



FAIR POLITICAL PRACTICES COMMISSION

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December 13, 2001

Richard D. Weiss
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Public Works Division
County of Los Angeles
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713

**Re: Your Request for Advice
Our File No. A-01-122**

Dear Mr. Weiss:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ This letter is limited solely to provisions of the Act, and should not be taken as advice or an opinion regarding any other areas of the law potentially raised by your letter. This advice is based upon the facts as provided in your request letter.² Please note that this letter should not be construed to evaluate any conduct that has already taken place. (Regulation 18329(b)(8)(A).)

QUESTION

Is the Southern California Regional Airport District required to adopt a conflict of interest code?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² This advice is applicable and confers immunity only to the extent that the facts provided to us are correct, and that all of the material facts have been disclosed. (*In re Oglesby* (1975) 1 FPPC Ops. 71; § 83114.)

CONCLUSION

The Southern California Regional Airport District is a "local public agency," and the basis for its previous exemption from the requirement that it adopt a conflict of interest code is no longer viable. As such, it is required to adopt a conflict of interest code under the Act.

FACTS

The Southern California Regional Airport Authority ("SCRAA") is a distinct legal entity created by a joint powers agreement ("JPA") pursuant to Government Code § 6500 et seq. The members are the City of Los Angeles and the counties of Los Angeles, Orange, Riverside, and San Bernardino. The Southern California Association of Governments ("SCAG") has a non-voting position on the SCRAA's Board of Directors but is not formally a member. A member of the Ventura County Board of Supervisors currently fills that position. The SCRAA was formed in 1985. The SCRAA met somewhat regularly from 1985 until 1992, and then became inactive until March of 2001, when meetings of its board of directors resumed.

Generally speaking, the SCRAA was created because it was perceived that no single governmental entity had the requisite authority and capability to resolve the Southern California region's air-carrier capacity shortfall and to independently develop regional airport facilities. The SCRAA's enumerated powers include developing, construction, acquiring and operating airports and related facilities, issuing revenue bonds, exercising the power of eminent domain, entering into contracts and granting franchises, permits and licenses for the use of facilities owned or operated by the SCRAA. The SCRAA has no specific land use or regulatory authority over the independent airport operations of its members or any other public or private entity.

The SCRAA is governed by a board of directors comprised of a member of the legislative body (board of supervisors or city council) of each of the member entities. Each member entity may also appoint an alternate who must also be a member of its respective legislative body, or an elected official of a municipal government directly affected by airport operations conducted by the SCRAA or one of its members.

The SCRAA has several officers including a treasurer, a controller-auditor, a chief executive officer, and a secretary. Those officers may be, and currently are, all public employees of one or more of the respective member entities. However, the JPA authorizes (and in one case requires) the SCRAA to hire employees to fill those positions who are not currently employees of the member entities.

The SCRAA has recently authorized the use of its funds for the payment of several consultants to provide staff, media, and clerical services for the remainder of this fiscal year (through June 30). The SCRAA also recently passed a budget for the remainder of this fiscal year with anticipated expenditures in the amount of \$40,000. It is

anticipated that the budget for fiscal year 2001-2002 will provide for expenditures in the range of \$250,000.

The SCRAA currently does not own or operate any facilities or other property, and it has issued no bonds or other indebtedness.

The JPA contemplated an initial "feasibility, investigation and study period" to allow the SCRAA to conduct various studies as to the feasibility of a new Southern California regional airport. The SCRAA recently extended that period until June of 2002.

On September 9, 1986, the Commission granted an exemption to the SCRAA from the requirement that it file a conflict of interest code under regulation 18751. You are requesting guidance regarding the continued viability of that exemption.

ANALYSIS

Section 87300 requires that every agency "adopt and promulgate" a conflict of interest code. Where an exemption from this requirement has been granted, the issue may be reexamined to determine if the exemption should be maintained. (*Paetzold* Advice Letter, No. I-01-027.) The term "agency" as defined in § 82003 includes a "local government agency." "Local government agency" is defined as:

"[A] county, city or district of any kind including school district, or any other local or **regional political subdivision**, or any department, division, bureau, office, board, commission or other agency of the foregoing." (§ 82041.)
[Emphasis added.]

