



FAIR POLITICAL PRACTICES COMMISSION

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November 21, 2006

Janet E. Bender
Deputy County Counsel
Office of the County Counsel
County of Sutter
1160 Civic Center Blvd., Suite C
Yuba City, CA 95993

**RE: Your Request for Advice
Our File No. A-06-184**

Dear Ms. Bender:

This letter is in response to your request on behalf of Sutter-Yuba Mental Health Services ("SYMHS") for advice regarding the conflict-of-interest code provisions of the Political Reform Act (the "Act").¹

QUESTION

For purposes of determining the code reviewing body for SYMHS, you ask whether SYMHS may be considered a single-county agency, with the Sutter County Board of Supervisors as the code reviewing body, as opposed to its current designation as a multi-county agency, with the Fair Political Practices Commission as the code reviewing body.

CONCLUSION

SYMHS meets the definition of a multi-county agency. Thus, the Fair Political Practices Commission will act as the agency's code reviewing body. Since it appears we have never approved a conflict-of-interest code for SYMHS, you must follow the procedures outlined in regulation 18750.1 (copy enclosed) in order to have a conflict-of-interest code approved.

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

FACTS

Your office represents Sutter-Yuba Mental Health Services. SYMHS is currently considered to be a multi-county agency for purposes of the conflict-of-interest code provisions of the Act.

SYMHS operates a bi-county mental health program under a "Joint Exercise of Powers Agreement between the counties of Yuba and Sutter for the operation of a bi-county mental health department" ("JPA").

Pursuant to the JPA, SYMHS provides services to both Sutter and Yuba County residents, for which the two counties share the costs and liabilities. However, only Sutter County administers and operates SYMHS, and all employees of SYMHS are Sutter County employees. The California State Department of Mental Health treats Sutter and Yuba Counties separately in determining county financial match requirements.

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 that involve the making or participation in the making of decisions that 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.) The issue addressed in your request for advice is whether the Commission should be the code reviewing body for SYMHS or if the Sutter County Board of Supervisors should be the code reviewing body.

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.)

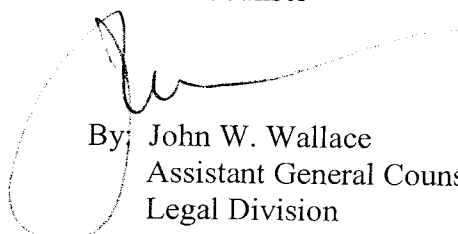
Thus, to answer the question of whether SYMHS is a multi-county agency subject to the Commission's review or a county agency subject to the Sutter County Board of Supervisors' review, we must ascertain the meaning of "jurisdiction" as it applies to an agency.

Although previous Commission advice letters have determined whether an agency principally located within one county has jurisdiction 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. (*Krause* Advice Letter, No. A-05-036; *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 in part because the residents of the annexed portion of the other county were entitled to receive services provided by the school district. Likewise, as stated in your request for advice, Sutter County provides services to Yuba County residents. Thus, we conclude that SYMHS is a multi-county agency whose conflict-of-interest code must be approved by the Commission.

You should contact our Technical Assistance Division (TAD) at (916) 322-5660 if you have other questions on this matter.

Sincerely,

Luisa Menchaca
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division

Enclosure

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(Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations)

18750.1. Procedures for the Promulgation and Adoption of Conflict of Interest Codes for Local Government Agencies with Jurisdiction in More Than One County

(a) Unless otherwise modified, the term "agency" as used in this section shall refer to a local government agency with jurisdiction in more than one county. The term "Commission" as used in this section shall refer to the Fair Political Practices Commission.

(b) An agency proposing a conflict of interest code or an amendment to an existing code, other than a nonsubstantive amendment, shall follow the procedures described in this section. An agency proposing a nonsubstantive amendment shall follow the procedures described in 2 Cal. Code of Regs. Section 18752.

(c) Every agency which proposes to adopt a conflict of interest code or to amend its existing code shall:

(1) Conduct a public hearing or establish a written comment period.

(2) Prepare an initial proposed code or an initial proposed amendment.

(3) Prepare a notice of intention to adopt a conflict of interest code, or to amend an existing code. This notice shall:

(A) Describe the proposed code or amendment in general terms and if the proposed action includes amendments to an existing code, include a concise, clear summary of the provisions of the existing code, if any, which will be affected by the proposed amendments, and a summary of how those provisions will be affected by the proposed amendments;

(B) State that copies of the proposed code or amendment are available to interested persons and indicate where the copies may be obtained;

(C) Specify the location where written comments concerning the proposed code or amendments may be submitted;

(D) Specify the date by which comments submitted in writing relating to the proposed code or amendments must be received in order for them to be considered by the agency before it adopts or amends the code;

(E) State the time and place of any public hearing that is scheduled on the proposed code or amendment; or if a public hearing on the proposed code or amendment is not scheduled, include a statement that any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing;

(F) State the name and telephone number of an agency officer to whom inquiries concerning the proposed code or amendment may be directed;

(G) State that the agency has prepared a written explanation of the reasons for the designations and the disclosure responsibilities, and has available all of the information upon which its proposal is based.

