



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

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July 27, 2009

Stephen M. Brammer
Jud Waggoman
Yuba-Sutter Economic
Development Corporation
312 1/2 First Street
Marysville, CA 95901

**Re: Your Request for Advice
Our File No. A-08-205a**

Dear Messrs. Brammer and Waggoman:

This letter responds to the request of the Yuba Sutter Economic Development Corporation (YSEDC) and Steven Brammer for reconsideration of advice regarding the YSEDC's responsibilities under the Political Reform Act (the "Act").¹ This letter is based on the facts presented by the YSEDC and its member agencies; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Is the Yuba-Sutter Economic Development Corporation ("YSEDC") a "local government agency" for purposes of the Act?

CONCLUSION

Yes. YSEDC is a local government agency under the Act. Consequently, the YSEDC must submit a proposed conflict of interest code to their code reviewing body (the Commission) within six months of the date of this letter.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

PROCEDURAL BACKGROUND

- In a letter dated December 8, 2008, Stephen M. Brammer requested advice on behalf of YSEDC concerning its duties under the Act.
- On February 3, 2009, after numerous telephone conversation and emails providing additional facts, the Commission issued *Brammer* Advice Letter A-08-205 which concluded that the YSEDC was indeed a public agency and was required to comply with the Act.
- On February 20, 2009, Mr. Brammer wrote and stated the following:

“Yesterday I received a letter from Lynda Cassady of your office requesting that we establish a conflict of interest policy and outlining steps your agency requires to accomplish that task. The final step in this process appears to be a requirement that we obtain a completed Form 700 from every director, employee, committee member and consultant/contractor we do business with.

“After receiving your letter dated February 8, 2009 advising me that the FPPC considers Yuba-Sutter Economic Development Corporation a government agency, I referred this matter to legal council [sic] for review and advice. As I mentioned before, I find it nearly in comprehensible that anyone could consider YSEDC a government agency. We certainly don’t look at ourselves that way nor do any of our local jurisdictions consider us a governmental agency. I believe your decision is wrong on several levels and have asked council [sic] to advise me on how to challenge that decision.

“My immediate concern, however, is that Ms. Cassady’s letter also appears to impose a time limitation to perform tasks which I am not sure we really need to complete.

“Is there a process that allows us to challenge these decisions [sic] before we begin asking people to provide private financial information. Our board and committee members are all volunteers with the vast majority being private sector people. I have been told that many of them would choose to resign these volunteer positions rather than make their financial information public.”
- On February 25, 2009, we responded that “we can take another look at the facts (or new facts you may have). Please send me any facts you have that you think argues against the conclusion in our letter. Also, it would be useful to obtain a copy of your bylaws. I would think at this point the more info you can provide, the better. Once I receive your information, will discuss the case again with the General Counsel. In the interim we will ask our Technical Assistance Division to hold off any action on a conflict of interest code.”

- On March 28, 2009, we were forced to write Mr. Brammer again since we had not received any information from YSEDC to suggest that reconsideration of the original letter was appropriate. We stated: "On February 25, 2009, I asked for some additional information that will assist us in determining whether the YSEDC has the responsibility to adopt a conflict of interest code. As you recall, our first analysis of the facts provided concluded that YSEDC did need to create a code."
- On April 14, 2009, you responded and stated that YSEDC would not provide any additional information.
- On April 27, 2009, the Executive Director of the Commission responded, in pertinent part:

"The [February 3, 2009] advice letter has not been rescinded or suspended, and will not, absent new facts being presented. Thus, we have no choice but to begin efforts to bring YSEDC into voluntary compliance with the Act consistent with the conclusion in the letter.

"In an effort to make sure that we have not missed any facts pertinent to our analysis, we are contacting the member public agencies to gather additional facts while simultaneously seeking voluntary compliance."
- Since that time we have received additional information from Sutter and Yuba County, the Cities of Marysville, Yuba and Live Oak. Only the City of Wheatland failed to provide requested material. YSEDC has declined to provide any additional information. The new facts and analysis are set forth below.

FACTS

The facts from the original letter were as follows:

"According to the YSEDC website, the YSEDC is a 501(c)(3) non-profit, public benefit corporation and one of only six Economic Development Districts in the State of California as designated by the U. S. Department of Commerce, Economic Development Administration. YSEDC staff and resources are available to work closely and in strict confidence with businesses considering location or expansion within the Yuba-Sutter region. Assistance with site location, economic and demographic information, identification of a myriad of community and employment training service groups, community tours, introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals, as required, is available. According to your letter, the YSEDC also provides other services to the community including business recruitment, expansion and retention services, economic research, financial and technical assistance, loan administration, and special projects.

