



FAIR POLITICAL PRACTICES COMMISSION

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April 28, 2016

Aaron R. Maguire, General Counsel
Board of State and Community Corrections
2590 Venture Oaks Way, Ste. 200
Sacramento, CA 95833

Re: Designating Members of Executive Steering Committees

Dear Mr. Maguire:

This letter responds to your request for assistance regarding the conflict of interest code for the Board of State and Community Corrections. More specifically, you have asked that we consider whether the Board has correctly designated members of the Board's executive steering committees in its conflict of interest code and whether the Board should continue to designate members of the committees. **Based upon information before us, we find that members of the Board's executive steering committees are public officials that make or participate in governmental decisions and the Board must designate the members in its conflict of interest code.**

On occasion, the Board establishes executive steering committees. Members of these committees are currently designated positions in the Board's conflict of interest code. For the last couple of years, these committees have had limited authority and are usually created to develop a Request for Proposal for a specific grant program and then scoring grant applicants. In this time, several committees have been formed to implement a specific grant program created by the Legislature with one-time funding and the committees have been dissolved once the grant program has been completed. In an email on April 6, 2016, you confirmed that the Board has not deviated from the recommendations from any recent committee and has made grant awards solely based on recommendations from the committees.

The Political Reform Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Additionally, Sections 87300 and 87302 require every agency to adopt a conflict-of-interest code enumerating the positions within the agency, "which involve the making or participating in the making of decisions which may foreseeably have a material effect on any financial interest."

The threshold question in determining if the Board must designate members of the committees in its conflict of interest code is whether the members are "public officials." A public



official is “every member, officer, employee, or consultant of a state or local governmental.” (Section 82048.) However, a member of a committee, board, or commission is considered a “public official” only if the committee, board, or commission has decisionmaking authority. (Regulation 18700(a)(2).)

“(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

“(i) It may make a final governmental decision;

“(ii) 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 that may not be overridden; or

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

“(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).” (Regulation 18700(a)(2).)

In this case, the Board’s executive steering committees are usually established for specific grant programs and dissolved when the program is completed. Without question, recommendations regarding grant applicants are substantive recommendations to the final decisionmaking authority. The determinative issue is whether these recommendations have been regularly approved, over an extended period of time, without significant amendment or modification. In making this determination, we cannot ignore the fact that the Board has established a history of awarding grants based solely on recommendations of the committees regardless of whether separate committees have been established for different grant programs. Accordingly, we find that the members of the Board’s executive steering committees are public officials that make or participate in governmental decisions and the Board must designate the members in its conflict of interest code.

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

Sincerely,



Brian G. Lau
Senior Counsel