(4) File a copy of the notice with the Commission at least 45 days before the public hearing or close of the comment period.

(5) Provide notice pursuant to the requirements of Government Code Section 87311, including providing a copy of the notice to each employee of the agency affected by the proposed code or amendment at least 45 days before the hearing or close of the comment period by serving the employees individually with a copy of the written notice, by posting the notice on employee

bulletin boards, or by publishing the notice in an employee newsletter.

(6) Make the exact terms of the proposed code or amendment available for inspection and copying to interested persons for at least 45 days prior to the public hearing or the close of the comment period.

(7) Accept written comments from interested persons through the conclusion of the public hearing or the close of the comment period.

(d) If the procedures set forth in subsection (c) have been followed, a proposed code or amendment, which has been changed or modified from that which was made available to the public, may, without further notice or hearing, be adopted if the code or amendment adopted is substantially similar to the initially proposed code or amendment and all employees affected by the proposed code or amendment as adopted by the agency had adequate notice.

(e) The agency shall submit three copies of the final proposed code or of the existing code with the final proposed amendment in ~~strikeout~~/underline form to the Commission accompanied by one copy of the following:

(1) For a code or amendment:

(A) A declaration by the chief executive officer of the agency declaring that the Code specifically enumerates each of 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 and the agency has satisfied the requirements of subsection (c) preliminary to formulation of the Code;

(B) A summary of any hearing held by the agency with appropriate identification of any areas of controversy and the manner of their resolution;

(C) Copies of all written submissions made to the agency regarding the proposed Code or amendment, unless the person making the written submission requests its omission;

(D) A written explanation of the reasons for the designations and the disclosure responsibilities of officers, employees, members or consultants of the agency. In the case of an amendment, provide a written justification for any changes including all changes in or additions to the designations or disclosure responsibilities;

(E) The names and addresses of all persons who participated in any public hearing of the agency on the proposed code or amendment and all persons who requested notice from the agency of the date of the Commission hearing on the adoption of the code or amendments;

(F) The most current organizational chart of the agency;

(G) Job descriptions for all designated employees or employees newly designated by the amendment.

(2) For a new conflict of interest code:

(A) A copy of a joint powers agreement or a copy of the statutory authority under which the agency was created with specific citations to the provisions setting forth the duties and responsibilities of the agency;

(B) A copy of the last annual or regular report prepared by the agency or submitted by the agency to the person or body to whom the agency reports or, if there is no report, copies of recent minutes of agency meetings;

(C) A brief description of the duties and the terms of all consultants working for the agency who are not designated employees.

(f) When an agency proposes a new conflict of interest code or an amendment to an existing code, the Executive Director shall either:

(1) Prepare a notice which specifies the establishment of a written comment period; includes a statement that any interested person, or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing; specifies the date by which comments submitted in writing must be received in order for them to be considered; includes a clear and concise summary of the proposed action; provides the name and telephone number of the agency officer to whom inquiries concerning the proposed action may be directed and that the text of the proposed code or amendment is available for inspection and copying at the agency and at the Commission offices. This notice shall be sent to the agency and to all persons who have requested notice at least 45 days before the close of the written comment period; or

(2) Return the proposed code or amendment to the agency with written recommendations for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection (h) of this regulation.

(g) If no hearing is requested as set forth in subsection (f)(1) above, the Executive Director at the end of the 45-day written comment period shall either:

(1) Approve the code as submitted; or

(2) Return the proposed code or amendment to the agency for revision. Any agency which objects to the recommendations for revision may request a full hearing by the Commission pursuant to subsection (h) of this regulation.

(h) If a public hearing on this matter has been requested, the Commission shall afford any agency or interested person or his or her duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing on, or prior to, the date of the hearing. Oral testimony shall be encouraged; however, oral statements may be limited at the discretion of the Chairman. The Commission shall consider all relevant matters presented to it prior to and during the public hearing, or appearing on the record of such hearing prior to taking action on the proposed code or amendment.

(i) After a full hearing as provided herein above, the Commission shall:

(1) Approve the proposed code or amendment as submitted and return the code or amendments to the agency;

(2) Revise the proposed code or amendment and approve it as revised; or

(3) Direct the Executive Director to return the proposed code or amendment to the agency for revision and resubmission within 60 days.

(j) If a code or amendment is approved, the Executive Director shall return a copy of the code or amendment to the agency with notification of approval.

(k) A conflict of interest code or amendment to a code shall become effective on the thirtieth day following the approval of the code or amendment.

(l) Each agency's code shall be maintained in the office of the chief executive officer of the agency, who shall make the code available for public inspection and reproduction during regular business hours commencing the effective date of the code. No conditions whatsoever shall be imposed upon persons desiring to inspect the conflict of interest code of the agency, nor shall any information or identification be required from such person. Copies shall be provided at a charge not to exceed ten cents (\$.10) per page.

(m) The Commission shall maintain copies of each agency's code for public inspection and copying at its offices in Sacramento, California.

Note: Authority: Section 83112, Gov. Code
Reference: Sections 87300, 87303, and 87306, Gov. Code

History

- (1) New section filed 5-18-87; effective upon filing.
- (2) Amendment filed 4-21-92; effective thirtieth day thereafter.