



# California Fair Political Practices Commission

April 17, 1995

Kathryn A. Berry  
Deputy Counsel  
Office of the Santa Clara County Counsel  
County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110-1770

Re: Your Request for Advice  
Our File No. A-95-074

Dear Ms. Berry:

We respond to your request for advice on behalf of the Santa Clara County Open Space Authority (the "Authority") regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTIONS

1. Are Authority board members "other public official who manage public investments" under Government Code Section 87200?
2. If Form 730 applies, are Authority board members required to disclose business positions on Schedule G, as well as disclosures concerning real property, investments and income?
3. May the Statements of Economic Interests be filed with the general manager in the office of the entity, or are there additional or other filing places such as the Clerk of the Superior Court?
4. Are the members of the "Citizens Advisory Committee" required to file statements of economic interests? What conduct or activities will trigger this filing if the Advisory Committee initially is not required to file?

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

### CONCLUSION

1. Board members of the Authority are not "other public officials who manage public investments" under Government Code Section 87200.

2. The boardmembers are subject to designation in the Authority's conflict of interest code and would file statements of economic interests on Form 730. Generally, members of the board would be required to file full disclosure, including Schedule G to Form 730.

3. The boardmembers' Statements of Economic Interests would be filed with the Board which retains a copy and forwards the original to the Board's code reviewing body, the Santa Clara County Board of Supervisors.

4. Members of the "Citizens Advisory Committee" (the "Committee") are not required to file statements of economic interests because the Committee is not a decisionmaking body at this time. If the Committee makes substantive recommendations which over an extended period of time are regularly approved without significant modification, then it will be considered a decisionmaking body and its members will be subject to the conflict-of-interest provisions of the Act, including the disclosure of financial interests.

### FACTS

Your office represents the Authority, a new agency created by legislation found in Public Resources Code section 35100, et seq. It is comprised of seven elected members (the "Board"). The Board is authorized to levy assessments, taxes, and bonded indebtedness. The Authority adopted as its financing mechanism an assessment benefit district under the Landscaping and Lighting Act (Streets and Highways Code § 22500 et seq.). It is projected to collect \$3.8 million per year with an ability to bond at \$26 million per year.

The Board is charged with the authority to acquire open space and greenbelts in Santa Clara County. In this regard, it has the authority to authorize expenditures for these purposes from the assessment collected. In addition, the enabling legislation also provides that the Board shall appoint a "Citizens Advisory Committee" with whom the Authority shall consult to review and assess the needs for acquisition, preservation, or maintenance of open space lands (Public Resources Code § 35171).

### ANALYSIS

#### "Other Public Officials Who Manage Public Investments"

Section 87200 requires that certain enumerated public officials file statements of financial disclosure. The enumerated

positions in Section 87200 are considered to be vital decision-making positions in public service and officials in such positions are required to file financial disclosure on Form 721. The uniform disclosure level guaranteed under Section 87200 assures that public officials in similar high-level capacities throughout the state disclose their financial interests in a similar manner rather than relying on the public officials' designation in the required but disparate conflict of interest codes each government body must promulgate.

One of the listed positions in Section 87200 is "other public officials who manage public investments." The phrase is ambiguous and vague and was therefore clarified and narrowed in Commission Regulation 18720. Regulation 18720 defines the term "public investments" as:

[T]he investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

The Board does not appear to manage public investments.<sup>2</sup> While the Board does levy assessments and taxes, and may bond up to \$26 million per year, it does not invest these monies for the purpose of production of revenue or other financial return. Rather, your facts would indicate that the money obtained through assessments, taxes and bonded indebtedness is merely a financing mechanism through which the Board finances the acquisition of greenbelts and open space in Santa Clara County. As the Board does not manage public investments, the board members are not required to file financial disclosure Form 721 pursuant to Section 87200, but rather, they will file financial disclosure on Form 730 as a designated employee of the Authority.

