



FAIR POLITICAL PRACTICES COMMISSION

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December 16, 1999

John L. Loomis
Deputy County Counsel
County of Shasta
1815 Yuba Street, Suite 3
Redding, California 96001

**Re: Your Request for Advice
Our File No. A-99-295**

Dear Mr. Loomis:

This letter is in response to your request for advice on behalf of the Shasta County Veterans Cemetery Advisory Committee regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Are members of the Shasta County Veterans Cemetery Advisory Committee required to be listed as designated employees in a conflict of interest code?

CONCLUSION

Members of the Shasta County Veterans Cemetery Advisory Committee are not currently public officials under the Act. However, if over an extended period of time the recommendations of the committee are regularly approved without significant amendment or modification by the board, the members will become public officials under the Act and will be subject to the Act's disclosure and disqualification provisions. In addition, if the committee begins recommending how annual funds are to be used, this advice may change.

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

FACTS

The Shasta County Veterans Cemetery Advisory Committee (the "committee") was established on October 26, 1999, by resolution of the Shasta County Board of Supervisors (the "board"). The committee was established to assist the board in implementing the provisions fulfilling its statutory obligations of Chapter 9 of Division 6 of the Military and Veterans Code (commencing with §1400).

On November 16, 1999, the board appointed members to the committee and elected Supervisor Molly Wilson to serve as its chair. Except for Mrs. Wilson, the members of the committee are private citizens who are veterans of military service.

It is the intention of the board that the committee will act in a purely advisory capacity vis-à-vis the State Department of Veterans Affairs, agencies of the federal government, and the board in the design, development, and construction of the Northern California Veterans Cemetery. Since the committee will only be an advisory body, its recommendations to the board and other public agencies will not be binding. Other than making such advisory recommendations, the committee itself will exercise no decisionmaking authority.

ANALYSIS

The Political Reform Act was enacted by the people of the State of California by initiative in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own economic interests or the economic interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, the Act requires every public official to disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) Generally, the Act distinguishes between those persons who must disclose all their economic interests (Section 87200) and those who may have tailored disclosure obligations in a local conflict of interest code.

A "public official" is defined in Section 82048 and Regulation 18701(a)(1) as follows:

"(a) 'Public official at any level of state or local government' means a member, officer, employee, or consultant of a state or local government agency. The term 'public official' also includes individuals who perform the same or substantially the same duties as an individual holding an office or a position listed in Government Code section 87200, including 'other public officials who manage public investments' as that term is defined in subsection (b).

(1) 'Member' shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decisionmaking authority. 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."

According to the information you have provided, it is the intention of the board that the committee will act in a purely advisory capacity. Other than making such advisory recommendations, the committee itself will exercise no decisionmaking authority. Therefore, subdivisions (A) and (B) do not apply. Since the committee will only be an advisory body, its recommendations to the board and other public agencies will not be binding. As to subdivision (C), because the committee is new and there is no information regarding whether its recommendations will be regularly approved over an extended period of time, this subdivision does not apply at this time.

Based on these facts, we conclude that the committee is an advisory body at this time and that the committee's members are not "public officials" as defined in the Act, by virtue of their role as members of the Shasta County Veterans Cemetery Advisory Committee. As you mentioned, Molly Wilson is already a public official in her capacity as a Supervisor. If your facts change, i.e., the committee begins recommending how the annual funds are to be used, this analysis may change.

Consequently, members of the committee, excluding Mrs. Wilson, are not subject to the disclosure and disqualification provisions of the Act. However, if in the future the committee's recommendations should be regularly approved without significant amendment or modification by the board and other public agencies, over an extended period of time, then the members of the committee will qualify as public officials within the meaning of Regulation 18701(a)(1)(C). At that time, the disclosure and disqualification requirements of the Act would apply. (*Paley* Advice Letter, No. A-90-583.)

I trust this clarifies application of the law to your situation. Should you require further advice as the committee continues operation, please do not hesitate to contact me for follow-up advice at (916) 322-5660.

Sincerely,

Luisa Menchaca
Assistant General Counsel

A handwritten signature in cursive script that reads "Lynda Doherty".

By: Lynda Doherty
Political Reform Consultant, Legal Division

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