“The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC’s 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC’s chief operating officer and the executive director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors. On January 26, 2009, you clarified that no one on your staff is employed by any city or county.

“While the YSEDC was initially funded during the 1995/1996 fiscal year predominantly with public funds (from the member cities and counties), by fiscal year 1997/1998 funding shifted to majority private sector sources and has remained predominantly funded by private sources ever since. You described the current funding of the YSEDC as follows:

“Loan administration	44%
“Private-sector business	22%
“Local government	18%
“Federal grants	9%
“Events and miscellaneous	7%

“You also noted that the YSEDC is subject to the Brown Act.

“The corporation was designated as an Economic Development District by the U.S. Department of Commerce Economic Development Administration in 1996. As such, YSEDC is responsible for the region's Comprehensive Economic Development Strategy that results from a local planning process to guide the economic growth of the Yuba-Sutter region.”

Our research conducted since our Executive Director’s letter of April 27, 2009, has yielded the following additional information on YSEDC.

According to the YSEDC annual report for 2007-2008, YSEDC administers several loan programs, including the Community Development Block Grant (CDBG) Revolving Loan Fund (RLF) programs on behalf of local cities and counties, as well as the Intermediary Relending Programs (IRP) through U.S. Department of Agriculture (USDA) Rural Development Agency and the Equity Equivalent (EQ-2) loan accommodation through Wells Fargo Bank and US Bank.:

- *U.S. Department of Housing and Urban Development CDBG Program:* This program provides Yuba-Sutter with resources to address a wide range of unique community development needs, in part, by creating jobs through the expansion and retention of businesses. *The State of California awards grants to smaller units of general local government that carry out community development activities.* CDBG funds are

used for activities that benefit low- and moderate-income persons, prevention or elimination of slums or blight, or address community needs in the form of business loans. As of June 30, 2008, YSEDC has written a total of 30 separate CDBG applications resulting in the award of \$11.4 million in federal funding for local cities and counties. Further, YSEDC has worked as a service provider to local jurisdictions in the ongoing administration of these CDBG revolving loan fund programs since 1994.

- *U.S. Department of Agriculture IRP:* As a private non-profit corporation, YSEDC is an eligible lender through this program. Businesses that are located in a rural area are eligible to apply and loans may be for acquisition, construction, conversion, enlargement, or repair of a business or business facility, particularly when jobs will be created or retained. Loans may also be for purchase or development of land (easements, rights of way), buildings, facilities, leases, materials, to purchase equipment, leasehold improvements, machinery, supplies, start-up costs and working capital. YSEDC has obtained two direct loans from USDA IRP totaling \$1.25 million. Collectively, YSEDC's IRP involvement has provided an additional \$2.1 million in funding available to rural businesses in the Yuba-Sutter area.
- *EQ-2* A program titled Equity/Equivalent Line of Credit or EQ-2 was identified as a viable private sector opportunity for YSEDC in 2004. EQ-2 is a financial tool that allows financial institutions to loan dollars to community and economic development organizations for relending. US Bank and Wells Fargo have made these loans to YSEDC and this allows YSEDC the opportunity to strengthen its capital structure, leverage additional debt and as a result, increase lending and investment opportunities in the region.
- *CLASP:* In 2005, YSEDC launched a program, Commercial Loan Application Solution Program (CLASP). The program offers in-depth counseling and technical assistance in commercial loan application preparation with specific emphasis in the areas of business plan development, the licensing and permitting process, cash flow management, bookkeeping and accounting, credit management, environmental review issues, economic development issues and goals such as job creation and retention.

The YSEDC also received grant funding from a variety of sources:

- *2007 U.S. Department of Housing and Urban Development Community Development Block Grant Enterprise Fund Program for Yuba County \$500,000 and for Live Oak \$500,000.* The CDBG program is a flexible program that provides Yuba-Sutter with resources to address a wide range of unique community development needs by creating jobs through the expansion and retention of businesses.
- *2007 Economic Development Administration Technical Planning Assistance Grant \$54,000:* Planning assistance is provided for the development, implementation, revision, or replacement of a Comprehensive Economic Development Strategy (CEDS) as well as other short-term planning efforts.

- *2007 Bank of America Charitable Foundation \$14,800:* Bank of America's corporate philanthropic mission is to direct funds to areas served by Bank of America's institution and specifically those organizations positioned to serve communities by contributing their energy and expertise in the areas most critical to community health. YSEDC was awarded this grant and it was used to support YSEDC's five-year action plan.
- *2008 US Bank Community Banking Grant \$10,000:* The grant committee builds strong partnerships and lasting value in communities by supporting organizations that improve the economic opportunities of low- and moderate-income individuals and families. This grant was awarded to YSEDC for capacity building and it was used to support YSEDC's five-year action plan.

