



JAMES K. HAHN
CITY ATTORNEY

Office of the City Attorney
Los Angeles, California

WRITER'S DIRECT DIAL: (213) 847-3144

FAX: (213) 485-6236
TTY: (213) 485-1607

November 30, 2000

Rosalind Stewart, General Manager
Department of Neighborhood Empowerment
305 E. First Street
Los Angeles, California 90012

Dear Ms. Stewart:

This letter responds to a question you posed to this office concerning the extent to which members of neighborhood councils may be subject to the requirements of the Political Reform Act of 1974, as amended, other state and City conflict of interest laws and the City's governmental ethics ordinance.

Question No. 1

Will members of the governing bodies of neighborhood councils be subject to the conflict of interest requirements of the Political Reform Act?¹

Answer

Whether members of the governing bodies of neighborhood councils will be subject to the conflict of interest requirements of the Political Reform Act will depend on whether they will be delegated the authority to make final government decisions; e.g., with regard to hiring staff, entering into contracts for goods and services or control over funds in the City budget.

Discussion

The Political Reform Act of 1974, as amended, prohibits a "public official" from making, participating in making or attempting to use his or her official position to influence any government decision if it is reasonably foreseeable that the decision will have a material financial effect on the official's economic interests. Government Code §§ 87100 and 87103.

¹ It is expected that most neighborhood councils will be governed by boards of directors or other decision-making bodies with fixed memberships. This will certainly be true for those which will be organized as nonprofit corporations. It is possible that the by-laws of some neighborhood councils will give decision-making authority to all individuals represented by the councils who are in attendance at a particular meeting. If decisions arrived at in that manner include non-advisory decisions (e.g., determining the use of City budgetary funds within a community, hiring staff or entering into contracts), individuals participating in those decisions could be deemed to be "public officials" who will be subject to the requirements of the Political Reform Act. This letter does not analyze that question.

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authorized to perform or which, in fact, they have traditionally performed;" and

4. whether the entity "is treated as a public entity by other statutory provisions." *Id.* at 64-65.

In another opinion, *In re Vonk* (1981) 6 FPPC Opns. 1, the FPPC determined that the State Compensation Insurance Fund was a state agency within the meaning of the Act simply because it was "an entity specifically authorized by the State Constitution." *Id.* at 9; emphasis in original.

For the reasons discussed below, we believe that the Charter's design for the creation of a network of neighborhood councils evidences an intent that neighborhood councils be part of the governmental structure of the City, operating at a grass roots level.

Before applying the *Siegel* and *Vonk* criteria, we turn to the provisions of the Charter relating to neighborhood councils. Article IX of the Charter contains provisions relating to the City's Department of Neighborhood Empowerment (DONE). Charter § 900 describes the purposes of the department and neighborhood councils:

"To promote more citizen participation in government and make government more responsible to local needs, a *citywide system of neighborhood councils*, and a Department of Neighborhood Empowerment *is created*. Neighborhood councils shall include representatives of the many diverse interests in communities and shall have an advisory role in issues of concern to the neighborhood."
(Emphasis added.)

DONE is charged with the responsibility of developing a "Plan for a citywide system of neighborhood councils." Charter § 904. The plan is required to set forth goals, policies and objectives as well as "specific regulations . . . which, if adopted by ordinance, would be sufficient to implement the Plan." Charter § 904(b). The regulations will provide for a method of establishing neighborhood council boundaries, establish procedures and criteria for "recognition or certification of neighborhood councils," and require neighborhood councils to "adopt fair and open procedures for the conduct of their business." Charter § 904(c), (e) and (g). Once approved by the department, the Plan and regulations (in the form of ordinances) will be submitted to the Council and Mayor for approval. Charter § 905.

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The Charter contemplates that the City will appropriate government funds "for the start up and functioning of neighborhood councils" and that those appropriations will be made a part of the City budget each year. Charter § 911. It has not been decided whether any funds which are provided will be appropriated to the DONE for support of the neighborhood councils, or whether funds will be appropriated directly for each council, or both. Although neighborhood councils may also receive private funds, the Charter evidences an intent that they will be substantially funded by City government. The second *Siegel* criterion is also met.

The purpose of neighborhood councils is "[t]o promote more citizen participation in government and make government more responsive to local needs" Charter § 900. Participation in government decision-making on the part of constituents by attempting to influence government decision-makers is not necessarily a government function, and there are numerous private organizations which already play that essentially advisory role. However, the City also provides official avenues within its governmental structure for that participation through the creation of advisory citizen commissions and committees (e.g., the Affordable Housing Commission, the Commission on the Status of Women; the Commission on Disability; planning advisory committees established by individual members of the Council). These commissions and committees, most of which are created by the Charter or ordinance, have historically been considered local government agencies within the meaning of the Political Reform Act. Providing advice to other City agencies is, of course, "one of the principal purposes for which [neighborhood councils are] formed." *Siegel* at 65.

