



FAIR POLITICAL PRACTICES COMMISSION

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February 10, 2010

Sharon Reilly
Chief Legal Counsel
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-10-014

Dear Ms. Reilly:

This letter responds to your request for advice regarding the conflict-of-interest reporting provisions of the Political Reform Act (the "Act").¹

QUESTIONS

- (1) Is the verification panel created by Section 7021 of the California Penal Code an agency that is required to adopt a conflict-of-interest code pursuant to Section 87300 of the Government Code?
- (2) If yes, what is the appropriate code reviewing body?

CONCLUSION

Based on your account of the facts, the verification panel does not have governmental decision-making authority, and therefore is not required to adopt a conflict-of-interest code pursuant to Section 87300. Consequently, while the panel members who are already public officials will still need to file their regular statements of economic interests, they do not need to disclose their economic interests for purposes of determining conflicts as they relate to the panel. Because the verification panel does not have to adopt a conflict-of-interest code, we do not address Question 2.

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.

FACTS

Section 7021 of the California Penal Code, enacted in 2007, created a verification panel ("the panel") to verify whether certain conditions relating to the Public Safety and Offender Rehabilitation Services Act of 2007 have been met. The panel consists of three members: (1) the State Auditor, (2) the Inspector General, and (3) an appointee of the Judicial Council of California. According to your letter, after the panel verifies that the conditions described in state law have been met, it has no other duties under state law and will cease to exist. You describe the panel as a "temporary body" that has not received funding for its operations.

You are Chief Counsel for Elaine Howle, the current California State Auditor. In your letter you point out that she, along with the other members of the panel, are already subject to the Act because of their roles in state agencies.

You inquire as to whether the panel is a state agency that is required to adopt a conflict-of-interest code pursuant to Section 87300, and if so, what is the appropriate reviewing body. You believe that because of the limited and temporary nature of the panel, it is not required to adopt a conflict-of-interest code.

ANALYSIS

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.)

For the purposes of Section 87300, "agency" is interpreted to mean any state agency or local agency. (*Maas* Advice Letter, N. A-98-261.) A "state agency" is defined in the Act as "every state office, department, division, bureau, board and commission, and the Legislature." (Section 82049.)

The term "designated employee" means any officer, employee, member or consultant of any agency whose position with the agency is designated in a conflict-of-interest code because the position entails the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest. The term "designated employee" does not include any unsalaried member of any board or commission that serves a solely advisory function. (Section 82019.)

"Member" includes any salaried or unsalaried member of a board or commission with decision-making authority. Under Regulation 18701(a)(1)(A), a board or commission possesses decision-making authority whenever:

- "(i) It may make a final government decision;

“(ii) It may compel a governmental decision; or may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

“(iii) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

A committee, board, or commission does not possess decision-making authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decision-making authority. (Regulation 18701(a)(1)(B).)

It does not appear that members of the verification panel will be making any final governmental decisions. The panel will verify whether conditions mandated by state law, specifically the Public Safety and Offender Rehabilitation Services Act of 2007, have been met. The panel does not have discretion to make recommendations based on these findings; rather, the panel is strictly limited to verifying and subsequently issuing a report on whether the very specific mandates outlined in the Public Safety and Offender Rehabilitation Services Act of 2007 have been met. The panel does not have the authority to act after the findings are made; rather, the panel terminates at the time the findings are issued. Therefore, it appears that the members of the verification panel solely serve in an information-gathering capacity and do not constitute a state agency required to adopt a conflict-of-interest code pursuant to Section 87300.

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

Sincerely,

Scott Hallabrin
General Counsel



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AM:jgl