



California Fair Political Practices Commission

March 21, 1995

George H. Eiser, III
City Attorney
City of National City
Office of the City Attorney
1243 National City Boulevard
National City, CA 91950

Re: Your Request for Informal Assistance
Our File No. I-95-075

Dear Mr. Eiser:

This is in response to your letter requesting advice on behalf of the City of National City regarding the application of the conflict-of-interest provisions of the Political Reform Act (the "Act")¹ to members of National City's Redevelopment Project Area Committee.

Since your advice request does not refer to a specific governmental decision, we are treating your request as one for informal assistance.² Moreover, please note that this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Would the exception in Regulation 18703.3 apply to members of National City's Redevelopment Project Area Committee who are

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, Sections 18000-18954. 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).)

selected by means of a vote of the residents and appointed representatives of businesses, community organizations and religious institutions situated within the project area?

CONCLUSION

For purposes of Regulation 18703.3, members of National City's Redevelopment Project Area Committee are appointed members of a board or commission. Consequently, Regulation 18703.3 may apply to some of the decisions of the Project Area Committee. However, application of the exception is necessarily dependent on the facts regarding the member in question and a particular decision.

FACTS

Pursuant to Health and Safety Code Section 33000 et seq., National City established a city redevelopment agency on April 11, 1967. On October 14, 1975, the City Council of National City designated itself as the Community Development Commission of the City of National City (the CDC), a combined redevelopment agency and housing authority.

The city is currently involved in establishing a project area committee (PAC) for the redevelopment project in the city. Health and Safety Code Section 33385 requires that representatives of residential owner occupants, residential tenants, business owners, and existing organizations within the project area serve on the PAC. The National City PAC is to be composed of 13 members which must include two residential owner-occupants, four residential tenants, two business property owners, three business owner/tenants, two representatives of community organizations/religious institutions (CORI). In the event there is an insufficient number of candidates elected for each category of membership of the PAC, a subsequent selection must be held.

A candidate for PAC membership must submit a completed PAC application to the Commission office, which application must be received by the Commission prior to the PAC election. The city selects members for the PAC in the following manner:

- o The CDC will publish notice of all meetings, hearings, and plebiscites (at which members are selected) at least one time in a newspaper of general circulation within the city, and at least ten days prior to the date established for each meeting.

- o The CDC must also mail written notice to all residents, businesses, and existing community organizations and religious institutions in the project area.

o The CDC will hold at least one public meeting to explain the establishment of, functions of, and opportunity to serve on the PAC, by providing written notice by first-class mail to all residents, businesses, and community organizations, including religious institutions within the project area at least 30 days prior to the formation of the PAC.

o It is contemplated that the election of members will take place at the same time and place as the informational meeting.

o Anyone desiring to vote at the PAC election must register prior to the PAC election by providing satisfactory evidence to the Commission that he or she is (1) at least eighteen years of age or older and (2) is a resident in the project area, or is the authorized representative of a business or CORI within the project area.

Only one person may vote on behalf of any residential owner-occupant, or residential tenant, or business property owner, or business owner/tenant. All persons participating in the election may vote for the candidates in the CORI category.

o Ballots shall be provided to registered voters for each PAC membership category. Voting is conducted by secret ballot at the meeting. The CDC appoints authorized election assistants to collect and tally the ballots. The ballots are tallied at the meeting and the CDC will announce the results of the election at the meeting when the ballots are tallied.

o The city council adopts a finding that all procedures were followed prior to certifying the election results. All challenges will be determined by the city council within 30 days following the date of the election.

ANALYSIS

On September 7, 1993, the Commission adopted new specific standards to determine when a governmental decision will fall within the "public generally" exception. Regulation 18703.3 provides:

(a) For the purposes of Government Code Section 87103, the "public generally" exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in Section 87103(a) through (d), if all of the following apply:

(1) The statute, ordinance, or other provision of law which creates or authorizes

the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

(2) The member is required to have the economic interest the member represents.

(3) The board's or commission's decision does not have a material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.

(4) The decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent.

The rationale for the exception in Regulation 18703.3 was as follows:

[I]n In re Callanan (1978) 4 FPPC Ops. 33, the Commission discussed whether the members of the State Board of Funeral Directors and Embalmers could participate in decisions that would affect the funeral industry. The Commission stated: "[W]hen the legislative body which creates a regulatory board determines that industry views and expertise should be represented on the board, the Political Reform Act should not be interpreted to prevent industry members from participating in board decisions affecting the industry."

* * *

For example, under the Health and Safety Code, redevelopment project area committees must include members to represent businesses, residential homeowners, etc. These members would be able to use the exception in...Regulation 18703.3.

