



RAVI MEHTA  
CHAIRMAN

## FAIR POLITICAL PRACTICES COMMISSION

August 15, 1997

Daniel Wallace  
City Attorney  
City of Santa Barbara  
740 State Street, Suite 201  
Post Office Box 1990  
Santa Barbara, California 93102-1990

**Re: Your Request for Advice  
Our File No. A-97-354**

Dear Mr. Wallace:

This letter is in response to your request for advice on behalf of Mayor Harriet Miller regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### FACTS

The City of Santa Barbara ("city") and the Redevelopment Agency of the City of Santa Barbara ("RDA") are in the process of considering development of a portion of the city adjacent to the Pacific Ocean and State Street, which is the main street in the city. The RDA board is composed of the mayor and city councilmembers. Presently under review are major development options in the area including a large aquarium, a public market, hotels/motels, and an urban village that includes retail, restaurant and housing features.

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

The city council has set as one of its highest priorities the development of a process to create a vision for the downtown and the waterfront. In November 1996 the RDA board directed staff to proceed with a downtown waterfront visioning process and budgeted \$250,000.00 for this process. Following a staff presentation and the endorsement of the RDA board to explore the acceptability of the process, a meeting was called by Mayor Miller on April 9, 1997, with a cross section of 23 community leaders with varying interests to determine community support for this concept. The mayor and Councilmembers Beaver and Langer attended and participated in this meeting designated by city staff as a convening committee meeting. Mayor Miller and Councilmember Beaver are announced candidates for mayor in the November 1997 election. The session was a facilitated discussion regarding community based visioning led by the president and project coordinator of the National Civic League.

By consensus the convening committee endorsed the city's/RDA's intent to develop a community based visioning process for the downtown and waterfront. Various persons were considered for selection to an initiating committee ("IC"). The IC was created by the convening committee and consisted of 14 citizens including the mayor who was chosen by the city council as its representative on the IC. The IC identified stakeholders (the parlance of the National Civic League) who were selected for invitation to participate in a series of facilitated meetings. The selection of these invitees was by consensus of the IC including the mayor. The IC dissolved and was replaced by a steering committee charged with finalizing the stakeholders' group and overseeing the process. Neither the mayor nor any councilmember sits on the steering committee. The first meeting of the stakeholders was attended by 96 of the 105 invited stakeholders, including five councilmembers and the mayor on May 30, 1997. All meetings of the IC steering committee and stakeholders are noticed public meetings under the Brown Act.

### QUESTION AND CONCLUSION

*Do the provisions of Section 85705 of the California Government Code prohibit the members of the stakeholders' committee from contributing to the mayor's reelection campaign or the campaigns of city councilmembers seeking office in the November 1997 election?*

Section 85705 provides that "no person *appointed* to a public board . . . 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." (Emphasis added.) Thus, Section 85705 prohibits governmental appointees from contributing to the officeholders who appointed them.

The contribution prohibitions in Section 85705 apply only to appointees who are members of a board or similar body authorized to make governmental decisions. (*Bovée* Advice Letter, No. I-97-027; *Guinan* Advice Letter, No. I-97-305.) To determine whether an appointee is a member of a board or similar body authorized to make governmental decisions, we look to Regulation 18700(a)(1), which furnishes reasonable, objective criteria:

“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 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.”

Thus, if any appointed board, commission, committee or similar body, whether created by statute, ordinance or city council resolution, has “decision making authority” as defined in Regulation 18700(a)(1), appointments to that body are governed by Section 85705.

Based on the facts you provided, the stakeholders’ committee does not presently possess decision making authority because it does not satisfy any of the provisions of Regulation 18700(a)(1). Because the stakeholders’ committee does not presently possess decision making authority the prohibitions in Section 85705 will not apply.<sup>2</sup> Therefore, any member of the stakeholders’ committee may contribute to the mayor’s reelection campaign or the campaigns of city councilmembers seeking office in November 1997. Please note that we have not determined whether members of the stakeholders’ committee are appointees because we have determined that the stakeholders’ committee is not a public board or similarly situated body.

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<sup>2</sup> Please note that this advice is based on current facts. You should be aware that Regulation 18700(a)(1)(C) may apply in the future, thereby creating “decision making authority” for purposes of the Act if the stakeholders’ substantive decisions are regularly approved without significant amendment. For further guidance on when Regulation 18700(a)(1)(C) may apply please see the enclosed advice letter *McLaughlin* Advice Letter, No. A-91-087, providing that the Economic Development Commission became a decision making body for purposes of Regulation 18700(a)(1)(C) because over the course of one year it increased their decision making involvement and appeared to be regularly approved by the city council or other governmental agencies.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink, appearing to read 'D. White', with a large, stylized flourish at the end.

By: Douglas White  
Graduate Assistant, Legal Division

SGC:DW:jlw