



FAIR POLITICAL PRACTICES COMMISSION

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April 12, 1999

Veronica Gomez
Staff Analyst - Court Facilities
The Task Force on Court Facilities
303 Second Street, South Tower
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**Re: Your Request for Advice
Our File No. A-99-068**

Dear Ms. Gomez:

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

QUESTION

Is the Task Force On Court Facilities a "state agency," or "an agency in the judicial branch of government," for purposes of identifying the appropriate code reviewing body and determining whether the task force is required to adopt a conflict of interest code?

CONCLUSION

The task force is a state agency, whose code reviewing body is the Fair Political Practices Commission. The task force is required to adopt and promulgate a conflict of interest code subject to approval by the Commission.

FACTS

By enacting the Trial Court Funding And Improvement Act of 1997 (Cal. Gov't Code, Title 8, Ch. 14) the Legislature gave form to its previously declared intent that the State assume a greater role in funding California's trial courts. (Stats. 1997, c. 850, Sections 1 to 3.) Article 2

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

of Chapter 14 (Gov't Code Sections 77650 *et seq.*)² established a Task Force on Court Facilities "charged with identifying the needs related to trial and appellate court facilities, and options and recommendations for funding court facility maintenance, improvements, and expansion, including the specific responsibilities of each entity of government." (Section 77650.)

This task force is composed of 18 members, six court representatives appointed by the Chief Justice; six representatives of county government named by the Governor; two appointees of the Senate Rules Committee, one of whom is to represent the State Bar or an associated attorney organization; two appointees of the Speaker of the Assembly, one of whom is also to represent the State Bar or an associated attorney organization. The final two members are the Director of General Services and the Director of Finance. (Section 77651.)

The Judicial Council provides staff support for the task force, with additional support authorized from the Department of General Services, the Department of Finance, and the California State Association of Counties. The Judicial Council provides the bulk of support services, and will have expended approximately \$7.5 million over the expected three year life of the task force, including sums paid for outside consulting services. The Judicial Council was also responsible for developing guidelines for task force procedures. (Section 77652.)

The duties of the task force include documentation of the state of existing court facilities, the need for any new facilities, currently available funding mechanisms, existing construction standards, the impact and possible mitigation of state actions burdening court facilities, and recommendations on state support and funding. (Section 77653.) After a number of preliminary steps, the task force will produce surveys of all trial and appellate court facilities in the state, identifying operational, construction, renovation and funding options. The task force will issue its final report to the Judicial Council, the Legislature, and the Governor not later than July 1, 2001. (Section 77654.)

Information developed by the task force is designed to support the larger legislative program to shift major court funding and operational responsibilities from the counties to the state within the next few years. (See Stats. 1997, c. 850, Sections 1-3.)

You are a staff analyst for the task force, which is in the process of adopting a conflict of interest code. Pursuant to Regulation 18750, you have submitted to the FPPC an OAL endorsed copy of the STD 400 form, with a copy of the notice of intent. FPPC consultants advised you of their concern that the FPPC might not be the proper "code reviewing body" as defined by Section 82011. The task force cannot complete the process of adopting the code until the code reviewing body is securely identified.

² All further statutory citations will be to the Government Code, unless otherwise noted.

ANALYSIS

1. *The task force is an agency subject to the requirements of Section 87300.*

Section 87300 requires that “every agency” adopt and promulgate a conflict of interest code pursuant to the provisions of the Act. This requirement includes every “state agency.” “State agency” means every state office, department, division, bureau, board and commission, and the Legislature. (Section 82049.) Courts are excluded from this definition (*Vickrey* Advice Letter, No. I-99-021; *In Re Baty* (1979) 5 FPPC Ops. 10) but the task force, although it *studies* courts, is manifestly not a court itself.

In structure and function, the task force is not distinguishable from a “commission” or “board” as those terms are used in Section 82049. The task force must therefore be deemed a “state agency” within the meaning of Section 82049, unless it can be described *more particularly* as “an agency in the judicial branch of government,” within the meaning of Section 82011.³ In either case, the task force is an agency subject to the requirements of Section 87300.

2. *Identifying the code reviewing body under Section 82011.*

Under Section 82011(a), the FPPC is the code reviewing body for conflict of interest codes adopted by most state agencies. A different result obtains for the task force only if it is “an agency in the judicial branch of government.” (*Id.*)

The Act nowhere defines “an agency in the judicial branch of government,” but the term is readily subject to commonsense interpretation. The task force has several links to the judicial branch. First, a majority of the 18 members are apparently to be selected by reason of affiliation with judicial organizations, counting the six appointed by the Chief Justice, one each by the Senate Rules Committee and Speaker of the House, who must be associated with the State Bar, and one county appointee responsible for court security. (Section 77651.)

Second, the Judicial Council provides staffing for the task force. Although several other legislative and executive branch agencies may be called upon for “additional” staffing (Section 77652), the Judicial Council has funded most of this support, totaling in all some \$7.5 million dollars. Third, the Judicial Council was responsible for developing guidelines for task force procedures and practices. (*Id.*)

³ As the term is used by Section 82011(a), an “agency in the judicial branch of government” is a subcategory of “state agency.” State agencies within the judicial branch are expressly exempted from coverage under subdivision (a), because they are reserved for special treatment under subdivisions (e), (f), and (g). Any doubt on this score is removed by subdivision (h), the catchbasin for “any *state agency* within the judicial branch not included under subdivisions (e), (f), and (g).” (Emphasis added.)

On the other hand, while the Legislature recognized the judiciary as a separate branch of government (Stats. 1997, c. 850, Section 2(a)), it nowhere purported to create a new agency within the judicial branch. Rather, the Legislature spoke only of establishing the task force "in state government" (Section 77650), in the course of dictating its composition and responsibilities within the larger context of a legislative program to increase state control over court funding. The intended function of the task force is clearly legislative fact-finding, calculated to advance legislative goals articulated in the Trial Court Funding And Improvement Act of 1997.

Its membership is consistent with a view of the task force as a legislative fact-finding body. Half of the members are judicial officers, with the remainder split among state and county administrative officials. (Section 77651.) This membership structure is plainly designed to bring a multi-dimensional perspective to the problems and needs of the courts. Staffing options, again split among the courts (the Judicial Council) and state and county administrative agencies, reflect the same interest in diversity of perspective and expertise. (Section 77652.)

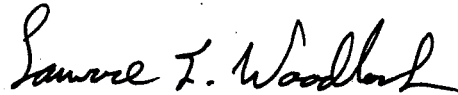
Section 77654 specifies a timetable for a variety of preliminary reviews, surveys, and reports, each to be circulated by the task force to various agencies in all three branches of state government. The recipients are expected to offer comments and suggestions which will be considered in the final report of the task force. (Section 77654(f).)

Although the Judicial Council is responsible for procedural guidelines (Section 77652), the substantive duties and responsibilities of the task force are specified by the Legislature. (Section 77653.) The sole function of the task force is to concentrate resources from all branches of government on legislative fact-finding in support of goals set by the Legislature. From this we conclude that the task force is not "an agency in the judicial branch of government," but that it is an agency within the legislative branch. Under Section 82011(a), the code reviewing body for the task force is the FPPC. As the code reviewing body, we determine that the task force is required to adopt a conflict of interest code and submit it for review to the FPPC.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lawrence T. Woodlock
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