



## FAIR POLITICAL PRACTICES COMMISSION

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November 29, 2010

Mr. Daniel Stone  
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**Re: Your Request for Informal Assistance  
Our File No. I-10-181, re: Attorney General Opinion No. 10-901**

Dear Mr. Stone:

This letter responds to your request for the views of interested parties prior to your issuing a formal opinion on the following questions from Chairperson Marcia Good of the California State Council on Developmental Disabilities. She asked:

1. The California State Council on Developmental Disabilities [the "Council"] is seeking to set their quorum as a majority of members currently appointed, rather than a majority of the Council's statutory membership. In absence of contrary statutory authority, can the Council set their quorum requirement in their Bylaws?
2. What effect do abstentions have on the outcome of a vote?

### *Discussion*

In our reply, we restrict our comments to the applicability of the Political Reform Act (the "Act")<sup>1</sup> to your question. The Commission does not have jurisdiction to advise the Council on their bylaws, except to the extent they implicate the provisions of the Act. Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

As noted above, we offer no opinion on the amendment or interpretation of the Council's bylaws. Moreover, we do not know if, factually, the questions presented concern the application of the Act, but we do offer this explanation of the disqualification and quorum rules under the Act and the Act's application to abstentions.

The only provision of the Act that refers to a quorum of a voting body, or to the effects of abstentions from a vote by such a body, is a narrow and rarely applied exception to the Act's conflict of interest rules, which appears to have no application to the question before you. We explain this provision below, for your information.

The Act prohibits a public official from making, participating in making or in any way attempting to use his official position to influence a governmental decision in which he knows he has a financial interest. (Section 87100.) There is, however, a limited exception to the prohibition in Section 87100. Section 87101 provides:

"Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section."

Further, Regulation 18708 provides, in pertinent part:

"(a) A public official who has a financial interest in a decision may establish that he or she is legally required to make or to participate in the making of a governmental decision within the meaning of Government Code section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

"(b) ....

"(c) This regulation shall be construed narrowly, and shall:

"(1) Not be construed to permit an official, who is otherwise disqualified under Government Code section 87100, to vote to break a tie.

"(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under Government Code section 87100, to vote if a quorum can be convened of other members of the agency who are not disqualified under Government Code section 87100, whether or not such other members are actually present at the time of the disqualification.

"(3) Require participation by the smallest number of officials with a conflict that are 'legally required' in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an

official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.

“(d) For purposes of this section, a ‘quorum’ shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the ‘quorum’ shall be that minimum number of members needed for that adoption.”

***Can the Council set their quorum requirement in their Bylaws?***

While the Act does define a quorum, it defines it only as the minimum number of members required to conduct business. Thus, ultimately, the determination of what constitutes a quorum is left to each state and local government agency to decide.

Regulation 18708 limits participation under this exception to the conflict of interest rules to the smallest number of officials with a conflict of interest that are “legally required” to participate in order for the decision of the agency to be made.” Thus, where only a single member is needed to make a quorum, only one disqualified member is permitted to participate in the decision. (*Skousen* Advice Letter, No. A-88-162; *Martin* Advice Letter, No. I-88-375.) This is because “the purposes of the Act are best served by a rule which minimizes participation in government decisions by officials with a conflict of interest.” (In re *Hudson*, (1977) 4 FPPC OPINIONS 13.) It would not permit a member to vote on the matter “if a quorum can be convened” of other members of the governing body of the agency.

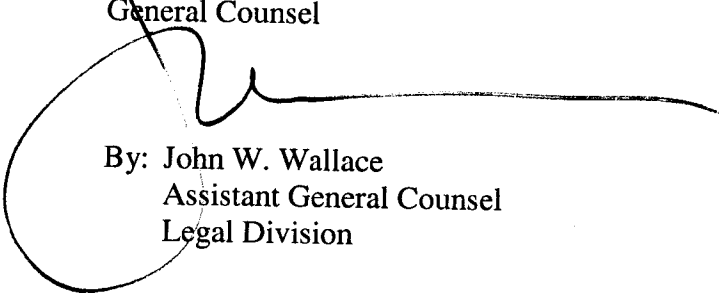
***What effect do abstentions have on the outcome of a vote?***

The Act contemplates that “legally required participation” exception only applies where a quorum cannot be convened because a majority of the members are disqualified under Section 87100, whether or not such other members are actually present at the time of the disqualification. Thus, the rule of legally required participation does not apply if the members determine that they do not have a conflict of interest under the Act, but nevertheless choose not to vote. We advised previously that “voluntary abstention has never been the basis for invoking legally required participation.” (*Gillig* Advice Letter, No. A-96-150.) In other words, if a quorum cannot be convened due to reasons other than disqualification based on Section 87100, the exception would not apply and the Council could not make the decision in question consistent with the requirements of the Act.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: John W. Wallace  
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Legal Division