



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

June 24, 1997

Robert Booth
Atkinson & Faraysn, LLP
Post Office Box 279
Mountain View, California 94042

**Re: Your Request for Advice
Our File No. A-97-293**

Dear Mr. Booth:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Is there a definition in the Act of "public board or commission"?
2. Does the term "public board or commission" include advisory agencies that do not compensate members?
3. Is the term "public board or commission" restricted to state agencies?
4. Does Section 85705 apply to persons who do not presently serve on any board or commission?
5. When "reappointment" to a public board or commission is by longstanding and unbroken custom automatic, who is "... the person who made the appointment ..." under Section 85705?

¹ Government Code Sections 81000 - 91014. Commission regulations appear at title 2, Sections 18109 - 18995, of the California Code of Regulations.

CONCLUSIONS

1. No. There is no definition in the Act of "public board or commission." However, we have issued advice providing guidance on this issue. For instance, we have concluded that any board or similar body created by a governmental entity and empowered to make governmental decisions is a "public" body within the meaning of Section 85705.

2. Section 85705 applies to members of an appointed advisory committee that is a governmental entity, with the authority to make governmental decisions and whose members are public officials.

3. The term public board or commission is not limited to state entities.

4. No. The express language of Section 85705 limits its application to appointees "during tenure in office."

5. In the instant case, the persons who originally made the appointment would be "... the person who made the appointment ..." under Section 85705.

FACTS

You are the City Attorney for the general law city of Los Altos, California. In connection with its election for city council seats, which will be held on November 4, 1997, several members of the city council, potential non-incumbent candidates, and members of various appointed boards and commissions have asked you to obtain advice regarding Section 85705. During a phone conversation with you on May 28, 1997, you stated that in Los Altos appointed board and commission members may hold office for only two consecutive terms. The entire city council appoints the member before the member's first term. If a member wishes to continue office for a second term, the city has a longstanding and unbroken practice for automatic reappointment.

ANALYSIS

Section 85705, which was added by Proposition 208, states as follows:

"No person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment."

For a more comprehensive analysis regarding questions 1-3, please see the *Groom* Advice Letter, I-97-060, and its enclosures. Briefly, there is no definition of “public board or commissions” in the Act. However, the enclosed letters do provide sufficient guidance on whether a governmental entity is a “public board or commission” for purposes of Section 85705. For instance, we have concluded that any appointed board or similar body created by a governmental entity and empowered (formally or informally) to make governmental decisions is a “public” body within the meaning of Section 85705. (*Lyions* Advice Letter, No. A-97-203, copy enclosed.)

To determine whether a board or similar body is authorized to make governmental decisions, we look to Regulation 18700(a)(1), which furnishes reasonable, objective criteria:

“A board or commission possesses decisionmaking authority whenever:

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

* * *

In response to question #3, we have consistently applied Section 85705 to local as well as state entities. (*Lyions* Advice Letter, *supra*; *Groom* Advice Letter, *supra*; *Moll* Advice Letter, No. A-97-161.)

Regarding question #4, Section 85705 limits the application of its prohibitions to time during the appointed person’s tenure. In fact, the express language of Section 85705 limits its application to appointees “during tenure in office.” Therefore, Section 85705 does not apply to persons who do not presently serve on any board or commission.

Next, you ask who is “... the person who made the appointment ...” under Section 85705 when an appointment is made automatically by the city council after a member’s first term. Under your facts, the reappointment does not appear to have the same attributes as an initial appointment (e.g. consideration of the merits of a person’s selection). It is the City of Los Altos’ longstanding and unbroken practice to reappoint members to a board or commission after their first term when they wish to continue for a second term. Therefore, “... the person who made the

appointment ..." under Section 85705 would be the person² who originally made the appointment, i.e., all the individual members of the city council who made the original appointment and engaged in substantive consideration of the appointment. Note that this conclusion is limited to the unique facts of the instant case.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:jlw

² "Person" is defined broadly in the Act to mean, among other things, any organization or group acting in concert. (Section 85705; *Vasquez-Connelly* No. A-97-18, copy enclosed.)