



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

June 7, 2002

Mike Stoker  
Deputy Secretary of State  
State of California  
1500 – 11<sup>th</sup> Street  
Sacramento, CA 95814

**Re: Your Request for Advice  
Our File No. A-02-130**

Dear Mr. Stoker:

This letter is in response to your request for advice regarding the conflict of interest code provisions of the Political Reform Act (the "Act").<sup>1</sup> Any conclusions contained herein are based on the facts you have presented to us. Please bear in mind the Commission does not act as a finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTIONS

1. Are the members of the Voting Modernization Board required to file statements of economic interests pursuant to section 87200?
2. What rules determine the obligations of a new state agency such as the Voting Modernization Board to promulgate a conflict of interest code?

### CONCLUSIONS

1. No. They are not "public officials who manage public investments." However, they will be required to file statements of economic interests once a conflict of interest code has been approved for the Board. (See Discussion.)
2. Regulations 18750 and 18751 govern the promulgation, standards, and procedures for implementing a conflict of interest code for a new state agency.

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## FACTS

The Secretary of State's Office is assisting in the start up of the Voting Modernization Board ("the Board") established pursuant to Proposition 41. You are the Board's authorized representative and are seeking advice on behalf of this new agency.

The law establishing the Board is codified at section 19230 et seq. of the California Elections Code and authorizes the Board to reimburse counties for the purchase of updated voting systems (voting machines, devices, etc.) that are certified by the Secretary of State, pursuant to Elections Code Division 19 (commencing with section 19001). The Board is comprised of three members appointed by the Governor and two members appointed by the Secretary of State. The members do not have a statutory term and are not confirmed by the Senate.

Proposition 41 states that the Board is established for purposes of administering the Voting Modernization Fund, into which the proceeds of bonds issued and sold are deposited. The Voting Modernization Finance Committee ("Committee"), rather than the Board, authorizes the issuance and sale of these bonds. However, it is upon request of the Board that the Committee will determine whether to issue any bonds authorized by the proposition in order to carry out the Board's plans and projects, and, if so, the amount of bonds to be issued and sold.

You have stated that the duties of the Board's members are limited to considering applications from counties to reimburse those counties for their purchase of voting equipment which is certified by the Secretary of State. The primary purpose of the Board is to determine whether a particular voting system is "certified." The members do not have any direct dealings with the private sector, and they do not request that a county deal with a specific vendor. You additionally state that the Board has no jurisdiction and no authority to issue debt. The Committee has the sole discretion to make the determination to issue bonds. The Committee's authority is such that it can issue funds in an amount lower than the Board requests.

The first board meeting is scheduled for June 6, 2002.

## ANALYSIS

Section 87300 of the Act provides that:

"Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter."

Section 87303 further provides that the deadline by which a new agency shall submit a proposed conflict of interest code to its code reviewing body is no later than six months after the agency comes into existence. Regulation 18750 (enclosed) specifies the procedures for the promulgation and adoption of a conflict of interest code for a state agency.

In limited circumstances, an agency may qualify for an exemption from the Act's conflict of interest code requirements. Regulation 18751 (enclosed) provides the procedure and standards for requesting such an exemption.

You have also asked whether the members of the Board presently have a duty to file a statement of economic interests with the Commission. An individual is required to file a statement of economic interests pursuant to either section 87200 or section 87300.

Section 87200 imposes broad disclosure obligations upon:

“...elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.”

Consequently, if members of the Board are deemed to be “public officials who manage public investments,” the members are required to file. Regulation 18701(b) defines “other public officials who manage public investments” to include:

“(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.”

Regulations 18701(b)(2) – (4) set forth the following definitions:

“(2) ‘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.

(3) 'Public moneys' means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investments by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

(4) 'Management of public investments' means the following non-ministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions."

The bonds provided for in Proposition 41 constitute public moneys under the above definition.

You have stated that the Board has no jurisdiction or authority to issue debt under Proposition 41. Additionally, although the Board, pursuant to its establishing statutory authority, initiates the issuance of debt by the Committee when making a request, the Board does not directly determine whether to issue any bonds or the amount of bonds to be issued and sold. Furthermore, although the Board does engage in asset allocation by reimbursing counties for equipment purchases, the Board does not "approve or establish guidelines" for asset allocation since the Secretary of State certifies this equipment pursuant to Elections Code Division 19. Based on this information, we conclude that the members of the Board are not "public officials who manage public investments."<sup>2</sup> This conclusion applies only to the extent that the duties of the Board are as described above. If, however, the Board's role changes or it assumes additional duties as it begins to implement its objectives pursuant to Proposition 41, our conclusion may change.

Please note that while the members of the Board are not "87200 filers," they, along with other officials and certain employees of the Board, will be required to file pursuant to a conflict of interest code which the Board must develop, unless the agency is eligible for a specific exemption. Timing of filing requirements is established pursuant to regulation 18730 which provides, in part, the following provisions which can be included in an agency's conflict of interest code:

"(A) Initial Statements. All designated employees<sup>3</sup> employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days

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<sup>2</sup> Although the Board members are not "public officials who manage public investments," each member must still apply the Act's conflict-of-interest analysis to determine whether he or she is disqualified from a particular decision.

<sup>3</sup> The term "designated employee" is defined by section 82019 (enclosed).

after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to the State Senate confirmation, 30 days after being nominated or appointed.” (Regulation 18730(b)(5).) (Footnote added.)

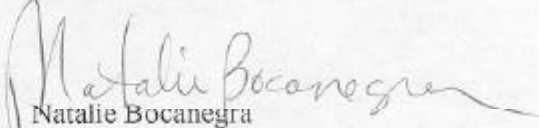
You should contact Wayne Imberi in our Technical Assistance Division once you have reviewed the enclosed materials and begin development of a conflict of interest code for your agency.

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

Sincerely,

Luisa Menchaca  
General Counsel

By:

  
Natalie Bocanegra  
Staff Counsel, Legal Division

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