



FAIR POLITICAL PRACTICES COMMISSION

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June 1, 1999

Michael Jenkins
Richards, Watson & Gershon
333 South Hope Street, 38th Floor
Los Angeles, CA 90071-1469

Re: Your Request for Advice
Our File No. A-99-135

Dear Mr. Jenkins:

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

QUESTIONS

1. Should members of the South Bay Cities Council of Governments (COG) have a jurisdiction greater than that imposed on them by their positions as city councilors for disclosure purposes?
2. May COG members file expanded statements of economic interests as city councilors and board members of the COG?
3. Do alternates to the board have the same disclosure obligations as the primary board members?

CONCLUSIONS

1. It appears from your discussion of the COG board's responsibilities that board members are required to disclose their economic interests using the 16 member cities as their "jurisdiction" for reporting purposes.
2. COG board members may file expanded statements of economic interests as city councilors and COG board members.

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

3. Assuming alternates have the same authority as other board members while sitting on the board, alternates would be required to have the same disclosure obligations.

FACTS

You are the General Counsel for the South Bay Cities Council of Governments, a joint powers authority consisting of 16 cities in the southwest portion of Los Angeles County. The stated purpose and authority of the COG is to allow its members to engage in discussions regarding regional planning and coordination of government services and responsibilities. The joint powers agreement provides that the entity may not compel any member to conduct any activity or implement any plan or strategy. The goal of the COG is to seek voluntary cooperation for the collective benefit of the region. The COG's activities generally consist of conducting studies and coordinating activities among member cities pertaining to such issues as traffic management, housing, and airport expansion.

You have stated that the COG has no decision-making authority and no authority to take or compel any governmental action. The COG is in the process of adopting a conflict of interest code.

ANALYSIS

Although it was not one of your questions, because you have stated that the COG has no decision-making authority, we feel it is necessary to address whether COG members are in fact participating in or making governmental decisions. Regulation 18702.2(b) states, in relevant part, that "a public official 'participates in making a governmental decision' when the official:

"Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

- (1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
- (2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A)."

Governmental decisions listed in Regulation 18701(a)(2)(A) are:

- “1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
5. Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof.”

You stated that part of the COG members' duties involve “conducting studies and coordinating activities among cities ... pertaining to such issues as traffic management, housing and airport expansion.” Based upon the facts which you have provided us, it is our conclusion that the members of the COG have decision-making authority, and thus should be designated in a conflict of interest code. Therefore, they will be required to submit disclosure statements. However, if you have additional documentation which indicates that the recommendations made by the commission are not routinely approved, or that they receive significant intervening substantive review by the cities, we may wish to reevaluate our advice. (*Almanza Advice Letter*, No. I-90-082, copy enclosed.)

Section 82035 defines “jurisdiction” as:

“The region, county, city, district or other geographical area in which [the agency] has jurisdiction.”

Since the COG board conducts studies and coordinates activities among the 16 member cities, the jurisdiction covered by the board members' statements of economic interests would be the territory represented by the 16 member cities. Please note that Section 82035 continues with its definition by stating that:

“Real property shall be deemed to be ‘within the jurisdiction’ with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.”

Therefore, the jurisdiction would include a two mile radius around the 16 member cities for determining conflicts of interest concerning real property.

Since all COG board members, including alternates, hold city council positions, they are required to file statements of economic interests under article 2. To reduce the time spent on completing the statements, footnote 1 to Regulation 18730(b)(3) provides that:

“Designated employees who are required to file statements of economic interests under any other agency’s conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original.”

Therefore, each member may complete a statement to cover both their city council position and that as a COG board member, sign two copies, and file one signed copy each with their respective filing officers.

All positions authorized to make or participate in the making of decisions, as defined above, must be included in the COG conflict of interest code. (Section 87302.) Consequently, since alternates to the board have the same authority as board members, they must be included in the conflict of interest code for the COG, regardless of the frequency with which they are called upon to use their authority. (*Williams* Advice Letter, No. A-87-067, copy enclosed.)

If you have additional questions, please feel free to contact me at (916) 323-6423.

Sincerely,

Steven G. Churchwell
General Counsel



By: Kevin S. Moen, PhD
Political Reform Consultant II