



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

November 3, 2016

Lillian Harris-Neal, CMC
City Clerk
1 Civic Center Circle
Brea, CA 92821-5732

James L. Markman
Brea City Attorney
Richards Watson & Gershon
P O Box 1059
Brea, CA 92822-1059

Re: Your Request for Informal Assistance
Our File No. 1-16-192

Dear Ms. Harris-Neal and Mr. Markman:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature, we are treating your request as one for informal assistance.²

QUESTIONS

1. Are the public members of the City of Brea (the "City") Investment Advisory Committee required to file statements of economic interests?
2. Are investment managers of the outside firms that invest public funds under contract with the City required to file statements of economic interests?

CONCLUSIONS

1. Yes. Members of the Investment Advisory Committee make governmental decisions concerning the management of public investments, and therefore must file statements of economic interests under Section 87200.³

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.

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

2. Yes. Under Regulation 18700.3(b)(1)(B) and (C), the investment managers of the outside firms who are making decisions regarding the investment of public funds, must file statements of economic interests under Section 87200.

FACTS

You are the City Clerk and the City Attorney for the City of Brea and are seeking advice on whether the public members of the City's Investment Advisory Committee and the consultants should be required to file a statement of economic interests (Form 700).

The City has an Investment Advisory Committee, whose primary purpose is to review the investment policy and monthly Treasurer's report. Their responsibilities also include making recommendations to the City Council, and to act in an advisory capacity to the City Council in matters pertaining to the investment of City funds, investment strategies, portfolio assets and maturity structure. The Committee members consist of a City Council Member, the Finance Director, the City Treasurer, the Financial Services Manager/Revenue, a City Manager's designee, and two at large public members appointed by the City Council for alternating four year terms. Currently, only the public members do not file statements of economic interests.

According to information provided by the Administrative Services Director, as well as the terms of contracts between the investment management firms and the City, the investment management firms actively manage City investments; they have full discretion to invest and reinvest all assets under their management in any type of security they deem appropriate, subject to the instructions given or guidelines set by the City.

In addition, the investment managers prepare and submit monthly reports of investment activity to the Investment Advisory Committee, and prepare and present annual investment activity reports on the performance of the City's investments to the City Council. They also make recommendations to the Investment Advisory Committee and City Council regarding investment policy.

The public members of the Investment Advisory Committee and the investment managers have not been filing statements of economic interests, and are not included in the City's conflict-of-interest code. However, several members of the Investment Advisory Committee file statements of economic interests because they are public officials who already file pursuant to Section 87200.

ANALYSIS

The threshold inquiry is whether, under the Act, these individuals are "public officials." Section 82048 defines "public official" as every member, officer, employee or consultant of a state or local government agency.

³ All members of the Investment Advisory Committee, including those whose positions are currently designated in the conflict-of-interest code, make governmental decisions concerning the management of public investments. and are required to file under Section 87200.

Under the Act, certain state and local public officials file periodic statements of economic interests for the purpose of disclosing pertinent economic interests. These individuals are required to file the Form 700 pursuant to either Section 87200 or Section 87300.

“Other Public Officials Who Manage Public Investments” Under Section 87200 and Regulation 18700.3(b)(1).

Section 87200 lists those officials with the broadest decision-making authority, including certain high-ranking local officials like the members of City Councils, mayors, city treasurers, city managers, and public officials who manage public investments, and imposes on them the broadest disclosure requirements under the Act.

“Other public officials who manage public investments” must file financial disclosure forms pursuant to Section 87200. Individuals who file statements pursuant to Section 87200 do so because their position is specifically enumerated in that section, rather than because they are designated in an agency’s conflict-of-interest code. Section 87200 filers have a uniform disclosure level throughout the state that does not vary with each agency’s unique conflict-of-interest code. We have advised that no individual whose position is enumerated in Section 87200 may be designated in an agency’s conflict-of-interest code. This includes “members of local government agencies, boards or commissions who manage public investments on behalf of their agency” and who file their statements of economic interests with the city clerk as their filing officer pursuant to Regulation 18753. (Sections 82019(b)(1), 87302(b).)

For purposes of Section 87200, Regulation 18700.3(b)(1) sets forth the following definitions of “other public officials who manage public investments”:

- (A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments;
- (B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and
- (C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B).

Regulation 18700.3 sets forth the following definitions:

“Public investments” means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return. (Regulation 18700.3(c).)

“Management of public investments” means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions. (Regulation 18700.3(e).)

Regulation 18704(a) provides that a public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Members of the Investment Advisory Committee

According to information provided by you, the City Attorney:

I have never observed the City Council act on a specific investment suggestion or recommendation by this Committee. The Committee, the elected City Treasurer and the City’s financial consultants confer with the City staff in the finance department and make the specific investments at the staff level. Occasionally, the performance of the City’s portfolio is reviewed at the Council meeting with the consultants making a presentation. I would characterize the Investment Advisory Committee as one which provides public observation and oversight of the investment process which occurs at the staff level.

As the members of the Investment Advisory Committee are making decisions that are not subject to approval by the City Council, they are “making governmental decisions” regarding the management of public investments, as defined by Regulations 18704(a) and 18700.3. As such, the members have an obligation to file statements of economic interests under Section 87200.

Investment Managers

We now analyze whether employees of the various investment management firms that contract with the City are “other public officials who manage public investments” under Regulation 18700.3(b)(1). Initially, we observe that the duties performed by these consultants -- active management of City investments, with full discretion to invest and reinvest all assets under their management in any type of security they deem appropriate -- fits the definition of “management of public investments” found in Regulation 18700.3(e).

In order to fit within the last category of “other public officials who manage public investments” these private employees must be “[i]ndividuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subsection (b)(1)(B).” (Regulation 18700.3(b)(1)(C).)

Because the investment managers have full discretion to direct the purchase, exchange, sale and reinvestment of the assets of City accounts, as well as the responsibility to prepare and submit monthly reports of investment activity to the Investment Advisory Committee, and prepare and present annual investment activity reports on the performance of the City’s investments to the City

Council, they fit the definition of Regulation 18700.3(b)(1). These are duties that would customarily be performed by the City Treasurer, Administrative Services Director, or other City employees. Thus, the power of the City to enter into investment contracts has been delegated to the investment consultants. Therefore, these investment managers fit the definition of "other public officials who manage public investments" and are required to file statements of economic interests under Section 87200.

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

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in black ink, appearing to read "Z. Norton", with a horizontal line extending to the right.

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:jgl