Thus, pursuant to this exception, where members of a board or commission are appointed to represent specific interests, the member may participate in decisions affecting these interests so long as (1) the decision of the PAC will financially affect the economic interest the member represents in substantially the same manner as the decision will financially affect a significant segment of the persons the member was appointed to represent, and

(2) the decision will not have a material financial effect on any other economic interest held by the member.

Regulation 18703.3 Does Not Apply to Elected Officers

You have asked whether Regulation 18703.3 would apply to members of National City's Redevelopment Project Area Committee who are selected by means of a vote of the residents and appointed representatives of businesses, community organizations and religious institutions situated within the project area.

The express terms of Regulation 18703.3 limit the application of the exception to appointed members. For example, in the April 26, 1993, Commission memorandum we responded to a letter requesting that the proposed exception be expanded to elected officers. We responded:

[W]hile staff believes persons can be appointed and designated to represent their interests, as well as those of persons similarly situated, we do not believe that this rationale in any way applies to an elected member of the governing board of a jurisdiction. County supervisors and city councilmembers, for example, are elected to represent the jurisdiction as a whole, despite the use of district elections. Additionally, decisions of the elected city or county officials impact the entire jurisdiction, their participation is not limited to decisions that affect their own district.

Thus, if project area committee members are "elected" officials, Regulation 18703.3 does not apply. The Act provides a definition for "elected officer."

1. "Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. (Section 82020.)

2. "Elective office" means any state, regional, county, municipal, district or judicial office which is filled at an election. "Elective office" also includes membership on a county central committee of a qualified political party. (Section 82023.)

3. "Election" means any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title. (Section 82022.)

These provisions have been interpreted to exclude persons selected by a vote, if the vote does not occur in a primary, general, special or recall election.

For example, we have advised that:

- o Officers of the State Democratic Central Committee, elected by the members of the state committee, are not "elected officers." (Moon Advice Letter, No. A-88-461.)
- o Members of the State Bar Association Board of Governors are not "elected officers." (White Advice Letter, No. GC 83-262.)
- o Members of the Board of Directors of the Community College League of California, elected by local community college boards, are not "elected officers." (Robertson Advice Letter, No. I-92-443.)
- o Elected members of the California Public Employees' Retirement System Board of Administration are not "elected state officers." (Koppes Advice Letter, No. A-94-121.)

Despite being voted on, project area committee members are not elected officers under the Act.

Are PAC Members Appointed Officers?

While PAC members are not elected officers under the Act, it still must be determined whether the members are "appointed." Clearly, Regulation 18703.3 was not intended to apply to all persons other than elected officers.³ The term "appoint" is generally used "where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. It is usually distinguished from 'elect,' meaning to choose by a vote of the qualified voters of the city...." (Black's Law Dict. (5th ed. 1979) p. 91, col. 1.)

Regulation 18703.3 does not provide any specific method of appointment. According to the procedure in National City, at a noticed meeting of the CDC, qualified voters in the project area (eighteen years of age or older and a resident or authorized representative of a business or CORI within the project area) mark secret ballots which are collected at that meeting, tallied and

³ For example, redevelopment agency staff are not elected officers, but they are also not appointed members of boards and commissions and therefore they may not use the exception in Regulation 18703.3.

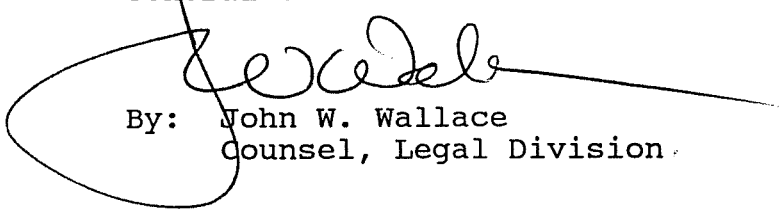
the results of the election announced at the meeting. In essence, project area committee members are members selected not by the voters of the city, but by a specified body--namely certain specified interested persons within the project area. Thus, for purposes of Regulation 18703.3, we consider members of the PAC to be appointed members of a board or commission.⁴

Please note, however, that the actual application of the factors in the exception depends on the specific facts of a particular decision. You have not provided information regarding a specific decision, thus we cannot say when Regulation 18703.3 will or will not apply. However, we have enclosed some letters for your information. (Galliano Advice Letter, No. A-94-024; Larocque Advice Letter, No. I-94-027; Galliano Advice Letter, No. I-94-088.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁵

Sincerely,

Steven G. Churchwell
General Counsel



By: John W. Wallace
Counsel, Legal Division

ENCLOSURES

⁴ Of course this conclusion is based on the specific facts pertaining to the selection of members of the National City Redevelopment Project Area Committee. If the selection process should change, you should contact us for further advice.

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.