According to the bylaws of YSEDC, the Board of directors shall consist of 23 members, "one member selected/appointed by and from each of the six governing bodies in the in the bi-county area (i.e., Sutter County Board of Supervisors - 1; Yuba County Board of Supervisors - 1; City Councils of the Cities of Yuba City, Live Oak, Marysville, and Wheatland - 1 each) for a total of six (6) elected officials; one resident/citizen (preferably representing labor, ethnic minorities, education and significant business sectors) appointed by each of the six (6) governing bodies for a total of six (6); and, eleven directors-at-large to be nominated from the members]"

ANALYSIS

As noted in our prior letter, the Act prohibits a public official from making or participating in making a governmental decision in which the official knows or has reason to know he or she has a financial interest. (Section 87100.) The primary purpose for the conflict-of-interest provisions of the Act is to ensure that "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) The conflict-of-interest provisions of the Act apply only to "public officials." A "public official" is defined as every member, officer, employee, or consultant of a state or local government agency. (Section 82048.)

A "local government agency" is defined in the Act as "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." (Section 82041.) In addition, Section 87300 of the Act states that "[e]very agency shall adopt and promulgate a Conflict of Interest Code" applicable to its "designated employees." For the purposes of the Act, "agency" is interpreted to mean any state agency or local government agency. (Section 82003; *Maas Advice Letter*, No. A-98-261.)

The original question presented was whether YSEDC board members are public officials that are subject to the disclosure requirements of the Act which led us to the initial inquiry of whether YSEDC is a public agency. "In analyzing this question we believe that several criteria

should be considered, and that the true nature of the entity, not merely its stated purpose, should be analyzed in determining whether the entity is public or private within the meaning of the Act.” (*In re Siegel* (1977) 3 FPPC Ops. 62) The answer controls whether YSEDC is considered a local government agency and required to adopt a separate conflict-of-interest code for its employees and board members under Section 87300.

The Commission-established criteria for determining whether an entity is governmental in character are found in its opinion *In re Siegel, supra*. The *Siegel* factors determine whether local entities are public or private in character. The Commission has applied the following four-part test:²

- (1) Whether the impetus for formation of the entity originated with a government agency.
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.
- (3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.
- (4) Whether the entity is treated as a public entity by other laws.

In our original letter, we concluded that three of the four factors were met and concluded that YSEDC is a public agency. In this letter, based on the additional information we received from the member cities, we conclude that all the factors are met and reaffirm our conclusion that YSEDC is a public agency under the purview of the Act.

1. Did the impetus for formation of the entity originate with a government entity?

Generally, the first factor has been met where an entity is created by some official action of another governmental agency. For example, in the *Siegel* Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question.

According to the documents submitted by the member agencies, the member agencies created the YSEDC by joint resolution. The member agencies pledged to support YSEDC by “appointments and participation on the Board of Directors; annual financial contributions for a period of not less than three years; and that Sutter and Yuba counties Board of Supervisors shall designate the newly created Yuba-Sutter Economic Development Corporation to serve as the administering agent for the proposed Yuba-Sutter Economic Development District.

² The Commission’s subsequent advice letters, and an opinion, state that it is not necessary that all four of the *Siegel* factors be satisfied for an entity to be considered a local government agency. (*In re Vonk* (1981) 6 FPPC Ops. 1; *O’Shea* Advice Letter, No. A-91-570.) It is only necessary that the entity satisfy enough of the four factors for its overall character to correspond to that of a local government agency. (*Rasih* Advice Letter, No. A-01-020.) Ultimately, the test must still be a factual analysis on a case-by-case basis. (*In re Vonk, supra*.)

2. Is the entity substantially funded by, or is its primary source of funds, a government agency?

YSEDC receives its funding from both public and private sources. While the YSEDC was initially funded during the 1995/1996 fiscal year predominantly with public contributions (from the member cities and counties), by fiscal year 1997/1998 (two years after formation) Mr. Brammer stated that the funding shifted to nonpublic sources. The current funding of the YSEDC as follows:

"Loan administration	44%
"Private-sector business	22%
"Local government	18%
"Federal grants	9%
"Events and miscellaneous	7%

However, in the past we have discussed federal grants and block grant loan administration fees as public funds. In the *Rasih* Advice Letter, No. A-01-020, we stated:

"Approximately 56% of the [City of Berkeley's Community Energy Services Corporation's] budget comes from the City of Berkeley. The balance of its funds come from the federal government and private sources. We do not find it significant that a portion of those funds come from the federal Community Development Block Grant program. We have taken the position in previous advice letters that if an entity receives most of its funding from federal grant monies, it meets the second factor. (*Matthews* Advice Letter, No. A-99-276; *Prestidge* Advice Letter, No. A-95-323, modified in *Vose* Advice Letter, No. I-97-578 on issues not affecting the analysis herein.) Although you do not specify what percentage of CESC's budget comes from private sources, it is clear that the CESC is substantially funded by a government agency, and would continue to be so funded after separating from the City of Berkeley and the Energy Commission. Therefore, the second criterion of the *Siegel* test is met."

