

LAW OFFICES OF ROBERT C. HAWKINS

March 13, 2012

**Via email only**

Ann Ravel, Chair  
Members of the Commission  
California Fair Political Practices Commission  
c/o Zachery P. Morazinni, General Counsel  
John Wallace, Ass't. General Counsel, Legal Division  
428 "J" Street, Suite 620  
Sacramento, California 95812

Re: **Action Item No. 43: Opposition to Petition to Amend Regulation 18705.5;  
Motion to Strike Petition**

Greetings:

This firm represents the Friends of Dolores, and other individuals and groups in the County of Orange interested in and dedicated to open and transparent government. The Friends of Dolores are an unincorporated group in the City of Newport Beach who are dedicated to the memory of Dolores Otting, a local citizen activist who has recently passed away.

In addition, the undersigned has filed two Sworn Complaints which have alleged violations of Government Code section 87100 against two public officials in Orange County. Because open and transparent government benefits all citizens and voters in California, we oppose the captioned petition. Moreover, because the captioned petition fails to satisfy the requirements of Section 11440 of the 1974 APA and current Government Code section 11340.6, and conflicts with the goals and objectives of the Political Reform Act, Government Code sections 81000 et seq. (the "Act")

**I. Motion to Strike: the Petition Fails to Allege that Petitioners' Standing; the Cities Are Not Regulated by the Fair Political Practices Commission.**

Petitioners are various cities in Orange County:

"the City of Anaheim; the City of Dana Point; the City of Irvine; the City of La Palma; the City of Newport Beach; the City of San Clemente; the City of Villa Park; and the City of Yorba Linda ("Clients")."

Petition, page 1. However, neither the Act nor the Commission regulate or purport to regulate cities or special districts; the Act and the Commission regulate the conduct of private persons and public officials.

For various reasons, Petitioners seek to amend Regulation 18705.5 as follows:

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(949) 650-5550  
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- “( c) Notwithstanding subsection (b), pursuant to Government Code Section 82030(b)(2), and California Code of Regulations, Title 2, section 18232, a public official may make, participate in making, or use his/her official position to influence or attempt to influence, a government decision under the following circumstances:
- (1) The decision is on his/her appointment to a committee, board, or commission of a public agency, a special district, a joint powers agency or authority, a joint powers insurance agency or authority, or a metropolitan planning organization.
  - (2) The position is one where the official is appointed by order of the appointing body, by ordinance or resolution of the appointing body, or pursuant to state law.
  - (3) The body making the appointment referred to in paragraph (1) adopts and posts on its website, on a form provided by the Commission, a list that sets forth each appointed position for which compensation is paid, the salary or stipend for each appointed position, the name of the public official who has been appointed to the position and the name of the public official, if any, who has been appointed as an alternate, and the term of the position.”

It is clear from this proposed remedy in the Petition that Petitioners have no standing: the cities are not bound by Regulation 18705.5's requirement to decline from voting on such appointments and recuse themselves from the meeting. This remedy undercuts the goals and objectives of the Commission and the Act.

For instance, Government Code section 81002 states that the purposes of the Act and the regulations of the Commission are to accomplish the following:

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- (b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.
- ( c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
- (d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.

- (e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.
- (f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

The Act contains nothing about the regulation of cities or other public agencies. Moreover, the proposed amendment sought by Petitioners show that it does not affect them: Petitioners are not agencies affected by the regulations. Rather, Petitioners are cities whose elected officials appear to bridle under the current reasonable Regulation 18705.5. (Please note that Petitioners' insertion of the proposed list of positions which they propose to maintain does not convert their claim into standing; this is a voluntary proposal.)

Indeed, the Supreme Court addressed standing requirements:

“Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an ‘injury in fact’ -- an invasion of a legally protected interest which is (a) concrete and particularized, [citations omitted] and (b) ‘actual or imminent, not “conjectural” or “hypothetical,”’ [citations omitted]. Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’ [Citations omitted.]”

Lujan v. Defenders of Wildlife (1992) 504 U.S. 555, 560-561.

Here, Petitioners suffer no injury from Regulation 18705.5; indeed, the Regulation does not apply to cities. It is neither imminent or actual. Further, because the Regulation does not apply to cities, no causal relationship exists. Because no injury exists, the Petition's remedy does not address any city impacts. Rather, the Petition seeks to amend the Regulation to address various individual members of the various cities.

Of course, potential petitioners exist who have standing to bring this Petition: they are the elected officials listed in the Petition. However, they are not the Petitioners. Indeed, it is unclear who is paying the fees for this Petition.

In addition, assuming for the sake of argument that public agencies are interested parties, it is possible that the other agencies on whose boards these elected officials serve and get paid could bring the Petition, because they are interested in the narrow sense of the phrase. The rule affects the selection of their board members. However, they have not brought the Petition.

Finally, the remedy sought in the Petition clearly shows Petitioners lack of standing; they are not “interested parties.” Their proposed amendment does not affect Petitioners at all. The proposed amendment only affects Petitioners’ individual elected officials. It allows them to influence governmental decisions where they have a financial interest when that interest is paid by another public entity. As discussed below, this is bad public policy and will significantly erode the public’s trust in its cities and other public agencies: Indeed, it violates Government Code section 81001(a) which provides:

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.

