



## FAIR POLITICAL PRACTICES COMMISSION

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February 7, 2002

Sue Vannucci  
City Clerk  
City of Woodland  
300 First Street  
Woodland, California 95695

**Re: Your Request for Informal Assistance  
Our File No. I-01-298**

Dear Ms. Vannucci:

This letter is in response to your request for informal assistance regarding the conflict of interest code provisions of the Political Reform Act ("the Act").<sup>1</sup> Because, with respect to the conflict of interest code of a city agency, the city council is the code reviewing body, the Commission cannot offer specific advice regarding which city officials must be designated under a city's conflict of interest code (sections 82011, 87300-87310). Although we are authorized to offer general advice and technical assistance (section 87312), please note that this advice is not binding on the city council as the code reviewing body.<sup>2</sup>

### QUESTION

Should members of the Manufactured Home Fair Practices Commission be required to file Form 700, Statement of Economic Interests?

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<sup>1</sup> Government Code sections 81000-91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, sections 18000-18997. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by a Commission opinion or formal written advice. (See enclosed, Regulation 18329(c).)

## CONCLUSION

If the Manufactured Home Fair Practices Commission has decision-making authority, the members are public officials and should be "designated" in the city's conflict of interest code and thus, should be required to file statements of economic interests. Until they are added to the conflict of interest code, there is no requirement for the members to file statements of economic interests.

## FACTS

The Manufactured Home Fair Practices Commission ("commission"), which consists of five regular members and two alternate members appointed by the mayor and city council, was created by an initiative ordinance passed in the City of Woodland ("city"). Generally speaking, the ordinance was enacted because of concern within the city that a shortage of rental spaces for the location of manufactured homes would lead to escalating rents. The initiative established a manufactured home space rent ceiling to be regularly adjusted by the newly created commission. In addition to overseeing the rent ceiling, the commission's powers also include requiring registration of manufactured home parks, conducting studies, surveys, investigations, and adopting administrative regulations.

## ANALYSIS

The Act prohibits public officials from making, participating in making or in any way attempting to influence a governmental decision in which the official has a financial interest. (Section 87100.) To further this goal, the Act requires every public official to disclose all of his or her economic interests, which could foreseeably be affected by the exercise of the official's duties. (Section 81002(c) and sections 87200-87313.)

Public officials, such as employees of governmental agencies, members of boards or commissions, or consultants of a state or local government agency, disclose their financial interests in accordance with the conflict of interest code developed by their respective agency. (See sections 87300 - 87313.) A conflict of interest code is a rule or regulation adopted by a governmental agency, which enumerates the positions within the agency that make or participate in making decisions which may have a foreseeable and material effect on any financial interest. (Section 87302.) The conflict of interest code requires a person in a designated position to disclose investments, interests in real property, sources of income and business positions that may be materially affected by his or her decision-making on behalf of the agency. (Section 87302.)

Regulation 18730, promulgated by the FPPC to interpret and implement the conflict-of-interest provisions of the Act, provides guidance as to those positions in the agency that must be included in a conflict of interest code. Subdivision (b)(2) of this regulation provides that persons designated in an agency's conflict of interest code include persons who make or participate in making governmental decisions which may foreseeably have a material effect on financial interests for purposes of section 87100:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Persons so designated in the conflict of interest code are “designated employees,” a term that includes any “officer, employee, member or consultant” of an agency whose position involves making or participating in making decisions that may have a foreseeable and material effect on any financial interest. (Section 82019(c).) The term “designated employee” does not include an unsalaried member of any board or commission that serves a solely advisory function. (Section 82019.)

Regulation 18701(a) provides that the term “designated employee,” as used in section 82019 includes a member of a board or commission with decisionmaking authority. This regulation defines a “member” as follows:

“(1) ‘Member’ shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority. A committee, 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 that may not be overridden; or

(C) It makes substantive recommendations that 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).)

It appears from the facts provided that, because the commission is required to perform such duties as adjusting the mobile home rent ceiling or adopting regulations, the commission may meet the criteria enumerated in paragraphs (A), (B), or (C) of Regulation 18701(a)(1). If this is the case, then the commissioners are members of a board or commission and, to the extent that the commissioners make or participate in making city decisions that may foreseeably have a material financial effect on their financial interests, the city must include them in its conflict of interest code (Regulation 18730). Under the Act, a public official *makes* a governmental decision when the official, acting within the authority of his or her office or position:

- ◆ 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;

(Regulation 18702.1(a), copy enclosed.)

A public official *participates* in making a governmental decision when, acting within the authority of his or her position, the official:

“(a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision...”

“(b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

“(1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision...” or

“(2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision....”

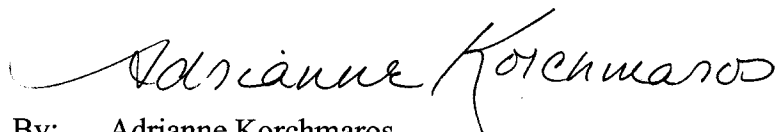
(Regulation 18702.2, copy enclosed.)

Because the commission has the power to adjust the rent ceiling, require registration of manufactured home parks (which also requires the registrants to pay a fee), conduct investigations, and adopt administrative regulations, the commission members appear to be involved in making governmental decisions which could affect their financial interests. Therefore, if these are the facts, the city should amend its conflict of interest code to include the commission members or develop a separate conflict of interest code for the commission. (Section 87301.)

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

Sincerely,

Luisa Menchaca  
General Counsel



By: Adrienne Korchmaros  
Political Reform Consultant

Enclosures