



Legislation Details (With Text)

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Title: Adopt the Stadium Authority's Resolution Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission

Sponsors:

Indexes:

Code sections:

Attachments: 1. Stadium Authority Resolution and Conflict of Interest Code 2.1.pdf, 2. 04.18.18 FPCC Advice Stadium Authority Consultant in its Conflict of Interest Cod, 3. 07.22.19 Ziegler Letter to Brian Doyle, 4. 02.10.20 Letter to D.Santana re KORE, 5. 03.20.20 FPPC Letter re ManCo Consultants, 6. 03.23.20 Letter re Form 700 Notices, 7. 03.30.20 SCSA Response to 03.23.20 Letter Requesting Determination, 8. 05.05.20 Reply to Letter to D. Santana, 9. 01.26.21 Public Comment by Forty Niners Stadium Management Company to Agenda Item 2.K (January 26 2021 SA Meeting), 10. 01.27.21 CA Reply Forty Niners Management Company Public Comment_ SCSA- Agenda Item 2.K- January 26, 2021 meeting, 11. 01.29.21 Response by Forty Niners Stadium Management Company to SA's Request for Addi. Info at its Jan 26 2021 Meeting, 12. 02.01.21 Letter to Ruthann Ziegler re Jan. 29 2021 Response by Forty Niners Stadium Management Company to SA, 13. City Clerk Form 700 Letter Notices, 14. POST MEETING MATERIAL, 15. Resolution No. 21-1 (STADIUM AUTHORITY)

Date	Ver.	Action By	Action	Result
2/9/2021	1	Council and Authorities Concurrent Meeting	Approved	Pass

REPORT TO THE STADIUM AUTHORITY

SUBJECT

Adopt the Stadium Authority's Resolution Amending the Conflict of Interest Codes for Designated Positions as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

The California Political Reform Act requires all public officials, employees, and consultants who make or participate in the making of governmental decisions to disclose any economic interest that could be affected by those decisions. Under Government Code Section 87302 of the Political Reform Act, certain designated officials and employees of the City are required to file a Statement of Economic Interest (Form 700) because of the nature of their position with the public agency. These officials, staff members and consultants serve in positions that have been designated by the Stadium Authority's Conflict of Interest Code as being required to file such statements.

Under the Political Reform Act, an individual consulting to a government agency is required to file a Form 700 when they assume office and annually thereafter if the consultant makes governmental decisions as defined in the FPPC regulations or when they serve in a staff capacity and participate in governmental decisions or performs the duties of an individual in the agency's conflict-of-interest code. Not every person that is subject to the Act has to file a Form 700, just statutory filers who are expressly listed in the Act and designated officials who the agency designate in the conflict of interest code, which includes new positions or consultants who meet the standard above.

DISCUSSION

All public officials, including “consultants,” are prohibited from making, participating in making, or influencing any government decision having a foreseeable, material financial effect on their economic interests. This conflict of interest prohibition applies irrespective of whether an individual is designated in a conflict of interest code. This means that Stadium Manager’s employees still had an obligation to comply with state law even when they were not expressly listed in the Authority’s conflict of interest code.

On March 7, 2018, Stadium Authority Counsel requested advice from the FPPC regarding its designation of ManCo employees as consultants who are required to file Form 700 financial disclosure statements. Following receipt of FPPC Advice Letter A-18-039, the Stadium Authority Secretary notified the one individual official (Jim Mercurio) who ManCo’s General Counsel had identified as performing the contracting function on behalf of the Stadium Authority under the Management Agreement that he must file a Form 700 as a consultant under the Stadium Authority’s Conflict of Interest Code. Mr. Mercurio filed his initial Form 700 and has since filed annual statements.

The reason that Mr. Mercurio was the only person initially identified as a consultant under the Stadium Authority Conflict of Interest Code is that Management Company actively thwarted access to the Stadium Authority’s financial and contractual records. As Stadium Authority staff gained knowledge of which Management Company officials were actually exercising the public agency authority that had been delegated, staff sent additional notifications to those officials to file Form 700’s as consultants under the Conflict of Interest Code.

Instead of complying with the notices, Management Company retained counsel, Ms. Ruthann Ziegler, to try to convince the FPPC staff that the Stadium Authority’s notifications to file were not proper. In a letter dated March 20, 2020, the FPPC suggest that the Code Reviewing Body, the City Council acting as the Stadium Authority Board, to make the determination as to who is responsible for filing Form 700s. Subsequently, the City Clerk sent filing notices to those ManCo positions the City determined required to file Form 700s. On March 23, 2020, ManCo sent a letter that it was evaluating the notices.. Stadium Authority Counsel followed-up with a letter explaining how staff came to this determination, and made the City available for a discussion with ManCo regarding the designation of consultants and applicable conflict provisions. On May 5, 2020, Ms. Ziegler subsequently responded in writing that without any explanation ManCo had determined that Mr. Schoeb and Mr. Mercurio were required to file Form 700s. That same day Stadium Authority Counsel followed up with an email requesting additional information regarding how they came to that determination.

