



FAIR POLITICAL PRACTICES COMMISSION

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April 15, 2005

Garith W. Krause
General Manager
Merced Irrigation District
744 West 20th Street
P.O. Box 2288
Merced, CA 95344-0288

**Re: Your Request for Advice
Our File No. A-05-036**

Dear Mr. Krause:

This letter is in response to your request on behalf of the Merced Irrigation District ("MID"), for advice regarding the conflict-of-interest code provisions of the Political Reform Act (the "Act").¹

QUESTION

Is the Fair Political Practices Commission (the "Commission") or the Merced County Board of Supervisors the appropriate conflict-of-interest code reviewing body for MID?

CONCLUSION

Because the MID is not a multi-county agency, the appropriate conflict-of-interest code reviewing body for MID is the Merced County Board of supervisors.

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

FACTS

The question recently arose as to whether or not Merced Irrigation District ("MID") is actually a multi-county agency or a county agency for purposes of the Act. Since the 1970s, MID has been submitting its conflict-of-interest code for the Commission to review as a multi-county agency. After the issue of MID's status was raised, Commission staff requested that a representative of MID ask for written advice to determine the answer.

Although the political boundaries of MID are entirely within the County of Merced, MID owns and operates the Merced River Hydroelectric Project facilities including Lakes McClure and McSwain, New Exchequer and McSwain Dams, and recreational facilities located entirely within Mariposa County. MID sells electric power from these facilities to Pacific Gas & Electric and distributes irrigation water from these facilities into Merced County serving MID farmers. MID does deliver a small quantity of wholesale water to the Lake Don Pedro Community Services District. This water is treated by the Lake Don Pedro Community Services District for domestic use by its customers in Mariposa County.

Only registered voters residing within MID's political boundaries, the County of Merced, are eligible to vote in district elections. Additionally, the MID was defined as a single county agency for the purposes of the state's appropriation of residual property tax revenue from special districts in 1993.

ANALYSIS

The Act, specifically section 87300, requires every state and local government agency to adopt a conflict-of-interest code ("code"). The code must enumerate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest held by the person filling the position. Further, the code specifies which financial interests must be disclosed by persons holding those positions designated in the code -- all with a view to avoiding conflicts of interest. (Sections 87300-87302.) MID has a code which is not in question. Rather, the issue addressed in your request for advice is whether or not the Commission should continue as the code reviewing body for MID or if the Merced County Board of Supervisors should take over the responsibility.

Pursuant to section 82011, "code reviewing body," as it relates to a county agency versus a multi-county agency, means the following:

"(a) The [C]ommission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, or any local government agency with jurisdiction in more than one county.

(b) The board of supervisors, with respect to the conflict-of-interest code of any county agency other than the board of supervisors, or any agency of the judicial branch of government, and of any local government agency, other than a city agency, with jurisdiction wholly within the county.”

The jurisdiction of a local government agency is “. . . the region, county, city, district or other geographical area in which it has jurisdiction” (Section 82035.) Thus, to answer the question of whether or not MID is a multi-county agency subject to the Commission’s review or a county agency subject to the Merced Board of Supervisors’ review, we must ascertain the meaning of “jurisdiction” as it applies to an agency.

Although previous Commission advice letters have determined whether an agency principally located within one county has jurisdiction² in another county by looking at whether the agency owns real property in the other county, the second prong of the analysis employed in these letters is to assess the extent to which the agency has authority in another county. (*Zimring* Advice Letter, No. A-90-167; *de Bortnowski* Advice Letter, No. I-90-356; *Woliver* Advice Letter, No. A-84-123.) In the *Zimring* advice letter, a school district principally located in one county annexed a small portion of another county and was declared a multi-county agency. We distinguish that situation from the situation of MID because, in the *Zimring* letter, the political boundary of the school district was presumably expanded when it acquired a section of another county. We assume that the residents of the annexed portion of the other county were able to vote in school district matters and were entitled to receive services provided by the school district. MID, however, is under no obligation to provide services to residents of Mariposa County and only sells some water, pursuant to a contract, to certain residents of Mariposa County. Likewise, residents of Mariposa County do not have voting rights regarding MID.

Because it is apparent that, although MID owns property in Mariposa County, its authority and its political boundary are solely within Merced County, we conclude that the jurisdiction of MID is Merced County. Further, section 87301 states that “it is the policy of the [A]ct that Conflict of Interest Codes be formulated at the most decentralized level possible.” In view of this mandate and the fact that the jurisdiction of MID is Merced County, Merced County Board of Supervisors is the “code reviewing body” for the MID conflict-of-interest code.³

² The American Heritage Dictionary of the English Language, Fourth Edition, defines jurisdiction as the “territorial range of authority or control” of an entity while Merriam-Webster’s Dictionary of Law 1996 similarly defines jurisdiction as “the limits or territory within which authority may be exercised.”

³ Please note that this conclusion is in no way intended to contradict the reporting requirements pertinent to real property interests found in section 82035 that specify that “real property shall be deemed to be ‘within the jurisdiction’ with respect to a local government agency if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency.”

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

Sincerely,

Luisa Menchaca
General Counsel


By: Adrienne Korchmaros
Political Reform Consultant II

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