Moreover, the Plan and/or the regulations adopted along with the Plan may well authorize neighborhood councils to make decisions concerning City budgetary funds, to hire staff and to enter into contracts. Although hiring staff and entering into contracts are functions common to both private and public entities, the Charter contemplates that, if these duties are delegated to neighborhood councils, those councils would pay for goods and services used for their operation with public funds appropriated by the Mayor and Council pursuant to Charter § 911. Because government monies would be used to fund what are otherwise governmental functions, we believe that decisions by neighborhood councils to hire staff and to contract for goods and services constitute "government" decisions within the meaning of the Political Reform Act.

These various duties, including the advisory role of neighborhood councils, are all functions which "public agencies are legally authorized to perform and which, in fact, they have traditionally performed." *Siegel* at 65. The third *Siegel* criterion is therefore also met.

Concerning the fourth *Siegel* criterion, the Charter requires that neighborhood councils'

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City. The question is therefore whether members of neighborhood councils are "members" of a City agency within the meaning of the Act.

The relevant FPPC regulation, 2 Cal. Code of Regs. § 18701(a)(1), provides:

"Member' shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decisionmaking authority. A board or commission possesses decisionmaking authority whenever:

"(A) It may make a final governmental decision;

"(B) It may compel a governmental decision; or it 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

"(C) 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."

The Charter does not give neighborhood councils final decision making authority, but it does contemplate that the Plan and regulations adopted along with it may give them that authority with regard to hiring staff, entering into contracts for goods and services and the expenditure of City funds. At this time, neighborhood councils are not "members" within the meaning of paragraph (A) of the FPPC regulation. If the Plan and regulations adopted along with it delegate to neighborhood councils the authority to make governmental decisions, their members would then be "members" of a City agency and therefore "public officials" within the meaning of the Act. As a consequence, they would then be subject to the conflict of interest requirements of the Act.

The Charter does give neighborhood councils an advisory role. That role does not make members of neighborhood councils "public officials." However, if over the course of several years, it appears that the recommendations of a neighborhood council are regularly approved without modification, the members of that council would become "members" of a

neighborhood councils do not meet that definition.

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well as the terms of, the contract. See *Millbrae Assn. for Residential Survival, supra*; *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278; *City Council v. McKinley* (1978) 80 Cal.App.3d 204; *Conflicts of Interest, supra* at 48.

In general, when a public official who is a member of a city council, board or other multi-member body is financially interested in a government contract, the entire body is disqualified from acting on matters relating to the contract. However, the body may act on these matters when the official's interest qualifies as a "remote interest" within the meaning of Government Code § 1091(b). Also, the Attorney General has opined that if a member of an advisory body is interested in a contract, the remaining members of the body may act on the contract if the member with the conflict does not participate in the body's deliberations and does not attempt to influence the other members. 82 Ops.Cal.Atty.Gen. 126 (July 15, 1999).

As members of an advisory body, members of neighborhood councils will be subject to the requirements of § 1090, *et seq.* Those requirements will apply under two different circumstances:

(i) if it is determined that neighborhood councils will have the ability to contract for goods and services, when a neighborhood council takes any action relating to a contract;⁵ and

(ii) when a neighborhood council advises a City agency concerning whether that agency should or should not enter into a particular contract or with regard to specific provisions of a contract.

Question No. 3

Will members of neighborhood councils be subject to the requirements of the City's Governmental Ethics Ordinance?

Answer

Members of neighborhood councils will be subject to the City's Governmental Ethics Ordinance only if neighborhood councils will exercise decision-making functions in addition to giving advice.

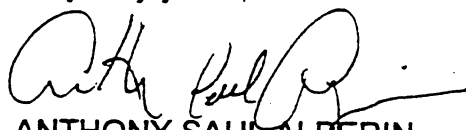
⁵ We note that if neighborhood councils are given the authority to contract for goods or services as City entities, other legal requirements for City contracts would also apply.

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Therefore, whether members of neighborhood councils will be subject to the requirements of the Governmental Ethics Ordinance will depend on whether neighborhood councils will exercise any decision-making function other than rendering advice.

Please let us know if we can be of further assistance to you in connection with this matter.

Very truly yours,



ANTHONY SAUL ALPERIN
Assistant City Attorney

ASA:mo

cc: Mayor Richard J. Riordan
Each Member of the City Council
Each Member of the Board of Neighborhood Commissioners