



FAIR POLITICAL PRACTICES COMMISSION

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June 20, 2000

Kim L. Stam
City of Sonora
94 North Washington Street
Sonora, CA 95370

**Re: Your Request for Advice
Our Advice File No. I-00-131**

Dear M. Stam:

This is in response to your request for advice regarding whether members of the Parking and Traffic Commission for the City of Sonora are required to file Statements of Economic Interests under the provisions of the Political Reform Act ("the Act").¹

QUESTION

Are members of the new Parking and Traffic Commission for the City of Sonora required to file Statements of Economic Interests?

CONCLUSION

It appears that members of the new commission should be included in the City's conflict of interest code and, thereafter, be required to file Statements of Economic Interests. However, since the City Council for the City of Sonora is the code reviewing body for city agencies, the City Council must decide whether to amend the code to include the new commissioners. In addition, the commissioners may not be required to file Statements of Economic Interests under the Act unless and until their positions are listed in a conflict of interest code.

FACTS

The City of Sonora established a Parking and Traffic commission on March 14, 2000. This commission consists of seven members. By city ordinance, commission members have the authority to act "on requests for changes made by the public or by committee members regarding roadways and public parking;" vote on "matters germane to special parking and traffic studies

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

and traffic calming;" and decide "such other matters as shall be referred from time to time from the City Council."

ANALYSIS

Section 87300 requires every California state and local government agency to adopt a conflict of interest code. A conflict of interest code is a document which specifically enumerates each of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on a financial interest of the designated employee holding the position. (Section 87302.)

The designation of employees under an agency's conflict of interest code is left to the discretion of each individual agency and its respective code reviewing body. (Sections 87300-87310.) Section 82011 indicates that the city council is the code reviewing body with respect to the conflict of interest code of any city agency, other than the city council, with jurisdiction wholly within the city. Therefore, the Commission cannot offer specific advice regarding which employees must be designated under a city's conflict of interest code. The Commission is empowered to offer general advice and technical assistance pursuant to section 87312. Although we provide this advice, please note that this advice is not binding on the City or on the City Council as the City's code reviewing body.

The term "designated employee" means any officer, employee, member or consultant of any agency who makes or participates in the making of agency decisions. The term "designated employee" does not include an unsalaried member of any board or commission which serves a solely advisory function. (Sections 82019 and 82048.)

"Member" includes any salaried or unsalaried member of a board or commission with decision-making authority. 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 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.

Regulation 18700(a)(1).

The members of the Parking and Traffic Commission appear to fit this definition because the ordinance provides them authority to make governmental decisions which are not solely

advisory. Therefore, it is recommended that the conflict of interest code for the City of Sonora be amended to include as "designated employees" members of the Commission as well as staff who make or participate in making governmental decisions.

A public official "makes a governmental decision" when he or she, acting within the authority of his or her office:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreements on behalf of his or her agency;
- (5) Determines not to act, within the meaning of subparagraphs (1), (2), (3) and (4), unless such determination is made because of his or her financial interest.

Regulation 18700(b).

If you have additional questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
Assistant General Counsel

By: Kevin S. Moen, PhD
Political Reform Consultant