



FAIR POLITICAL PRACTICES COMMISSION

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June 24, 2011

Stacy A. Roscoe, President
Carnegie Art Museum Cornerstones
424 South C Street
Oxnard, CA 93030

Re: Your Request for Advice
Our File No. A-11-058a

Dear Mr. Roscoe:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act¹ (the "Act"). You are requesting reconsideration of our advice based upon new facts not included in your original request. (*Roscoe* Advice Letter, No. A-11-058.)

Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, this letter is based on the facts presented. 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.)

For the purposes of this letter, the facts presented have been described in our previous advice letter (*Roscoe* Advice Letter, *supra.*) Additional facts added to this analysis are:

(1) The final contract between the City of Oxnard (the "City") and Carnegie Art Museum Cornerstones ("Cornerstones") "has no mention of the Brown Act in any context in the document."

(2) Cornerstones "would be happy to comply with the Brown Act...should a City Council member sit on the Board." However, "that has not occurred to date..."

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.

Please note that the *Siegel* factors were not intended to be a definitive litmus test for determining whether an entity is public for purposes of the Act. Ultimately, the test is a factual analysis on a case-by-case basis. (*In re Vonk* (1981) 6 FPPC Ops. 1.)

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* supra; *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.)

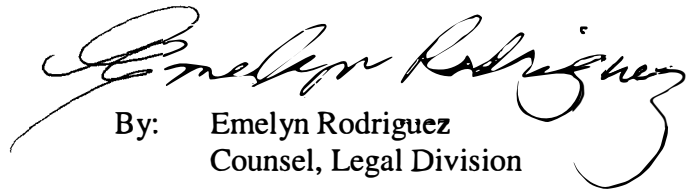
In a previous letter, we advised that the fourth factor was met where the bylaws of a proposed corporation subjected the entity to the Brown Act. (*Alperin* Advice Letter, No. A-95-118, see also *O'Shea* Advice Letter, No. A-91-570.) In this case, the Cornerstones Agreement with the City does not mention the Brown Act. Therefore, this factor has not been met. However, we have also advised that this factor alone is *not* determinative. (*Epp* Advice Letter, No. A-92-195.)

In applying the *Siegel* test with the additional facts presented in your request for reconsideration, we find that two of the four *Siegel* factors are met. The fact that Cornerstones receives 90% of its funding from its contract with the City and uses city employees to carry out staff functions is conclusive in making our determination that Cornerstones is a local government agency under the Act. Therefore, it is required under Section 87300 to adopt a conflict of interest code for its employees and board members, or be included within a code.

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

Sincerely,

John W. Wallace
Assistant General Counsel


By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl