

Summary

This motion requests that the City Attorney obtain an advisory opinion from the Fair Political Practices Commission (“*FPPC*”) relating to conflict of interests of “decisionmakers” under Title 2 of the California Code of Regulations (“*CCR*”), section 18700(a) and 18700(c). A city attorney request for an advisory opinion from the FPPC is routine practice (opinions are available here: <https://www.fppc.ca.gov/advice/opinion-search.html>), but the Los Angeles City Attorney has never before made this request to the FPPC.

Instead, the Department of Neighborhood Empowerment (“*DONE*”) has ruled without a coherent explanation that NCs are subject to section 18700(a), and therefore subject to conflict of interest regulations imposed on “decisionmakers.” Over the years, *DONE*’s position has not always been consistent. Regardless of whether *DONE* is correct or not, the City Attorney can request the FPPC issue an advisory opinion, which is what this motion requests.

Background

The following is my legal analysis of the relevant CCRs, which *DONE* has not yet substantively addressed since this question was posed in March 2023. The rules references below are separately available in supporting documents.

The use of the “Basic Rule” with a general prohibition in 18700(a) instead of the specific rule that includes exception in Section 18700(c)(2)(A) is somewhat confusing and does not square with at least two rules of statutory construction:

- the specific over the general should prevail; and
- every word and every provision is to be given effect (i.e., no interpretation that results in surplusage).

First, the prohibition to “make, participate in making, or in any way use or attempt to use the official’s position to influence a governmental decision” in 18700(a) is, in its own words, the “Basic Rule.” “Public official” is the term used in that section. Elsewhere, in subsection (c) specifically targeted at “conflict of interest prohibitions,” the term “member” is defined with several exclusions set forth in 18700(c)(2)(A).

Mysteriously, the term “member” is not used at all in 18702.2 (nor seemingly any where else, except the definition of “public official”). 18702.2 uses the entirely undefined term “official” and “government official.” Based on a plain reading of the respective definitions of “member” and “public official,” it would appear the former is a category of the latter. In any event, 18702.2 only creates more confusion by using “official,” “government official,” and “public official” throughout the lengthy rule.

Second, if 18700(a) is applied so broadly, there would be no use for 18700(c)(2)(A). Indeed, what is a plausible example of someone in 18700(c)(2)(A)(iii) if not a member of an advisory NC? Section 907 of the Charter grants NCs authority to “participate” in decision-making, vis-a-vis their authority to provide recommendations to various city agencies, including City Council. This exactly what is contemplated by §18700(c)(2)(A)(iii).

Following that logic, an NC is a decisionmaker only 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?” In fact, quite the opposite is true. The better example here would be a planning commission that directly advises a city council, and whose recommendations are consistently followed.

PROPOSED MOTION

WHEREAS, the Venice Neighborhood Council (“*VNC*”) was created among 99 community and neighborhood councils, pursuant to the City of Los Angeles Charter Amendment in 1999;

WHEREAS, since 1999, the VNC has made hundreds of recommendations to City Council, Department of City Planning, and Council District 11 offices (“*City Agencies*”);

WHEREAS, City Agencies do not rely on recommendations from the VNC and have disregarded VNC recommendations or conditions entirely on major projects. Recent examples of this include: 720 Rose Ave. CPC-2018-2140-CU-DB-CDP-SPP-MEL 2467 Lincoln Blvd. CPC-2018-7344-GPAJ-VZCJ-HD-SP-SPP-CDP-MEL-SPR-PHP 2102 Pacific Ave CPC-2019-6069-CU-DB-CDP-CDO-SPP-MEL-WDI-PHP;

WHEREAS, the Fair Political Practices Commission (“*FPCC*”) promulgates state regulations regarding conflicts of interest under Title 2 of the California Code of Regulations (“*CCR*”), section 18700, et seq., Including local governmental decision making bodies;

WHEREAS, CCR section 18700(c)(2) states: (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 or 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 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. (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);

WHEREAS, the Department of Neighborhood Empowerment (“*DONE*”) contends: Under the City Charter Section 907, the role of the NCs is to make recommendations to various City decision-makers including City boards, commissions, City Council committees and the City Council. This role falls within the “make, participate in making, or in any way use or attempt to use the official’s position to influence a governmental decision” provision of the Political Reform Act (2 CCR §18700(a)). Essentially, since the Neighborhood Councils have been delegated the authority to make “government decisions,” even the board members’ votes on “non-governmental” or purely advisory recommendations will be subject to the conflict-of-interest provisions. For example, a purely advisory recommendation to a City Council Committee regarding an approval or conditional use permit for a project located within the boundaries of the Neighborhood Council would require the NC board members to comply with disqualification requirements; and

WHEREAS, the City Attorney may request an advisory opinion from the FPCC interpreting whether neighborhood and community councils have decisionmaking authority under the CCR.

NOW, THEREFORE, VNC requests that the City Attorney send a request for an advisory opinion to the Fair Political Practices Commission addressing whether neighborhood and community councils are considered to have decisionmaking authority under CCR section 18700(c).