#### Required Disclosure Levels

Generally, the designation of employees under an agency's conflict of interest code is left to the discretion of each individual agency and its respective code reviewing body.<sup>3</sup> (Sections 87300-87310.) The Act requires that conflict of interest codes be formulated at the most decentralized level. (Section 87301.) Accordingly, the Commission cannot offer specific advice regarding which employees must be designated under

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<sup>2</sup> If the Board does indeed manage public investments, then this advice would necessarily be different. In addition, please note that it is possible that while the Board does not manage public investments, other officers of the Authority may in fact do so. In particular, the Authority's treasurer and chief executive officer positions should be reviewed in this regard.

<sup>3</sup> As a county authority, the code reviewing body for the Authority is the Santa Clara County Board of Supervisors. (Section 82011.)

an agency's conflict of interest code unless the Commission is the code reviewing body for that agency. The Commission may only offer general assistance pursuant to Section 87312.

Generally, Section 87302 requires that a business position shall be made reportable by the conflict of interest code if the business entity in which the business position is held may foreseeably be affected materially by any decision of the designated employee by virtue of his or her position. (See e.g. Conflict of Interest Code For Fair Political Practices Commission, Regulation 18351.) It seems appropriate, therefore, that business positions in entities which may be affected by the Authority's function should be disclosed by the members of the Board on Schedule "G" of Form 730.<sup>4</sup>

#### Filing Statements of Economic Interests

Statements of economic interests are filed in accordance with Section 87500. It appears that the Authority is a local board not under a department of a state agency nor under the jurisdiction of a local legislative body; accordingly the authority falls under the provisions of Section 87500(j). The Authority would therefore accept the original disclosure forms from its designated employees, make and retain a copy and forward the original to the code reviewing body which is the filing officer under Section 87500(j). Again, the code reviewing body for the Authority would be the Santa Clara County Board of Supervisors. (Section 82011.)

#### Advisory Committee Responsibilities

Generally, all positions which entail the making or the participation in the making of decisions which may foreseeably have a material effect on any financial interest must be designated in the Authority's conflict of interest code and individuals in those positions must file statements of economic interests. (Section 87302.)

The Commission has promulgated regulations which define when an individual is in a decisionmaking capacity. Regulation 18700(a)(1) states that a member of a board or commission possesses decisionmaking authority whenever, among other things, the board or commission makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification.

Where a board or commission charged with making substantive recommendations has been newly formed and has no history of its

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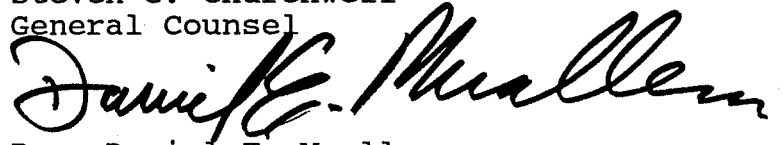
<sup>4</sup> For further information regarding promulgation of conflict of interest codes, please refer to Commission Regulations 18730 and 18733. Additional questions regarding conflict of interest codes should be addressed to the technical assistance division of this Commission.

recommendations being regularly approved over an extended period of time, this agency has advised that such a board or commission is not yet a decisionmaking entity under the Act. (Wilson Advice Letter, I-94-307.) Accordingly, although the Citizen's Advisory Committee may become a decisionmaking body by virtue of its ability to make substantive recommendations which are regularly approved over an extended period of time, by virtue of its recent creation, it does not yet qualify and its members are not required to file financial disclosure forms. We suggest that you monitor the advisory committee's recommendations and the Authority's action with regard thereto over the next several months and amend the Authority's conflict of interest code as required.

We trust that this advice letter addresses the issues raised in your request. Should you require further assistance with the conflict-of-interest provisions of the Act, please contact the undersigned at (916) 322-5901.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, reading "Daniel E. Muallem". The signature is written in a cursive style with a large initial "D".

By: Daniel E. Muallem  
Counsel, Legal Division

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