

COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

July 1, 2021

To: Chair and Members
Health Authority Commission

From: Peter C. Zilaff
Deputy County Counsel

Subject: Potential Conflict of Interest of Industry Representatives

ISSUE

You requested our advice as to whether certain members of the Sacramento County Health Authority Commission (“Commission”) are prohibited pursuant to conflict of interest statutes and regulations from participating in matters before the Commission. Specifically, the question is whether members seated on the Commission by the authorizing statute who represent the health care industry are precluded from participating in the process of providing advice to the State Department of Health Care Services for the selection of managed health care plans within the County of Sacramento (“County”).

It is the conclusion of this Office that the members on the Commission that are industry representatives are not precluded from participation in the advisory process by conflict of interest statutes and regulations. The Commission serves in an advisory role. In this role, it is not making “governmental decisions” subject to the controlling conflict of interest statutes and regulations. Furthermore, members of the Commission are not subject to the controlling conflict of interest statutes and regulations because they are not “public officials” that make governmental decisions.

DISCUSSION

To address this question, this Office reviewed the Political Reform Act (Gov. Code, § 81000 et seq.), the California Code of Regulations (Cal. Code Regs. tit. 2, § 18700 et seq.), and Government Code section 1090. This Office also reviewed prior opinions and writings from the Fair Political Practices Commission (FPPC).

The FPPC is an independent commission that has primary responsibility for the impartial and effective administration of the Political Reform Act (“Act”), as well as providing advice regarding the prohibition against financially interested contracting pursuant to California Government Code section 1090. The FPPC both administers and enforces these ethics laws, including conflicts of interest. It provides, by regulation, both informal and formal advice to public officials and employees, and publishes its opinion advice letters.

A 1997 advice letter issued by the FPPC, File No. A-97-371, responded to a similarly situated advisory body, the former Managed Health Care Improvement Task Force (MHCITF). Comparable to the Sacramento County Health Authority’s current operating model, the MHCITF was authorized by statute to research and report on health care service plans in California. The MHCITF did not have the authority to contract with such plans directly. The MHCITF consisted in part of representatives of health care services plans, employers who purchase health care, plan enrollees and health care providers. The members received no salary or expense reimbursement.

The FPPC found that the members of MHCITF were not “public officials” subject to the Political Reform Act. Pursuant to Government Code section 87100, the conflict-of-interest provisions of the Act apply only to ‘public officials,’ including ‘designated employees.’ The term ‘designated employee’ is defined in section 82019 to specifically exclude members of boards and commissions which serve a solely advisory function. The FPPC continued that, pursuant to California Code of Regulation 18700(a)(1), “[a] board or commission which does not possess decision-making authority ...is solely advisory in nature.” (Citing *In re Rotman* (1987) 10 FPPC Ops. 1.) Because the MHCITF did “not possess governmental decision-making authority its members are not public officials subject to the conflict of interest and disclosure provisions of the Act.”

The 1997 advice letter is on point and persuasive. Our office reached out informally to the FPPC regarding the application of its prior findings to the Sacramento County Health Authority Commission. The FPPC confirmed that the 1997 advice letter is still good authority, however, would not confirm its applicability without further fact-finding in regards to the Political Reform Act. Such fact-finding would require the Commission to proceed with a request for formal written advice. Also relevant to this Commission, the FPPC responded that the Health Authority members have no conflict pursuant to Government Code section 1090.

Although the FPPC stopped short of confirming its findings as applicable to the Health Authority, this Office believes the Commission may still rely on its reasoning. The FPPC relied on Regulation 18700(a)(2) in part. The language of this regulation has not been amended since the FPPC relied on it in their opinion. Regulation 18700(a)(2) states that a board possesses decision-making authority whenever it makes or compels a governmental decision, but also when “[i]t makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved

without significant amendment or modification by another public official or governmental agency.” The Commission does not have the power to compel a governmental action nor has it made recommendations over an extended period of time that have been the basis for a governmental action. Thus, this regulation supports the conclusion that the Commission is not a body that makes governmental decisions.

This evaluation may need to be reconsidered if in the future the Commission were to be provided authority to contract directly, or there is a demonstrated history of the recommendations of the Commission being accepted without change from the State or County.

Based on these findings, it is this Office’s determination that there exists no conflict of interest for Commission board members to participate in the advisory process to the State Department of Health Care Services.



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