



FAIR POLITICAL PRACTICES COMMISSION

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November 6, 2002

Lindsay F. Nielson
Post Office Box 7540
Ventura, CA 93006

Re: Your Request for Advice
Our File No. A-02-147

Dear Mr. Nielson:

This letter is in response to your request, and that of the Ventura County Board of Supervisors, for advice regarding provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Does the Ventura County Treasury Oversight Committee, established pursuant to Government Code §§ 27130 et seq., perform a "solely advisory function" for purposes of the Act?
2. Are members of the Ventura County Treasury Oversight Committee "other public officials who manage public investments" within the meaning of § 87200?

CONCLUSIONS

1. The Commission cannot conclude, from the available facts, that the Ventura County Treasury Oversight Committee performs a "solely advisory function." The statute under which the Treasury Oversight Committee was formed plainly anticipates more than a purely advisory function.
2. So long as the oversight responsibilities of the Ventura County Treasury Oversight Committee does not require or authorize its members to undertake any of the functions listed in regulation 18701(b)(4), its members will not be classified as "other public officials who manage public investments" within the meaning of § 87200.

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

FACTS

Pursuant to Government Code section 27130 et seq., the Board of Supervisors of Ventura County created a "Treasury Oversight Committee" ("TOC"). Until recently, the TOC consisted of three members: (1) the treasurer-tax collector, (2) a member of the board of supervisors, and (3) the assistant county superintendent of schools, business and personnel. It is your understanding that each of these individuals files a statement of economic interests ("SEI") by reason of his or her primary office or position, and that those SEIs are sufficient to encompass any additional responsibilities relating to service on the TOC, if in fact service on the TOC requires filing an SEI.

Membership on the TOC was recently expanded by the board of supervisors' action to include one public member. You were appointed as this first public member.

Unlike the other members of the TOC, you were not a public official at the time of your appointment, and therefore you did not have an SEI already on file. You are not sure whether your membership on the TOC obligates you to file an SEI as a "designated employee," or whether you would now be considered a "public official who manages public investments" under § 87200. There was no time to resolve this question before the filing deadline, so you submitted an assuming office statement out of an abundance of caution, and have taken your seat on the TOC. The board of supervisors, which is the "code reviewing body" for the TOC under § 82011(b), is not sure how to answer the questions you raise, and joins in your request for advice on these points.

ANALYSIS

Under the Act, public officials disclose their economic interests each year on an SEI. Section 87200 identifies public officials who must report all of their economic interests. The list includes "other public officials who manage public investments." Under §§ 87300 et seq. officials not listed in § 87200 report economic interests as prescribed for employees "designated" by their agency's conflict of interest code.

Question 1.

The term "designated employee" is defined by the Act at § 82019, as pertinent to your inquiry, as follows:

"Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency;

¶...¶

"(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest..."

The last paragraph of this statute contains an important proviso to subdivision (c):

“‘Designated employee’ does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.”

Assuming that you do not receive a salary for your service on the TOC, you would not be a “designated employee” with filing obligations under Article 3 if the TOC serves a “solely advisory function.”

A board or commission is “solely advisory” when it does not possess decisionmaking authority as defined by Regulation 18701(a)(1). (*In re Rotman* (1987) 10 FPPC Ops. 1.) Regulation 18701(a)(1) explains further:

“(a) For purposes of Government Code Section 82048, which defines ‘public official,’ and Government Code Section 82019, which defines ‘designated employee,’ the following definitions apply:

“(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.”

Your letter does not elaborate on the details of the TOC’s functions, although you observe that only the board of supervisors may make “policy changes.” But even if we assume, for purposes of this analysis, that the TOC does not have decisionmaking authority relative to investment policy, we cannot rule out the possibility that the TOC may have decisionmaking authority in other matters. We note, in particular, that Government Code § 27134 seems expressly to confer decisionmaking authority on the TOC, by providing:

“The county treasury oversight committee shall cause an annual audit to be conducted to determine the county treasury’s compliance with this article. The audit may include issues relating to the structure of the investment portfolio and risk.”

The FPPC does not interpret bodies of law outside the Political Reform Act, and it does not do so here. However, we cannot overlook the existence of a statute whose plain meaning signals an apparently unqualified delegation of audit responsibilities to the TOC. The statute does not simply call for advice or recommendations concerning an audit, and it seems clear that the statutory scheme creating the TOC anticipates some level of genuine oversight, beyond mere advice that the board of supervisor’s investment decisions be audited as and how the *board* sees fit.

We cannot conclude, from the facts available to us, that the TOC has nothing more than the “solely advisory function” referenced in the last paragraph of § 82019. To the contrary, it appears that the TOC must assume at least some decisionmaking responsibility, at least with respect to audit oversight.

Question 2.

Public officials who are “designated employees” of a governmental agency may also have disclosure obligations under § 87200 if they are “other public officials who manage public investments.” Regulation 18701(b) provides guidelines for determining which persons are “other public officials who manage public investments:”

“(b) For purposes of Government Code Section 87200, the following definitions apply:

“(1) ‘Other public officials who manage public investments’ means:

“(A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;

“(B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and

“(C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed

by the public officials described in subdivision (b)(1)(B) above.

“(2) ‘Public investments’ means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

“(3) ‘Public moneys’ means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

“(4) ‘Management of public investments’ means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.”


Members of the TOC would meet the definition set out in subdivision (b)(1)(A), if they exercise responsibility for the “management of public investments.” This last term is defined at subdivision (b)(4). Your account of the facts does not indicate that members of the TOC direct the investment of public moneys, formulate or approve investment policies, approve or establish guidelines for asset allocations, or approve investment transactions. Instead, your account of the facts indicates that the TOC acts to oversee (and audit) such actions by the board of supervisors.

So long as the TOC’s oversight function does not require or authorize TOC members to undertake any of the functions listed in Regulation 18701(b)(4), they will not be classified as “persons who manage public investments” under § 87200.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
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