



FAIR POLITICAL PRACTICES COMMISSION

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February 13, 2002

Grace Johnson
Deputy City Clerk
City Hall
10300 Torre Avenue
Cupertino, CA 95014-3255

**Re: Your Request for Informal Assistance
Our File Number I-01-301**

Dear Ms. Johnson:

This letter is in response to your request for written advice regarding the conflict of interest code provisions of the Political Reform Act (the "Act").¹ 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). Therefore, we are only 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.²

QUESTION

Are Teen Commission members for the City of Cupertino required to file a Statement of Economic Interests?

CONCLUSION

Except for those officials listed in Section 87200, only those individuals holding positions included in an agency's conflict of interest code are required to file a Statement of Economic Interests under the Act. However, you did not provide sufficient

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

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

information for us to assist you in determining whether members of the Teen Commission are members of a decisionmaking board for the City of Cupertino who should be included in the city's conflict of interest code. (Please see the Analysis section of this letter for a discussion of which positions must be included in a conflict of interest code.)

FACTS

The city council for the City of Cupertino has established a Teen Commission "to assist city staff in the development, promotion, and evaluation of teen programs and activities to enhance the growth and development of youth." Each of the 12 members will serve one-year terms and be appointed by the city council. The Department of Parks and Recreation for the city will provide staff support.

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 those 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 decisionmaking 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 to be 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 “[a]ny 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. Subdivision (a) of 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 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.”

The FPPC staff has advised on several occasions that if there is a history or track record of “rubber stamping” an advisory body's recommendations, the advisory body will be considered to have decisionmaking authority. (See, e.g., *Baird* Advice Letter, No. A-94-299; *Czach* Advice Letter, No. A-91-503; *Ball* Advice Letter, No. I-89-671.)


We have advised in the past new advisory bodies that they are, in fact, solely advisory until a history of recommendations has been established (*Ball, supra.*). Once there is a history of a particular advisory body's recommendations being routinely accepted without amendment or modification, the body converts from a solely advisory function to one of making or participating in the making of a governmental decision and must be incorporated into a conflict of interest code. With regard to your question, since we have no information concerning the commission, we are not able to assist you in determining if including its members in the city's conflict of interest code is or is not appropriate. If, at this time, the commission functions as “advisory,” the members are not designated employees and therefore, they would not be public officials subject to the reporting provisions of the Act. On the other hand, if they are members of a board with

decisionmaking authority and they make or participate in governmental decisions as defined in 18702.1 or 18702.2, they should be included in a code.

If you have any additional questions, please feel free to call me toll-free at (866) 275-3772.

Sincerely,

Luisa Menchaca
General Counsel


By: Kevin S. Moen, PhD
Political Reform Consultant II

KSM:jg

Enclosure