Moreover, even the revenue generated by loan administration appears to be public in nature. YSEDC reports on their website:

"Local jurisdictions are, from time to time, granted public funds from the State of California, Department of Housing and Community Development's "Community Development Block Grant" (CDBG) program for the purpose of creating a Revolving Loan Fund. These funds are earmarked for projects that will create private sector jobs for low and moderate income persons.

"Grant funds are delivered to the community in the form of business assistance loans through the Yuba-Sutter Economic Development Corporation which acts as the service provider for the local jurisdictions.

“Loans are made to qualified businesses to fill ‘GAPs’ in local private sector lending practices which leave some businesses unable to obtain suitable financing.” [Emphasis added.]

Under this line of authority, the majority of funding that YSEDC takes in each year originates from public governmental sources.³ Thus, this criterion is met.

3. *Is one of the principal purposes for which the entity is formed to provide services or undertake obligations that public agencies are legally authorized to perform and which, in fact, they traditionally have performed?*

In the *Siegel* Opinion, this third criterion is a two-part inquiry that examines whether an entity performs a public function, and whether the service provided is one that is traditionally performed by public agencies. (*Stark* Advice Letter, No. A-03-015.)

A. *Public Function:* We first look at factors considered by the *Siegel* Opinion to be relevant to determining whether an entity performs a public function. One such factor is the degree to which public agencies control or are involved in its operations. In the *Siegel* Opinion the Commission looked at whether city council members were members of the board of the nonprofit Corporation and though they were not, considered the fact that the city council nevertheless had a right to disapprove the name of anyone submitted to serve on the board. (*In re Siegel*, supra.)

According to your facts, of YSEDC’s 23 voting members of the Board, 12 are either elected officials from the four member cities and two member counties or appointed by the member cities and counties. The elected officials serve in their capacities as elected officials of their jurisdictions. The other 11 are not elected officials but are from the private sector. However, according to the bylaws, they are nominated by the members (the 12 elected and appointed representatives from the member cities and counties). Thus, it appears that YSEDC is ultimately controlled by a board on which government representatives hold a one-vote majority and control the remainder of the membership. Because of this control by a majority of governmental officials acting in their official capacities over YSEDC’s ultimate operation, it can be concluded that YSEDC does serve a public function.

B. *Service Traditionally Performed by Public Agencies:* Secondly, we look at factors considered by the *Siegel* Opinion to be relevant in determining whether an entity performs a function that has traditionally been performed by public agencies. According to the YSEDC website, the YSEDC works closely and in strict confidence with businesses regarding location or expansion within the Yuba-Sutter region. The YSEDC provides assistance to businesses with site location, economic and demographic information, identification of a myriad of community and employment training service groups, community tours, introductions to government and

³ The 2007-2008 annual report shows that between the public agency contributions, grant and CDBG revenue, this constituted more than 60% of the revenue of the YSEDC.

business leaders and facilitation of meetings with developers, planners and other key individuals, as required, is available. According to your letter, the YSEDC also provides other services to the community including business recruitment, expansion and retention services, economic research, financial and technical assistance, loan administration, and special projects. None of these appear to be solely a "governmental function."

However, the additional information we received in the letters from the member agencies is enlightening. One of the primary goals for the creation of the EDC was to foster stable and diversified local economies, to alleviate unemployment and underdevelopment, and to provide financial assistance through loans to local businesses. It cannot be said that these functions and purposes are not functions and purposes performed by government agencies. These are public purposes performed by public agencies. In fact, the City of Yuba City has decided "to fund its own Economic Development program . . . phasing out funding to YSEDC."

Finally, in prior letters, we have concluded that other EDC's did perform semi-public functions. In *Cohen* Advice Letter, No. A-08-152, we advised:

"According to information provided in your letter, [the Economic Development Corporation of Oxnard (EDCO)] is performing a function that was performed by city employees and [Economic Development Advisory Commission] a city advisory commission. City employees and members of the commission approached city council members to establish EDCO. Based on your facts, it appears that business promotion and development was a service historically provided by the city to the community.

"Under the facts presented, it appears that EDCO is performing a semi-public function (with some input and involvement by city officials), and is providing a service that the city of Oxnard, a government agency, has traditionally performed. Therefore, this factor is also met."

YSEDC's function is, in this case, a governmental function.