The threshold issue of your inquiry is whether the SCRAA is a "local government agency" and thus, required to comply with the conflict-of-interest provisions of the Act. Generally, the Commission applies the analytical framework set forth in its opinion in *In re Siegel* (1977) 3 FPPC Ops. 62, to assist in making this determination. However, because an entity created by a JPA is, by virtue of the statutes enabling it, clearly a "local public agency," our previous advice has consistently been to treat it as such under the Act without resort to *Siegel* analysis. (*Crabb* Advice Letter, No. A-97-575.)

Regulation 18751 sets forth the procedural requisites and substantive bases for granting an exemption from the requirement to adopt a conflict of interest code. It states in pertinent part as follows:

"(c) A request for exemption shall be approved by the Executive Director only if he or she finds:

"(1) That if the agency requesting the exemption were to adopt a Conflict of Interest Code, there would be no 'designated

employees,' within the meaning of Government Code Sections 82019 and 87302(a), subject to its provisions; or

“(2) That the agency is, or soon will be, inoperative and nonfunctioning.

“(d) An exemption to Government Code Section 87300 may be granted to an agency when there would be no "designated employees" within the meaning of Government Code Sections 82019 and 87302(a) because all of the following apply:

“(1) The agency does not have regulatory, quasi-regulatory, permit, licensing or planning authority or functions;

“(2) The agency will not acquire real property in the foreseeable future; and

“(3) The annual operating budget exclusive of salaries for the agency is less than \$70,000.

“(e) In all other circumstances, the Executive Director will consider the requests for exemption on a case by case basis.”

The basis under regulation 18751 for granting the exemption to the SCRAA in 1986 is not expressly set forth in the minutes from that meeting.³ However, from the staff memorandum supporting the exemption request, it appears that the exemption fit most of the criteria under subdivision (d), but could not be granted under that subdivision because of the size of the SCRAA's budget. As such, the exemption was apparently granted under the Commission's residual discretionary authority to grant exemptions on a case-by-case basis under subdivision (e).

Notably, the staff memorandum recommending that the Commission grant the exemption specifically referenced the representation made at that time that the SCRAA's only function was to conduct a five-year study on the feasibility of constructing a new regional airport for Southern California, as referenced above. Also specifically referenced was a commitment by the attorney for the SCRAA that it would file a conflict of interest code if such an airport was found to be feasible.

Examining the current basis for the continued viability of the exemption, your letter indicates that the feasibility study period has been extended until June of 2002. However, you have set forth no facts indicating that the SCRAA is still conducting the feasibility study as its sole function. Indeed, the passage long ago of the anticipated five-year feasibility study period and the recent resurrection of the SCRAA strongly suggest

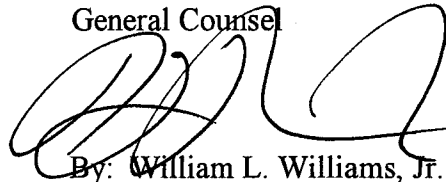
³ Copies of the original exemption request letter, the relevant staff memorandum, the executive director's reports, and the meeting minutes reflecting the Commission's granting of the exemption are enclosed for your reference.

otherwise. Moreover, the budget for the remainder of this fiscal year is \$40,000, with a \$250,000 budget anticipated for the next fiscal year that well exceeds the \$70,000 threshold in subdivision (d) of regulation 18751. In a related development, the SCRAA has authorized funds for the payment of consultants for various substantive services through the end of this fiscal year. All of these factors must be considered against the backdrop of the JPA itself, which expressly sets forth very significant governmental decision-making powers in the SCRAA. In sum, the basis for granting an exemption to the SCRAA no longer remains viable.⁴ Therefore, the SCRAA is no longer exempt from the requirement to adopt a conflict of interest code, and must do so.⁵ (See reg. 18750.1.)

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

Sincerely,

Luisa Menchaca
General Counsel



By: William L. Williams, Jr.
Staff Counsel, Legal Division

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Encl.

⁴ If you disagree with our conclusion, nothing in this letter precludes the SCRAA from applying to the Executive Director for an exemption under regulation 18751.

⁵ The Commission's Technical Assistance Division regularly provides assistance to local public agencies in developing and amending their conflict of interest codes. (§ 87312.)