



FAIR POLITICAL PRACTICES COMMISSION

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March 30, 2000

Mitchell S. Conner
President, CityVision
Post Office Box 4689
Santa Rosa, California 95402

**Re: Your Request for Advice
Our File No. A-00-044**

Dear Mr. Conner:

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

QUESTION

Do officers and/or members of the CityVision board of directors constitute public officials for purposes of the Act?

CONCLUSION

At the present time, CityVision is solely an advisory entity. Therefore, its officers and members of the board of directors are not public officials subject to the disclosure and disqualification provisions of the Act.

FACTS

CityVision is a California nonprofit corporation organized by private citizens in the Santa Rosa community. The primary purpose of CityVision is to create working relationships and coalitions within the community to reach consensus on important issues affecting both the public and private sectors, specifically the common goal of physically redesigning downtown Santa Rosa for the purpose of providing a more efficient, livable and commercially viable city core

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

area. CityVision intends to forge consensus between private and public interests in order to advocate policy and action to the City of Santa Rosa on these issues.

During the past two years a group of citizens, including a number of local architects, made application to the American Institute of Architects ("AIA") to provide a Regional & Urban Design Assistance Team ("R/UDAT") to come to Santa Rosa to make recommendations regarding improving the downtown area of the city. The application was accepted by the AIA, and the R/UDAT arrived in Santa Rosa in November 1998, and issued its report on November 16, 1998.

In order to carry forward the recommendations of the R/UDAT, a group of citizens consisting of many local architects and engineers and other members of the community came together to form CityVision for the purpose of coalition and consensus building in order to advocate implementation of the recommendations contained in the R/UDAT report. CityVision was incorporated as a private nonprofit California corporation on December 23, 1999. CityVision has applied for tax exemption under Section 501(c)(3) of the Internal Revenue Code.

CityVision is composed of several hundred volunteers from the community. The CityVision Action Plan sets out the purposes and activities of the nonprofit corporation. As a recently organized nonprofit entity, CityVision is governed by corporate officers and a board of directors. All of the officers and the board of directors are private individuals; none are public officials in any other capacity. The organization recently selected an executive director who is paid to administer the CityVision organization. The executive director is also not a public official.

The activities and operations of CityVision are currently funded and provided by two sources: (1) the volunteer activities and donated services of the individuals and their employers who participate in CityVision's activities, and (2) initial "seed" or "start-up" funds provided to CityVision by the City of Santa Rosa in order to fund the early operations (including the executive director's compensation) of CityVision.² As indicated in the CityVision Action Plan, CityVision intends to solicit contributions of private funding and expects to rely primarily on private funding sources to support its activities.

In order to undertake CityVision's primary purpose to act as a facilitator of consensus and coalition building between the private and public sectors, CityVision has and will form "task forces" and committees in various subject matter areas (such as transportation, linkages between downtown Santa Rosa and the Railroad Square Historic District) which will be comprised of both private individuals and public employees.

² These initial funds, approximately \$155,000, were provided by the City of Santa Rosa upon approval by the city of the organization's grant application and were specifically designed by the city to be used to pay for CityVision's initial administrative expenses.

ANALYSIS

The purpose for the disclosure and disqualification provisions of the Act is to ensure that public officials, whether elected or appointed, 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), copy enclosed, 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 CityVision will act in an advisory capacity. You have stated that its primary purpose is "to act as a facilitator of consensus and coalition building between the private and public sectors." CityVision has neither the power to make nor to compel a final governmental decision. The

newly-formed nonprofit entity considers itself an advocacy organization which may make recommendations regarding the downtown projects and improvements to the planning commission, which in turn will make its own recommendation to the city council or other commissions.

The Commission has previously advised that when a board or commission is newly formed and has no history of its recommendations being regularly approved over an extended period of time, such a board or commission is not yet a decisionmaking entity under the Act. (*Wilson* Advice Letter, No. I-94-307; *Cader-Thompson* Advice Letter, No. A-97-393; *Loomis* Advice Letter, No. A-99-295, copies enclosed.)

A board or commission which does not possess decisionmaking authority pursuant to the provisions of Regulation 18701(a)(1) is solely advisory in nature. (*In re Rotman* (1987) 10 FPPC Ops. 1.) Accordingly, its members are not public officials solely by virtue of their membership on that advisory body.

Therefore, based on the information provided, we conclude that CityVision is an advisory body and its board members and officers are not "public officials" subject to the disclosure and disqualification provisions of Act. However, if in the future, CityVision's substantive recommendations are regularly approved without significant amendment or modification by the planning commission, city council or other governmental agencies, the board members 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.

Please note that this advice does not apply to any board members who are already public officials. A public official, in any capacity, may not make, participate in making, or use his or her official position to influence a governmental decision in which he or she has a financial interest. (Section 87100.)

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

Sincerely,

Luisa Menchaca
Assistant General Counsel

By: 
Jill Stecher
Staff Counsel, Legal Division

LM:JS:tls
Enclosures