4. *Is the entity treated as a public entity by other statutory provisions?*

The final factor that is considered in evaluating an entity's status under the Act is whether the entity is treated as a public entity by other provisions of law. The corporation at issue in the *Siegel* Opinion was recognized as a public body in both tax and securities law.

Your facts state that YSEDC is a nonprofit entity. However, your facts indicate that YSEDC has determined that the Ralph M. Brown Act (open meeting laws) applies to its board meetings. Consistent with prior advice, the requirement to follow the open meeting laws weighs in favor of the fourth criterion of the *Siegel* analysis. (*Kranitz* Advice Letter, No. A-03-204; *Stark*, supra; *Alperin* Advice Letter, No. A-95-118.)

SUMMARY

In summary, based on the above discussion, YSEDC is a local public agency within the meaning of the Act, and will be required to adopt a conflict of interest code under Section 87300. A conflict of interest code should be formulated at the "most decentralized level possible." (Section 87301.) An agency is required to submit its initial proposed conflict of interest code for approval to the code reviewing body no later than six months after coming into existence. (Section 87303.) Since YSEDC is multicounty in jurisdiction (in both Sutter and Yuba County), the Commission would be the code reviewing body.

In your February 20, 2009 communication you expressed concern that as a government agency you would be required to obtain a completed Form 700 from every director, employee, committee member and consultant/contractor with whom you do business. However, Section 87302 requires that every conflict of interest code only specifically enumerate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. Thus, those persons who do not make or participate in making decisions (such as clerical employees or members of advisory committees) where recommendations are not regularly followed by the board of directors would not be designated in the code, and those who make and participate in a limited scope of decisions (such as IT staff) might have narrowly tailored disclosure obligations in the code fit to their decisionmaking ability.

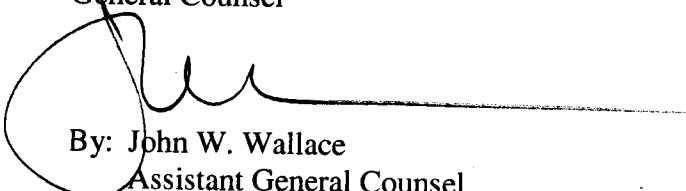
Finally, please note, Section 87304 provides:

"If any agency fails to submit a proposed conflict of interest code or amendments, or if any state agency fails to report amendments pursuant to subdivision (b) of Section 87306 within the time limits prescribed pursuant to Section 87303 or 87306, the code reviewing body may issue any appropriate order directed to the agency or take any other appropriate action, including the adoption of a conflict of interest code for the agency."

If you have other questions on this letter, please contact me at (916) 322-5660. Please contact Lynda Cassady, Chief of the Technical Assistance Division, at 1-888-ASK-FPPC (1-888-275-3772) for assistance in developing your code.

Sincerely,

Scott Hallabrin
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division



FAIR POLITICAL PRACTICES COMMISSION

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May 19, 2009

Richard Shanahan
City Attorney
City of Wheatland
111 C Street
Wheatland, CA 95692

Re: Request for Documents

Dear Mr. Shanahan :

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation (YSEDC) is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character. (*In re Siegel* (1977) 3 FPPC Ops. 62.) The Commission has applied the following four-part test:

- (1) Whether the impetus for formation of the entity originated with a government agency.
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.
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According to the information we have already obtained, the YSEDC is a 501(c)(3) non-profit, public benefit corporation. YSEDC staff and resources provide businesses with assistance in connection with site location, economic and demographic information, identification of community and employment training service groups, community tours, and introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals. YSEDC also provides other services to the community including business recruitment, expansion, and retention services, economic research, financial and technical assistance, loan administration, and special projects.

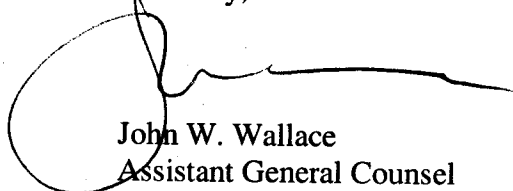
The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the Cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the Executive Director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of a governmental agency. For example, in the *Siegel* Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since the City of Wheatland has a representative on the YSEDC board, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by the City of Wheatland. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Wallace", with a large, stylized loop at the beginning.

