



## FAIR POLITICAL PRACTICES COMMISSION

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January 15, 2004

Mary Tobias Weaver  
Quality Education Commission  
1430 N Street, Suite 5609  
Sacramento, CA 95814-5901

**Re: Your Request for Advice  
Our File No. A-03-225**

Dear Ms. Weaver:

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

### QUESTIONS

1. Is the QEC subject to the conflict of interest code provisions of the Act?
2. Are the QEC members required to file under the provisions of section 87302.6 until such time as a conflict of interest code is approved?

### CONCLUSIONS

1. The QEC is a state agency required by section 87300 to formulate and adopt a conflict of interest code.
2. The members of the QEC are required to disclose their economic interests under the provisions of section 87302.6 until such time as a conflict of interest code has been promulgated by the QEC and approved by the Fair Political Practices Commission.

### FACTS

The Quality Education Commission was created by Education Code Section 64201 et seq., to develop, evaluate, validate and refine a quality education model for

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

prekindergarten through grade 12. Specifically, the QEC has responsibility for developing a quality education model and then developing recommendations in a report to the Legislature and the Governor no less than 12 months after the QEC first convenes. The report shall include recommendations for any statutory changes to conform the existing school finance structure to the model proposed in the report. When the QEC delivers its report, it will then act as a standing commission to test its model, refine the means to account for missing elements in the educational system, develop capacity for using the model, and make further recommendations to improve the state's data collection system. The QEC shall remain in effect only until January 1, 2008, unless a later enacted statute, deletes or extends that date.

The QEC will have an initial operational budget of \$500,000 from donations made by the William and Flora Hewlett and the Bill and Melinda Gates foundations. The two foundations are in the final processes of providing funding to the California Department of Education – the agency that agreed to house the commission.

In addition to the facts provided in your request for advice, you advised us in a November 6, 2003, telephone conversation that the QEC will be appointing an executive director to run the day-to-day activities of the QEC.

#### ANALYSIS

The first question posed by your advice letter is whether QEC is a state agency. We conclude that QEC is a state agency. (Section 82049; *In re Vonk* (1981) 6 FPPC Ops. 1; *Doi* Advice Letter, No. A-02-025.) According to your facts, the QEC was created to develop a quality education model and develop recommendations to the Legislature and the Governor for statutory changes to conform the existing school finance structure to the quality education model proposed in the report. Once the initial report is issued, 12 months after the QEC convenes, it will make further recommendations for improvements to the state's data-gathering systems and will sunset on January 1, 2008, unless a statute deletes or extends that date. In addition, the QEC is empowered to appoint an executive director. Accordingly, the QEC is a state agency and the QEC must start the process described in regulation 18750 to adopt a conflict of interest code.<sup>2</sup>

A conflict of interest code 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.) Public officials, such as employees of governmental agencies, members of boards or commissions, or consultants of a state or local governmental agency, disclose their financial interests in accordance with the conflict of interest code developed by their respective agency. (See sections 87300 - 87313.)

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<sup>2</sup> Regulation 18751 (copy enclosed) governs the procedures and standards for requesting an exemption from the requirement to adopt a conflict of interest code. Such requests are submitted to the Commission's Executive Director.

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.) This furthers the goal of the Act that public officials disclose all of their economic interests which could foreseeably be affected by the exercise of their duties. (Section 81002(c) and sections 87200-87313.)

Persons 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 who serves in a solely advisory function. (Section 82019.)

For purposes of determining disclosure requirements of designated employees under section 82019,<sup>3</sup> subdivision (a)(1) of regulation 18701 defines a member as follows:

“‘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.”

The second question posed in your letter is whether the members of QEC must file statements of economic interests. It is possible that an agency must adopt a conflict of interest code while its members have no filing obligations under the Act. For example, an agency may have an executive director, but members of the board or commission of that agency may not hire that person, and serve solely in an advisory function. In that case, the agency must have a conflict of interest code, but the members may not have filing obligations under regulation 18701. Under your facts, the QEC members have appointing authority and therefore make governmental decisions within the meaning of regulation 18701. Therefore, the conflict of interest code you develop should include them.

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<sup>3</sup> This regulation also applies to determine if individuals are “public officials” for purposes of the disqualification rules of the Act. (Sections 82048 and 87103.)

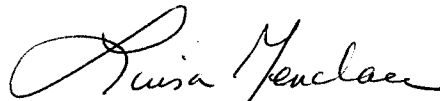
Please note that the QEC is subject to the provisions of section 87302.6, which requires that all members of newly created agencies file statements of economic interests within 30 days of assuming office. The statements must disclose all economic interests until a conflict of interest code is approved by the Fair Political Practices Commission. (Section 87302.6; regulation 18754, enclosed.) These statements must disclose:

All interests in real property within the jurisdiction of the Agency, as well as investments, business positions and sources of income, including gifts, loans and travel payments.

You can direct your board members to the Form 700, Statement of Economic Interests, on our web site at [www.fppc.ca.gov](http://www.fppc.ca.gov). At the home page, they should go to "Forms" in the upper right-hand corner. They would then scroll to the Form 700 interactive version and complete those schedules that are necessary to reflect their economic interests. The interactive form should then be printed out and filed with you. Once you have received the original statements from your board, make a copy for your files and submit the originals to the Fair Political Practices Commission to the attention of Emily Bowden. If your members have in fact assumed office and the 30-day deadline to file has expired, please ask that the statements be completed and filed with you within 30 days of the date of this letter.

We previously sent to you regulation 18750, which is the regulation that describes the procedure an agency must follow to adopt a code, along with additional information to assist you in the code adoption process. If you have any questions regarding this process, please feel free to contact the Technical Assistance Division at (916) 322-5660.

Sincerely,



Luisa Menchaca  
General Counsel

Enclosure

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