



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

October 25, 2000

Thomas J. Riggs  
Lozano Smith, Attorneys at Law  
285 West Bullard Avenue, Suite 101  
Fresno, California 93704-1706

**Re: Your Request for Advice**  
**Our File No. A-00-223**

Dear Mr. Riggs:

This letter is in response to your request for advice regarding the conflict of interest code provisions of the Political Reform Act ("the Act").<sup>1</sup>

### QUESTION

Should members of the State Center Community College District's Personnel Commission be designated in the State Center Community College District's conflict of interest code?

### CONCLUSION

Yes, the commission members must be incorporated into the State Center Community College District's conflict of interest code.

### FACTS

The State Center Community College District ("district") is a merit system district operating pursuant to the provisions of Education Code sections 88060 et seq. It has a personnel commission ("commission") consisting of three members. The Governing Board of the district appoints one member, one member is nominated by the classified (non-academic) employees of the district, and these two members appoint the third member.

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

The commission's Education Code mandated duties include:

- appointing a personnel director
- adopting a budget for its office
- expending funds for the training and development of its staff
- classifying all employees and positions in the classified service
- recommending to the Governing Board salary schedules for the classified service

The commission also prescribes and interprets rules "to ensure the efficiency of the service and the selection of the service and the selection and retention of employees upon a basis of merit and fitness" (Ed. Code section 88080). The rules provide for the procedures to be followed by the Governing Board regarding applications examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, lay-offs, and similar employment related issues for the classified service.

In addition, the commission is required to determine minimum educational and work experience requirements for classified positions. It adopts disciplinary rules for the classified service, and hears appeals from employees who have been suspended, demoted, or dismissed. The commission may authorize a hearing officer to conduct any hearing or investigation which the commission itself is authorized to conduct.

The district is a multi-county agency. As such, the Fair Political Practices Commission is its code reviewing body.

### 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 financial interests. (Section 81001(b).) Regulation 18701 establishes that "public official" includes a "*member, officer, employee, or consultant of a state or local government agency*" (emphasis added). The regulation further states that:

"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

(Regulation 18701(a)(1).)

Considering the wide range of duties that appear to reside solely in the power of the commission, we may safely establish commission members as public officials and subject to the Act's requirements.

Section 87302 of the Act states that each agency's conflict of interest code shall enumerate (and require disclosure for) "the positions within the agency, ... which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest . . . ." (Section 87302(a).) Regulation 18702.1 assists in defining what it is to make a governmental decision. A public official makes a governmental decision when he or she:

- Votes on a matter;
- Appoints a person;
- Obligates or commits his or her agency to any course of action;
- Enters into any contractual agreement on behalf of his or her agency.

Because the commission has, among other authorities, the power to appoint to positions, hire consultants, adopt budgets, spend funds for training, enter the agency into contracts, classify positions, recommend salary schedules, and make wide-ranging personnel decisions, the commission members clearly meet the definition of being public officials who are involved in making governmental decisions which could affect their financial interests. For example, as stated above, the commission has the authority to expend funds for training. Certainly, it would be in the public's interest to know if a commission

member has a financial interest in a training company. Therefore, the district must amend its conflict of interest code to include the commission members.

If you have any other questions regarding this matter, you may contact me toll-free at 866/275-3772.

Sincerely,

Luisa Menchaca  
Assistant General Counsel

A handwritten signature in black ink that reads "Adrienne Korchmaros". The signature is written in a cursive style with a large, sweeping initial 'A'.

By: Adrienne Korchmaros  
Political Reform Consultant