John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
YSEDC
312 1/2 First Street
Marysville, CA 95901



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May 19, 2009

Seth Merewitz
City Attorney
City of Marysville
526 C Street
Marysville, CA 95901

Re: Request for Documents

Dear Mr. Merewitz:

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation (YSEDC) is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character. (*In re Siegel* (1977) 3 FPPC Ops. 62.) The Commission has applied the following four-part test:

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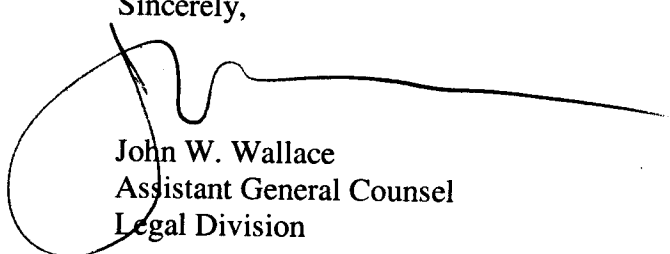
The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the Cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the Executive Director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of a governmental agency. For example, in the Siegel Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since the City of Marysville has a representative on the YSEDC board, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by the City of Marysville. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,



John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
YSEDC
312 1/2 First Street
Marysville, CA 95901



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

May 19, 2009

Brant Bordsen
City Attorney
City of Live Oak
9955 Live Oak Blvd.
Live Oak, CA 95953

Re: Request for Documents

Dear Mr. Bordsen :

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation (YSEDC) is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character. (*In re Siegel* (1977) 3 FPPC Ops. 62.) The Commission has applied the following four-part test:

- (1) Whether the impetus for formation of the entity originated with a government agency.
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.
- (3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.
- (4) Whether the entity is treated as a public entity by other laws.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

According to the information we have already obtained, the YSEDC is a 501(c)(3) non-profit, public benefit corporation. YSEDC staff and resources provide businesses with assistance in connection with site location, economic and demographic information, identification of community and employment training service groups, community tours, and introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals. YSEDC also provides other services to the community including business recruitment, expansion, and retention services, economic research, financial and technical assistance, loan administration, and special projects.

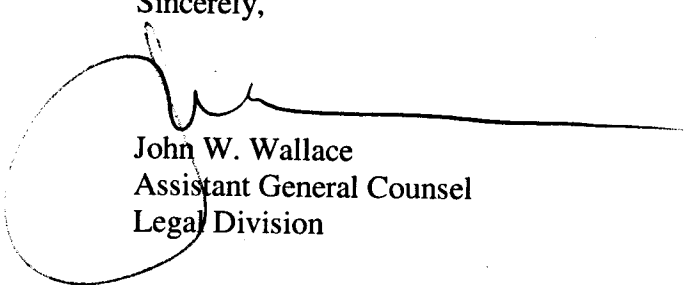
The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the Cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the Executive Director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of a governmental agency. For example, in the Siegel Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since the City of Live Oak has a representative on the YSEDC board, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by the City of Live Oak. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,



John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
YSEDC
312 1/2 First Street
Marysville, CA 95901



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

May 19, 2009

Timothy P. Hayes
Yuba City City Attorney
1201 Civic Center Blvd
Yuba City, CA 95993

Re: Request for Documents

Dear Mr. Hayes:

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation (YSEDC) is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character. (*In re Siegel* (1977) 3 FPPC Ops. 62.) The Commission has applied the following four-part test:

- (1) Whether the impetus for formation of the entity originated with a government agency.
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.
- (3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.
- (4) Whether the entity is treated as a public entity by other laws.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

According to the information we have already obtained, the YSEDC is a 501(c)(3) non-profit, public benefit corporation. YSEDC staff and resources provide businesses with assistance in connection with site location, economic and demographic information, identification of community and employment training service groups, community tours, and introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals. YSEDC also provides other services to the community including business recruitment, expansion, and retention services, economic research, financial and technical assistance, loan administration, and special projects.

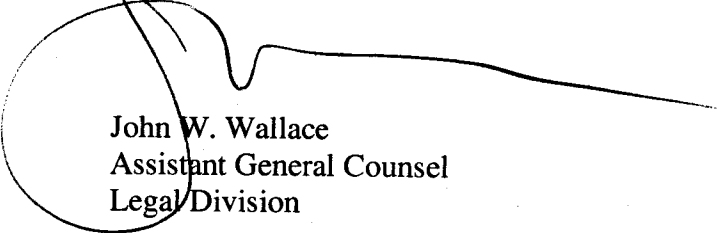
The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the Cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the Executive Director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of a governmental agency. For example, in the Siegel Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since the Yuba City has a representative on the YSEDC board, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by the Yuba City. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,



John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
YSEDC
312 1/2 First Street
Marysville, CA 95901



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

May 13, 2009

Daniel G. Montgomery
County Counsel
Yuba County
915 8th. St., Suite 111
Marysville, CA 95901

Re: Request for Documents

Dear Mr. Montgomery:

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character is found in its opinion *In re Siegel* (1977) 3 FPPC Ops. 62. The Commission has applied the following four-part test:

- (1) Whether the impetus for formation of the entity originated with a government agency.
- (2) Whether the entity is substantially funded by, or its primary source of funds is, a government agency.

