson created CILTS on January 31, 1994, through Executive Order W-77-94. This order empowers the Governor to appoint no more than 25 commissioners from diverse backgrounds to serve no more than two three-year terms. The commissioners serve without compensation but may be reimbursed for travel expenses and receive a per diem in the same manner as employees intermittently serving the State.

CILTS' duties include:

- A) development of a three-year comprehensive CalServe national and community service plan, as required by federal law;
- B) establishment of public-private partnerships to promote service and to maximize federal, state and local resources available for service opportunities;
- C) provision of technical assistance to the California Department of Education in the preparation of Service-America applications and to applicants for funding under the CalServe service plan;
- D) evaluation and monitoring of programs and activities funded under the CalServe Service plan;
- E) recruitment and placement of national service participants;
- F) development of a strategy by which health and child care benefits are provided to service participants, as required by federal law;
- G) pre-selection of Subtitle C national service programs, as defined in the National and

Community Service Trust Act of 1993, and preparation of appropriate applications to the Corporation;

- H) administration of the State's service grants program as defined under the CalServe service plan;

The executive director, deputy director, and other key staff are appointed by the Governor and serve at the pleasure of the Governor.

The Governor's Office of Child Development and Education provides in-kind office space and other appropriate assistance to CILTS.

ANALYSIS

CILTS is a state agency created by Governor Wilson with Executive Order W-77-94. Section 87300 requires every California state and local government agency to adopt a conflict of interest code. A conflict of interest code is a document which specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on a financial interest of the designated employee holding the position. (Section 87302.)

The term "designated employee" means any officer, employee, member or consultant of any agency who makes or participates in the making of agency decisions. The term "designated employee" does not include an unsalaried member of any board or commission which serves a solely advisory function. (Sections 82019 and 82048.)

"Member" includes any salaried or unsalaried of a board or commission with decision-making authority. A board or commission possesses decision-making authority whenever:

- (A) It may make a final governmental decision;
- (B) It may compel a governmental decision; or 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.

Though the members of CILTS are unsalaried, they do not fit the exception in Section 82019 because CILTS does have decision making authority and therefore is not a solely advisory body.

The conflict of interest code for CILTS must include as "designated employees" members of the Commission as well as staff who make or participate in making governmental decisions.

A public official "makes a governmental decision" when he or she, acting within the authority of his or her office:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreements on behalf of his or her agency;
- (5) Determines not to act, within the meaning of subparagraphs (1), (2), (3) and (4), unless such determination is made because of his or her financial interest.

Regulation 18700(b).

To assist you in the code development process, I am enclosing a copy of the procedural regulation as well as additional fact sheets which should assist in determining which positions must be included in the code.

If I can be of further assistance in the code adoption process, please call me or Hilda Perez at (916) 322-5662.

Sincerely,

Steven G. Churchwell
General Counsel

By: Wayne P. Imberi
Political Reform Consultant

Enclosures