

MEMORANDUM OF LAW

DATE: May 11, 1987

TO: Milon Mills, Jr., Assistant Water Utilities
Director

FROM: City Attorney

SUBJECT: Metropolitan Treatment Facility Task Force

By memorandum of April 22, 1987, you inquired as to whether the above-referenced Task Force was subject to a) the Brown Act and b) the Political Reform Act.

The purpose of the Ralph M. Brown Act is to insure that public business is debated and decided openly. Hence we have no hesitancy in advising that all meetings of this Task Force are subject to the Brown Act by virtue of California Government Code section 54952.3 which holds in part:

Section 54952.3. "Legislative body":
advisory committees

As used in this chapter "legislative body" also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency.

....

As this Task Force was specifically created by City Council Resolution No. R-268232, pursuant to Section 43(b) of the San Diego City Charter, the mandates of the Brown Act are clear and this office will outline those requirements at the Task Force's organizational meeting.

The Political Reform Act (California Govt. Code section 81000 et seq.) has a separate focus from the Brown Act. Its purpose is to insure that all public decisions are free from financial

influence. To accomplish this, the PRA requires disclosure of assets of "designated employees" (i.e. those who have discretionary authority which may have a material effect on a financial interest. Govt. Code sections 82019; 87302) and disqualification of "public officials" (Section 82048) of a "local governmental agency" (Section 82041).

As members of a Section 43(b) committee as referenced above, the Task Force is purely advisory and not within the every day decision making function of government that the PRA seeks to control.

(b) The Mayor, City Council or City Manager may create and establish citizens' committees. Such committees shall be created and established only for the purpose of advising on questions with clearly defined objectives, and shall be temporary in nature, and shall be dissolved upon the completion of the objectives for which they were created. Committee members shall serve without compensation.

San Diego City Charter, section 43(b)

Members of a purely advisory body such as the Task Force created under Section 43(b) are not required to file financial disclosure forms since they are explicitly exempted from the term "designated employee."

....
"Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

Calif. Govt. Code section 82019
Accord; Commission on Cal. State
Gov. Org. and Econ. v. FPPC, 75
Cal.App. 716, 724 (1977)

Disqualification, as opposed to disclosure, may be required of members of the Task Force under the Political Reform Act or Council Policy 000-4. Since each has separate tests, they will be reviewed separately.

Disqualification under the Political Reform Act would flow only if such members of an advisory committee are deemed "public officials" by virtue of their membership on the committee. In re Lumsdon, 2 FPPC 140 (1976). The Fair Political Practices Commission has issued a regulation as to when membership will be equated with public official status.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making 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.

2 Cal. Admin. Code section 18700(a)(1)

Emphasis added.

Hence the disqualification requirements of the Political Reform Act can only be determined after consideration by the City Council of the Task Force's recommendations.

The City of San Diego has, however, adopted Council Policy 000-4 (attached) which would clearly require disqualification of a member who has direct or indirect personal or financial interest in a matter before the Task Force.

In summary then, we advise that this advisory Task Force is subject to all restrictions of the Brown Act but its members are not required to file financial disclosure forms under the

Political Reform Act. The Task Force must, however, observe and comply with the potential disqualification provisions of Council Policy 000-4.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:453(x043.2)

Attachment

ML-87-48