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(3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.

(4) Whether the entity is treated as a public entity by other laws.

According to the information we have already obtained, the YSEDC is a 501(c)(3) non-profit, public benefit corporation. YSEDC staff and resources provide businesses assistance with site location, economic and demographic information, identification of a myriad of community and employment training service groups, community tours, introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals, as required. YSEDC also provides other services to the community including business recruitment, expansion and retention services, economic research, financial and technical assistance, loan administration, and special projects.

The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the executive director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

While the YSEDC was initially funded during the 1995/1996 fiscal year predominantly with public funds (from the member cities and counties), by fiscal year 1997/1998 funding shifted to majority private sector sources and has remained predominantly funded by private sources ever since. You described the current funding of the YSEDC as follows:

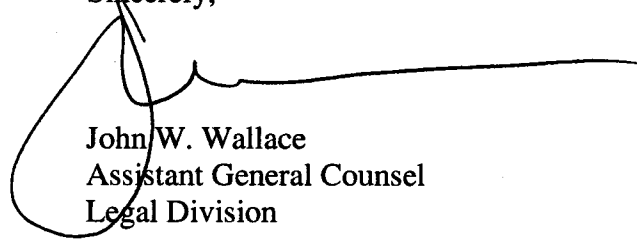
Loan administration	44%	Federal grants	9%
Private-sector business	22%	Events and miscellaneous	7%
Local government	18%		

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of another governmental agency. For example, in the *Siegel* Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since Yuba County was involved in the creation, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by Yuba County. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Wallace", with a long horizontal flourish extending to the right.

John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
312 1/2 First Street
Marysville, CA 95901



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

May 13, 2009

Ronald Erickson
County Counsel
Sutter County
1160 Civic Center Blvd.
Yuba City, CA 95993

Re: Request for Documents

Dear Mr. Erickson:

The Fair Political Practices Commission is analyzing whether the Yuba Sutter Economic Development Corporation is a "local government agency" required to enact a conflict of interest code for purposes of the Political Reform Act (the "Act").¹ As you may be aware, the Commission established criteria for determining whether an entity is governmental in character is found in its opinion *In re Siegel* (1977) 3 FPPC Ops. 62. The Commission has applied the following four-part test:

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(3) Whether one of the principal purposes for which the entity was formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.

(4) Whether the entity is treated as a public entity by other laws.

According to the information we have already obtained, the YSEDC is a 501(c)(3) non-profit, public benefit corporation. YSEDC staff and resources are available to work closely and in strict confidence with businesses considering location or expansion within the Yuba-Sutter region. Assistance with site location, economic and demographic information, identification of a myriad of community and employment training service groups, community tours, introductions to government and business leaders and facilitation of meetings with developers, planners and other key individuals, as required, is available. YSEDC also provides other services to the community including business recruitment, expansion and retention services, economic research, financial and technical assistance, loan administration, and special projects.

The YSEDC board of directors is composed of representatives from both the public and private sector, including two elected officials from each local government jurisdiction (Yuba and Sutter Counties, and the cities of Live Oak, Marysville, Wheatland, and Yuba City). Of YSEDC's 23 voting members, 12 are elected officials, and 11 are from the private sector. YSEDC's chief operating officer and the executive director of the Yuba-Sutter Chamber of Commerce are ex officio members of the board of directors.

While the YSEDC was initially funded during the 1995/1996 fiscal year predominantly with public funds (from the member cities and counties), by fiscal year 1997/1998 funding shifted to majority private sector sources and has remained predominantly funded by private sources ever since. You described the current funding of the YSEDC as follows:

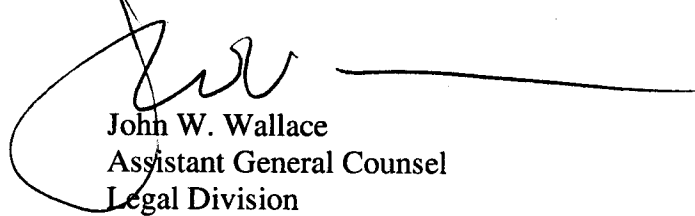
Loan administration	44%	Federal grants	9%
Private-sector business	22%	Events and miscellaneous	7%
Local government	18%		

We are still lacking information on the impetus for formation of the YSEDC. We are trying to determine if the entity was created by some official action of another governmental agency. For example, in the *Siegel* Opinion, although the agency was created as a nonprofit corporation, the city council was intimately involved in the creation of the corporation in question. Since Sutter County was involved in the creation, we are hoping you would have some documents that would help us in our determination.