Because the Cities have no standing to bring the Petition, it should be stricken.

**II. The Petition Lacks Merit and Seeks to Amend the Regulation Unreasonably and in a Manner which is Bad Public Policy.**

**A. Introduction: The Petition Is a Return to the Spoils at the City of Bell.**

In the Spring of 2010, the Los Angeles Times published a series of stories regarding the corruption at the City of Bell. Among other things, Bell council members voted for outrageous staff salaries but also voted to appoint themselves to other committees and agencies where the council members received outrageous compensation. Voters throughout California revolted about the duplicity in Bell: how could council members vote to enrich themselves.

Although not really new, the Commission’s current and correct interpretation of Regulation 18705.5 avoids the spoils of Bell: it recognizes the potential for a conflict of interest when council members voted on agency positions for which they received payment. The Petition maintains that such positions paid minimal amounts. Although such compensation may be small now, without the current interpretation of Regulation 18705.5 and without amendment, it is only a matter of time before Petitioners become the City of Bell. The Commission should deny the Petition and decline to amend Regulation 18705.5.

**B. The Commission Should Deny the Petition: There is no Evidence of any “Unreasonable” Burden on the Regulated Public, i.e. Elected Officials; and There are Good Public Policy Reasons, e.g. the Spoils of the City of Bell, to Deny the Petition.**

The February 27, 2012 Staff Memorandum correctly analyzes the basis of Regulation 18705.5. However, this Memorandum incorrectly notes in response to Point No. 4 that the Petition is correct that the Regulation as currently interpreted will pose an unreasonable burden on the regulated public. First, the Petition contains no facts or evidence regarding such a burden. The Petition contains only legal argument with which the Staff Report disagrees and adequately addresses.

Second, Staff notes that one such burden is that:

“Thus, the application of this rule to the officials not only prohibits them from voting but requires them to leave the room while the voting is taking place.”

Third, the only evidence of this burden is March 8, 2012 letter submitted well after the filing of the Petition from the City Clerks Association which maintains several issues. First, they argue:

“The practical effect of Regulation 18705.5 is that the primary appointee, followed by the alternate, must abstain and leave the room each time he/she is appointed to a board regardless if they are receiving a salary or per diem of \$250 or more because there is no way to determine for sure if they may be reimbursed throughout the year in an amount that equals \$250 or more.”

This is speculation and is without any support. None of the petitioners have provided any evidence of this hypothetical problem. Indeed, the Resolution of the City of Orange contains no mention of any hardships, either those speculated by the City Clerks or those mentioned in the Staff Report.

Second, they suggest:

“In addition, this regulation limits other officials, who may have voted on the appointment from attending a reimburseable conference when the primary and alternate appointees are not available.

The speculation continues and there are several responses. The “other officials” can simply attend without reimbursement if they want to attend. Also, there is no evidence that these “other officials” actually do attend such conferences and seek reimbursement. None of the petitioners have provided any such evidence. Most importantly, the Commission cannot craft a conflicts requirement based upon speculated absences and hypothetical conferences.

Third, they maintain it is difficult to keep track of officials recusing themselves:

“Procedurally it is challenging to determine what officials should be leaving the room and when, as well as when the public can comment and engage certain officials on their appointments.”

Conflicts, and we hope, recusals, happen all of the time. This argument reaches too far: it argues to eliminate the Act, because the Act requires those recused to leave the room. Clearly, this is not an unreasonable burden for Petitioners or the elected officials.

The Petition does not comply with the purposes or goals of the Act. The only officials who support the Petition are city attorneys and city clerks. Where are the complaints from the regulated public, the elected officials? There are none in support of the Petition. Any received after this letter are simply serving the interests of city staff, not the regulated public. Moreover, Regulation 18705.5

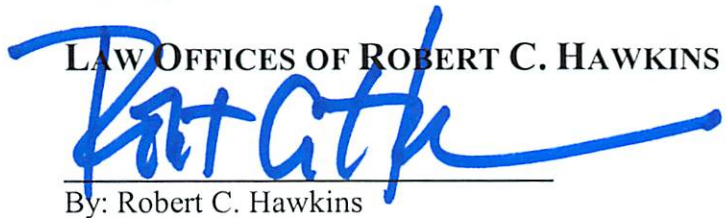
regulates the entire state. If it were so burdensome, why do the complaints only come from Orange County cities? Where are the northern California complaints from the regulated public? Because the regulated public is silent in support of the Petition, the Commission should deny it.

**III. Conclusion.**

The Petition must be stricken as Petitioners have no standing. Assuming for the sake of argument that the Commission declines to strike this Petition on the grounds for instance that the standing issue can be cured by adding the names of elected officials, the Petition and its proposed amendment are bad policy and undercuts the goals and purposes of the Commission and the Act. The Commission should deny the Petition.

Thank you for the opportunity to comment on this matter. We will provide additional argument and evidence at the March 15, 2012 hearing. Should you have any questions, please do not hesitate to contact me.

Sincerely,

  
LAW OFFICES OF ROBERT C. HAWKINS  
By: Robert C. Hawkins

RCH/kw

Handwritten signature in blue ink, possibly reading "Rajesh" or similar.