



FAIR POLITICAL PRACTICES COMMISSION

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March 13, 2007

Elizabeth McGie
Chief Deputy County Counsel
Office of County Counsel
County of Butte
25 County Center Drive
Oroville, CA 95965-3380

**RE: Your Request for Informal Assistance
Our File No. I-06-207**

Dear Ms. McGie:

This letter is in response to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act"),¹ and specifically, the requirements that public agencies adopt conflict of interest codes that designate which public officials are required to file statements of economic interest. Because your request is general in nature, we are treating your request as one for informal assistance.²

QUESTIONS

1. Is the County of Butte Indian Gaming Local Community Benefit Committee (the "Committee") required to adopt a conflict of interest code?
2. If so, which positions should be designated as requiring disclosure?
3. What disclosure category applies to those positions that require designation in the code?
4. Where are the statements of economic interest required to be filed?

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

² Pursuant to regulation 18329, subdivision (c)(3)(copy enclosed), informal assistance does not confer immunity.

5. Are members or employees who are already required to file a statement of economic interest by virtue of their membership on or employment with another county agency required to file with both agencies?

6. Is the Committee or its members exempt from the requirements of the Political Reform Act under a claim that tribal sovereignty supersedes the Act?

CONCLUSIONS

1. The Committee is a local agency and is required to adopt a conflict of interest code.

2. and 3. The determination as to which positions should be designated in the code and the disclosure categories for each position designated must be made by the code reviewing body, in this case, the County Board of Supervisors.

4. The statements of economic interests are to be filed with the agency and/or the code reviewing body as provided in section 87500, subdivisions (j) and (o) and as determined by the code reviewing body.

5. Whether members or employees who are already required to file a statement of economic interest by virtue of their membership on or employment with another county (or city) agency are required to file, or not, with both agencies is determined by the provisions of the conflict of interest code adopted by the code reviewing body.

6. No. Any individual performing functions as a public official is subject to the provisions of the Act.

FACTS

The Committee is composed of seven members: two representatives from the county appointed by the Butte County Board of Supervisors, designated by district; three elected representatives from cities located within four miles of a tribal casino in the county and appointed by the county board of supervisors based upon nominations from the city councils; and two representatives selected upon the recommendations of a majority of the tribes paying into the Indian Gaming Special District Fund in the county. In addition to these seven members, the Committee is staffed by a representative of the county's chief administrative office, (the county compliance officer), who is a designated employee under the county's conflict of interest code.

The Committee's duties, as set forth in its bylaws (Article V, Section 1), include those duties as stated in Government Code sections 12710 through 12718. More specifically:

- "a. Select all grants for funding from Each Individual Tribal Casino Account or County Tribal Casino Account.
- "b. Ensure that the following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts; law enforcement, fire services; emergency medical services, environmental impacts, water supplies; waste disposal; behavioral health; planning and adjacent land uses; public health; roads, recreation and youth programs, and child care programs.
- "c. Establish all application policies and procedures for grants from the Individual Casino or Tribal Casino Account.³
- "d. Assess the eligibility of applications for grants from local jurisdictions, within the County, impacted by gaming operations.
- "e. Determine the appropriate amount for reimbursement, from the aggregate County tribal account, of the demonstrated costs incurred by the County for administering the grant programs.
- "f. Submit to the State Controller a list of approved projects for funding from the Individual Tribal Casino Accounts.
- "g. Prepare and submit an annual report to the County Board of Supervisors each year detailing the specific projects funded by all grants from the Indian Gaming Special Distribution Fund."

The current bylaws also require that all members of the Committee be required to file statements of economic interest, but the bylaws may be amended.

In a telephone message you left on February 7, 2007, you stated that the Committee has one staff member, who is a full time county employee. The staff member receives a county salary and tracks time, which is reimbursed from the funds received into the tribal casino accounts. While the members of the Committee do not receive additional compensation for their participation on the Committee, their time is compensated as part of their county salaries.

³ The language in subsection c. as quoted herein is taken directly from the bylaws provided rather than from your letter, as the language quoted in the letter does not reflect what it purports to quote.

ANALYSIS

Question One: Is the County of Butte Indian Gaming Local Community Benefit Committee required to adopt a conflict of interest code?

State and local agencies are required to adopt a conflict of interest code designating those positions within the agency that involve the making of governmental decisions and requiring officials and employees holding those positions to file a Form 700 (Statement of Economic Interests) disclosing certain financial interests. (Sections 87300 and 87302; *Miles* Advice Letter, No. A-05-162.)