We are also seeking additional information on funding provided to YSEDC by Sutter County. Finally, we are seeking any documents that reflect whether YSEDC is treated as a public agency by other statutory provisions.

If you have other questions on this matter, please contact me at (916) 322-5660. If it will expedite your response, please treat this as a Public Records Act request.

Sincerely,

A handwritten signature in black ink, appearing to read "JW", is written over a horizontal line. The signature is stylized and cursive.

John W. Wallace
Assistant General Counsel
Legal Division

cc: Jud Waggoman
312 1/2 First Street
Marysville, CA 95901



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 23, 2009

Jud Waggoman
312 1/2 First Street
Marysville, CA 95901

Re: Yuba Sutter Economic Development Corporation

Dear Mr. Waggoman:

We are in receipt of your April 14, 2009 letter addressed to Lynda Cassidy^A on behalf of your client, the Yuba Sutter Economic Development Corporation (YSEDC.) Please allow us to correct some confusion that seems to be reflected in your letter. ✓

(1) YSEDC contacted the Commission's Legal Division for advice regarding whether they would be considered a public agency under the Act.

(2) ~~This agency~~^{We} concluded in an advice letter based on facts provided by YSEDC that they indeed were a public agency and were legally obligated to adopt a conflict of interest code. ✓

(3) However, based on YSEDC's assertion that it had additional facts, we suspended our efforts to bring YSEDC into compliance with the Act.

(4) You now state no new facts will be provided by your client, YSEDC.

(5) The advice letter has not been rescinded or suspended. Thus, we have no choice but to begin efforts to bring YSEDC into voluntary compliance with the Act consistent with the conclusion in the letter. AND will NOT, ABSENT New facts being presented. ✓

(6) Should efforts to bring YSEDC into voluntary compliance fail, we will be forced to consider other approaches to enforce the law (as is our statutory mandate). Can compel YSEDC TO ADOPT A COIC pursuant TO Gov Code Sec 87304.

(7) In an effort to make sure that we have not missed any facts pertinent to our analysis, we ~~will be~~ ^{and} contacting the member public agencies to gather additional facts while ~~we~~ ^{lines} simultaneously seek voluntary compliance.

If you have other questions on this matter, please contact John Wallace in the Legal Division at (916) 322-5660.

Sincerely,

Roman Porter
Executive Director



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 27, 2009

Jud Waggoman
312 1/2 First Street
Marysville, CA 95901

Re: Yuba Sutter Economic Development Corporation

Dear Mr. Waggoman:

We are in receipt of your April 14, 2009 letter addressed to Lynda Cassady on behalf of your client, the Yuba Sutter Economic Development Corporation (YSEDC.) Please allow us to correct some confusion that seems to be reflected in your letter.

(1) YSEDC contacted the Commission's Legal Division for advice regarding whether they would be considered a public agency under the Act.

(2) We concluded in an advice letter based on facts provided by YSEDC that they indeed were a public agency and were legally obligated to adopt a conflict of interest code.

(3) However, based on YSEDC's assertion that it had additional facts, we suspended our efforts to bring YSEDC into compliance with the Act.

(4) You now state no new facts will be provided by your client, YSEDC .

(5) The advice letter has not been rescinded or suspended, and will not, absent new facts being presented. Thus, we have no choice but to begin efforts to bring YSEDC into voluntary compliance with the Act consistent with the conclusion in the letter.

(6) Should efforts to bring YSEDC into voluntary compliance fail, we can compel YSEDC to adopt a conflict of interest code pursuant to Government Code section 87304.

(7) In an effort to make sure that we have not missed any facts pertinent to our analysis, we are contacting the member public agencies to gather additional facts while simultaneously seeking voluntary compliance.

If you have other questions on this matter, please contact John Wallace in the Legal Division at (916) 322-5660.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Porter', with a long horizontal stroke extending to the right.

Roman Porter
Executive Director



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 27, 2009

Jud Waggoman
312 1/2 First Street
Marysville, CA 95901

Re: Yuba Sutter Economic Development Corporation

Dear Mr. Waggoman:

We are in receipt of your April 14, 2009 letter addressed to Lynda Cassady on behalf of your client, the Yuba Sutter Economic Development Corporation (YSEDC.) Please allow us to correct some confusion that seems to be reflected in your letter.

(1) YSEDC contacted the Commission's Legal Division for advice regarding whether they would be considered a public agency under the Act.

(2) We concluded in an advice letter based on facts provided by YSEDC that they indeed were a public agency and were legally obligated to adopt a conflict of interest code.

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If you have other questions on this matter, please contact John Wallace in the Legal Division at (916) 322-5660.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Porter', with a long horizontal stroke extending to the right.

Roman Porter
Executive Director