



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 12, 2025

Terrie Robinson
Terrie.Robinson@cdfa.ca.gov

Re: Your Request for Advice
Our File No. A-24-146

Dear Ms. Robinson:

This letter responds to your request for advice regarding conflict of interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Should members of the Healthy Soils New Management Practices Committee (Committee), of the California Department of Food and Agriculture (CDFA), be employees designated to file Statements of Economic Interests (Form 700) where there is no substantial, intervening review of the Committee’s conclusions regarding environmental benefits that may be recommended for funding eligibility under the CDFA’s Healthy Soils Program.

CONCLUSION

Yes. Based upon the facts provided and pursuant to Regulation 18700(c)(2)(A)(iii), the Committee 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 Committee therefore possesses decision-making authority and does not serve in a solely advisory capacity. Accordingly, the members of the Committee are public officials and their positions must be designated in the CDFA’s conflict of interest code. The members are also subject to the Act’s conflict of interest provisions and required to file Statements of Economic Interests (Form 700s).

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

You are an attorney at the CDFA, submitting this request on behalf of the Office of Environmental Farming and Innovation (the Office) within the CDFA, including Dr. Tawny Mata, the Director of the Office.

The Healthy Soils New Management Practices Committee (the Committee) makes recommendations to the Environmental Farming Act Science Advisory Panel (the Panel) regarding farming practices that have enough data to show an environmental benefit such that they may be recommended to be eligible for funding under the Healthy Soils Program (the Program). Members of the Panel file Form 700 disclosures.

The Program provides grant funding for types of practices on farms. Each practice needs to have enough data to quantify the environmental benefit of that practice, as only practices that have an environmental benefit are funded. An example of a practice is whole orchard recycling, which involves mulching old orchard trees into the soil, instead of burning them, which had been a standard practice.

The Committee reviews the science on a particular farming practice to determine if there is enough data to quantify an environmental benefit. The practices that the Committee determines to have enough data are then forwarded to the Panel. This is the end of the Committee's involvement, and the Panel does not review the work of the Committee. The Panel takes the determinations of the Committee to make recommendations to the Secretary of Agriculture about whether a practice should be included as a fundable practice in the next round of grant solicitations for the Program. If the Secretary approves the inclusion of a practice, then applicants for grant funding may apply for funding for that practice the next time there is a grant solicitation by the Program. The Program staff make the determinations as to which applicants will receive grants for farming practices.

You state that there is no substantial, intervening review of the Committee's conclusions regarding whether there is enough data about the environmental benefits of certain farming practices to quantify the practice's environmental benefits. The Panel does not review the Committee's conclusions on this issue. The Panel merely takes the recommendations of the Committee and further evaluates whether the practices should be eligible for grant funding. You are concerned that Committee members could have a financial interest in industries that make certain farming practices possible about which they have concluded there is sufficient data of environmental benefit.

ANALYSIS

“A public official at any level of state or local government shall not make, participate in making, or in any way attempt to use the public official's official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” (Section 87100.) In addition, certain state and local public officials must file periodic Statements of Economic Interests (Form 700) disclosing those personal assets and interests that may be affected during the performance of their official duties. (Sections 87200 - 87350.)

The Act defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.” (Section 82048, emphasis added.) In addition, the Act defines the term “designated employee” to include “any officer, employee, member, or consultant” of any agency who meets specified criteria. (Section 82019.) Under the Act, each agency is required to adopt a conflict of interest code, which sets forth positions within the agency for which Form 700s must be filed. (Section 87300.)

The Act requires that conflict of interest codes be formulated at the most decentralized level. (Section 87301.) Accordingly, considerable deference is provided to agency designations of employees under the agency’s conflict of interest code. The Commission is, however, responsible for providing technical assistance upon request to agencies preparing a conflict of interest code. Additionally, under Regulation 18739.5(c), “[t]he Commission may also, upon request, provide advice or assistance to an agency concerning which positions should be designated in the agency’s Conflict of Interest Code....”

Section 87302 provides that conflict of interest codes shall enumerate the designated employees within the agency who make or participate in making decisions which may foreseeably have a material financial effect on any financial interest. Section 82019 defines a designated employee as any officer, employee, member or consultant of any agency who possesses decision-making authority. The term “designated employee” does not include any unsalaried member of a board of commission which performs a solely advisory function.

The issue here is whether the Committee is solely advisory or is participating in making decisions that may foreseeably have a material financial effect on a financial interest. In *Commission on Cal. State Gov. Org. & Econ. v. Fair Political Practices Com.* (1977) 75 Cal. App. 3d 716, 721, the court stated that “the word advisory denotes indirect, relatively passive, hortatory and nonbinding counsel or guidance, as contrasted with active management, decisionmaking and the imposition of obligatory orders or decrees.” The court further noted that “the presence or absence of decisionmaking power is thus an important factor in identifying the wielder of a solely advisory function.”

Regulation 18700(c)(2)(A)(iii) provides that a committee possesses decision-making authority if it “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.”

Here, the facts provided indicate that the Committee determines if there is enough data to quantify an environmental benefit. The determination is then forwarded to the Panel, which does not review the Committee’s work, but rather takes its determinations to make recommendations to the Secretary of Agriculture about whether a practice should be included as a practice to be funded under the Program. These facts indicate that the Committee “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 Committee, therefore, provides decision-making authority under Regulation 18700(c)(2)(A)(iii).

Based on the facts provided, the Committee possesses decision-making authority and thus does not serve in a solely advisory capacity pursuant to Regulation 18700(c)(2)(A)(iii). Accordingly, the Committee is covered by the conflict of interest provisions of the Act and its

members are public officials. The members' positions must be designated in the CDFA's conflict of interest code and the member are required to file Statement of Economic Interests (Form 700s). To the extent you need additional assistance in determining appropriate levels of disclosure for the positions within the conflict of interest code. or the application of the conflict of interest provisions in Section 87100, *et seq.*, you may wish to seek additional advice.

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JF:aja