Section 87300 requires every agency to “adopt and promulgate” a conflict of interest code pursuant to the provisions of the Act. Section 82003 defines “agency” to include “any state or local government agency.” Section 82041 defines “local government agency” to mean “a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”

The inquiry here is whether the Committee is a local government agency. Generally, the Commission applies the analytical framework set forth in its opinion in *In re Siegel* (1977) 3 FPPC Ops. 62, to assist in making this determination. (*Weiss* Advice Letter, A-01-122.) However, the *Siegel* factors are not applicable to your facts because *Siegel* dealt with determining whether *local* entities were public (governmental) or private (non-governmental) in character. The Commission has traditionally treated entities formed pursuant to a statute, by virtue of the statute enabling it, to clearly constitute a local government agency. (*Weiss* Advice Letter, *supra*; *Crabb* Advice Letter, No. A-97-575.) When we have advised that such entities are clearly public, it is not necessary to apply the *Siegel* criteria to determine that they are public agencies within the meaning of the Act. (*Siegel* Advice Letter, No. A-81-015, *Alperin* Advice Letter, No. I-94-177.)

As a public agency under the Act, the Committee is required to adopt a conflict of interest code that sets forth appropriate financial disclosure categories for its members and any employees or consultants who engage in the decision-making process. (Section 87302.)

Questions Two and Three: Which positions should be designated in the conflict of interest code as requiring disclosure and what disclosure categories apply to those positions that require designation in the code?

Section 87301 provides that a conflict of interest code shall be formulated at the “most decentralized level possible.” Section 87302 provides the required provisions that shall be contained within a conflict of interest code. Regulation 18329.5(a)(3)(B) provides that the Commission shall not render formal written advice or informal assistance regarding the application of an agency's conflict of interest code to specific

individuals when the Commission is not the code reviewing body unless the agency first requests a determination from the code reviewing body for such conflict of interest code. Thus, this determination is first to be made by the county board of supervisors as the code reviewing body.⁴ (Sections 87301 and 82011; see also regulation 18329.5; *Carlile* Advice Letter, I-05-246.) Additionally, section 82019 provides the definition of “designated employee” and includes positions that “entail the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” (See also *In re Alperin*, 3 FPPC Ops., copy attached.)

Question Four: Where are the statements of economic interest required to be filed?

Section 87500 identifies where statements of economic interests are to be filed. Subdivision (j) provides that for members of boards or commissions not under a department of state government or not under the jurisdiction of a local legislative body the original statement shall be filed “with the agency, which shall make and retain a copy and forward the original to the code reviewing body which shall be the filing officer. In its discretion, the code reviewing body may provide that the original be filed directly with the code reviewing body and that no copy be retained by the agency.”

The Butte County Board of Supervisors is the code reviewing body for county agencies and local government agencies with jurisdiction wholly within the county. (Section 82011(b).) Because the Committee is not under the direct jurisdiction of the board, section 87500(j) requires that the Board of Supervisors be the filing officer for the Committee members, as well as for any head of the agency. (See *Grunwald* Advice Letter, No. I-00-183a; *Herman* Advice Letter, No. 05-009.) For designated employees who are not members of the Committee and are not deemed to be agency heads, section 87500(o) governs where statements must be filed:

“Persons not mentioned above - one original with the agency or with the code reviewing body as provided by the code reviewing body in the agency’s conflict of interest code.”

Question Five: Are members or employees who are already required to file a Statement of Economic Interest by virtue of their membership on or employment with another county agency required to file with both agencies?

Regulation 18730 addresses the provisions of conflict of interest codes, and provides model provisions which, if incorporated by reference along with the designation of employees and the formulation of disclosure categories in the appendix constitutes the

⁴ Section 82011 defines “Code Reviewing Body” under subdivision (b) as: [t]he 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, or any local government agency with jurisdiction in more than one county.”

adoption and promulgation of a conflict of interest code within the meaning of section 87300. Under the terms of a conflict of interest code amended or adopted and promulgated pursuant to that regulation, section 3 provides:

“This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

“In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

“(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

“(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

“(C) The filing officer is the same for both agencies.¹

“Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee’s disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.”

In other words, under the model conflict of interest code found in regulation 18730, if adopted, county officials who are section 87200 filers and are members of the Committee will not have to file a separate statement if they are designated in the code in the same capacity nor will county designated employees if they are designated in the code in the same capacity. City officials, however, must file a separate statement⁵ because the jurisdiction of the agency (the county) is not “the same as or wholly included within the jurisdiction [the city] in which those persons must report their economic interests”

⁵ The Form 700 includes instructions for public officials holding more than one position to file a single “expanded” statement.

pursuant to the city conflict of interest code. We highly recommend that these model provisions be adopted.

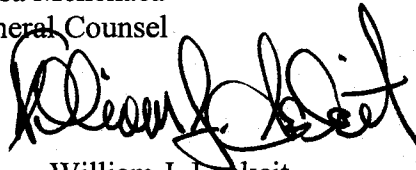
Question Six: Is the Committee or its members exempt from the requirements of the Political Reform Act under a claim that tribal sovereignty supersedes the Act?

No. Any individual serving in a capacity as a member of a public agency is not exempt from the provisions of the Act.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "William J. Lenkeit", written over the typed name below.

By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl
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Enclosure