

November 12, 2009

From: Stacey Fulhorst, Executive Director, San Diego Ethics Commission

To: JoAnn Fuller, member Sacramento Charter Review Committee

RE: Role of Ethics Commissions

Stacey Fulhorst, Executive Director, San Diego Ethics Commission developed the following list of suggestions for jurisdictions interested in starting Ethics Commissions:

- 1) **Establishment:** Because Sacramento is a charter city, I would strongly encourage placing the establishment of the Commission on the ballot as a charter amendment for the voters to approve. This will ensure that the Commission cannot be disbanded without voter approval. If the legislators create the Commission, then there is the possibility that they will dissolve it if they are unhappy with the Commission's investigative and enforcement activities. This charter amendment could be combined with subpoena power (see #2).
- 2) **Subpoena Power:** This is key. The Commission will need the ability to subpoena documents and witnesses, both during investigations and for administrative hearings. Because Sacramento is a charter city, I believe a charter amendment will be required.
- 3) In addition to establishing a Commission, the voters and/or the legislature will need to address the jurisdiction of the Commission as well as the Commission's duties and responsibilities. In other words, this can be done in the charter or in the municipal code. Most local Ethics Commissions in California have jurisdictions that include campaign laws, lobbying laws, and ethics laws (see additional discussion below). In addition, duties and responsibilities generally include: training and education, auditing disclosure statements, investigating and enforcing the laws, and reviewing the laws within the Commission's jurisdiction and proposing updates as appropriate.
- 4) **Appointment of Commissioners:** There are various options for the appointment of Commissioners. The most common is for elected officials to directly appoint individuals of their choice to serve on the Commission. Although this approach could create the appearance that the Commissioners are serving the elected officials who appointed them, it also ensures that the elected officials are held directly accountable for the people who are selected. As you know, most people think this system has worked well at the FPPC over the years. The City of San Diego opted for a system whereby the Council members nominate people, the Mayor selects from the pool of nominees, and the full City Council confirms the appointments. In our eight years of existence, this system has served us well in terms of producing a non-partisan, apolitical group of Commissioners. The third option is to have another independent body that would not be subject to the Commission's jurisdiction (such as the Sacramento Superior Court judges) appoint the Commissioners. Obviously, for such a system to work, the body would need to agree to be involved in the appointment process, and the procedures would need to ensure that the process did not become politicized. Another issue is establishing a list of qualifications for potential Commissioners. By way of example, the City of San Diego has a total of seven Commissioners with no more than three from one political party. We are also required to have at least two attorneys on the Commission, and at least one Commissioner who has been an elected official, a candidate for elective office, or a high-level campaign staffer.
- 5) **Annual Budget:** This is an extremely important issue. I would strongly encourage the city to incorporate into the charter a minimum budget and staffing level for the Commission to ensure that the Commission is not rendered useless by lack of funding. One possibility would be to set the budget as a percentage of the general fund. Another would be to set it at the same level as the individual legislator's offices. Minimum staffing should include: an Executive Director, a General Counsel (see discussion below), a trainer/educator, an investigator, an auditor, and a secretary.

6) Independent Attorney: To my knowledge, the City of San Diego is the only local jurisdiction with an independent legal advisor. Other jurisdictions receive their legal advice from the City Attorney, County Counsel, etc. This is problematic for several reasons. Most importantly, because the City Attorney and/or County Counsel works directly with the elected officials (and is sometimes even appointed by them), there will be at least an appearance that the legal advice from the office will not be independent. This will impact the Commission's work both in terms of analyzing the laws and giving advice to elected officials and candidates, but also in terms of enforcing the laws. Another issue is the enforcement of campaign laws if the City Attorney is an elected official. In other words, the City Attorney's office cannot give advice or conduct enforcement of candidates in a City Attorney race. All of the other jurisdictions I communicate with would much prefer to have their own independent attorney. Depending on the legislative framework regarding the role of the City Attorney, this may require a charter amendment (as it did in San Diego).

7) Investigative and Enforcement Procedures: After the Commission is created, the Commissioners are appointed, and some staff members are hired, they should collectively draft these procedures for the legislature to approve. Drafting these procedures will be a labor intensive effort and will require research with various other jurisdictions to ensure that all relevant practical and policy issues are considered.

8) Campaign Laws: I believe Sacramento already has campaign laws on the books. If this is true, the Commission should review them and propose any necessary amendments. If the city does not currently have any campaign laws, the Commission should draft them for the legislature to review & approve. Both efforts will require the Commissioners and the Commission staff to become familiar with California Political Reform Act so as to ensure that local law is consistent with, and not less restrictive than, state law. Although there are many different issues to consider in drafting or revising campaign laws, one of the most important is requiring on-line disclosure of campaign statements.

9) Lobbying Laws: Same as campaign laws.

10) Ethics Laws: Same as campaign laws. As you know, the term "ethics" can be misleading. Most jurisdictions limit their ethics laws to the same types of provisions found in the Political Reform Act: disclosure of economic interests, financial conflicts of interests, gift limits, post-employment lobbying, etc.

These are just initial suggestions. Clearly there is a lot of work involved in flushing out the details. We have a whole host of documents on our website ([www.sandiego.gov](http://www.sandiego.gov)) including links to our laws, our procedures, our educational materials, and our annual reports.