Having heard nothing from ManCo for more than 7 months, the Stadium Authority prepared this report to update the Authority’s Conflict of Interest Code with the ManCo positions that are required to file Form 700 as consultants under applicable state laws and regulations.

The 2018 amendment to the Stadium Authority's Conflict of Interest Code in adding the consultant designation is legally sufficient to create a duty to file a Form 700 on the part of individual 49ers Stadium Management Company (Management Company) officers who are performing decision-making functions on behalf of the Stadium Authority. In an effort to make such designations even clearer, staff recommends that the Stadium Authority's Board include in the resolution that designation of the Management Company's an agent for the Stadium Authority which is subject the code.

In addition, the Board should adopt a Resolution amending Appendix A of the Code to revise the position for Consultant to Consultant/New Positions and providing the Executive Director with the authority to determine when a consultant or a new position is required to comply with the disclosure requirements described in the Code. The new positions are subject to the broadest disclosure category in the code, unless the Executive Director authorizes a narrower disclosure for new positions with limited duties.

The following individual officials of Stadium Manager and their respective positions have been determined to meet the consultant designation and are required to file a Form 700 under the Stadium Authority's Conflict of Interest Code:

President
Executive Vice President & General Manager
Chief Financial Officer
Chief Revenue Officer
General Counsel

We have included language that provides the Executive Director with the authority to determine which consultants or new positions that will be subject to the Conflict of Interest Code and the ability to assign the applicable disclosure category. This procedure is fully authorized under the regulations and is the proper way to identify those positions that may be required to file a Form 700 between the times the Code is updated biennially.

ManCo submitted a letter from Ms. Ziegler six minutes before the January 26, 2021 Stadium Authority meeting requesting a continuance of the Board's action on adopting the resolution amending its Conflict of Interest Code and challenged the Stadium Authority's designation of ManCo positions. Neither Ms. Ziegler nor any other ManCo representative appeared at the meeting to explain why the period from May 5, 2020 to January 26, 2021 had not been sufficient opportunity for having a "meaningful discussion" of their concerns.

The Stadium Authority Board directed Stadium Counsel to meet with ManCo regarding their concerns regarding the designations under the Stadium Authority Conflict of Interest Code. Neither Ms. Ziegler nor Ms. Gordon has responded to Stadium Authority's Counsel's request to have a discussion. Instead, Ms. Ziegler sent another letter at 4:45 PM on January 29, 2021, the date set by the Board. Ms. Ziegler's letter reiterated that two positions should be designated, the Executive Vice President and General Manager and the Chief Revenue Officer but failed to explain her rationale for objecting to the designation of the other ManCo officials that staff has identified as consultants who required to file Form 700, nor did the letter explain why she could not actually discuss her concerns with staff or appear at the Board meeting to answer the Board's questions.

On February 1, 2020, Stadium Authority Counsel sent a letter responding to Ms. Ziegler's letter. The

following is a summary of the legal support for the recommended action by the Board and summary of Stadium Manager's contract, legal, and fiscal actions taken on behalf of the Stadium Authority- each clearly qualifying for Form 700 completion.

The Basic Rule and Guide to Conflict of Interest Regulations is set forth in subsection (a) of Section 18700 of the FPPC Regulations (2 Cal. Code Regs. Sec. 18700):

A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103).

Under subsection (c) of Section 18700, public official includes consultants of a local government agency such as the Stadium Authority.

Section 18700.3 provides the guidance as to whether a particular officer of a consultant company in contract with a public agency is acting as a consultant within the meaning of the Act. A simple reading of subsections (D) and (E) must leads to the conclusion that Mr. Guido is indeed acting as a public official in that he is both authorizing the booking of event contracts and executing sponsorship revenue agreements on behalf of the Stadium Authority, such as the Title Sponsorship Agreement for the Redbox Bowl signed by Mr. Guido as Management Company President and Mr. Schoeb as VP, Corporate Partnerships.

Perhaps more relevant to the question of which Management Company officers are subject to state conflict of interest law is subsection (a)(2) of Section 18700.3. Under that subsection a consultant includes an individual who, pursuant to a contract with a local agency:

Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18704(a) and (b) or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Section 87302.

The Management Agreement and its amendments delegated an extraordinary degree of governmental decision-making authority from the Stadium Authority to Management Company. The Board delegated virtually all of its authority to book non-NFL events and receive sponsorship revenue and charge expenses for those events to Management Company. Thus, Management Company officials who exercise that delegated authority are both making governmental decisions and performing the same or substantially all the same duties for the agency as agency officials. For this reason as well, Mr. Guido is properly designated as a consultant under the Stadium Authority's Conflict of Interest Code.

Ms. Gordon's letter explaining Mr. Guido's divestiture of his position in KORE Software Holdings, LLC that contracted for Stadium Authority non-NFL customer services relationship service is further acknowledgement of Mr. Guido's status as being subject to conflict of interest law. If Mr. Guido were not subject to conflict law, why would he have had to undo his financial arrangement with KORE?

And, why did Ms. Gordon disclose this action to the Stadium Authority?

Another instance in which Management Company officials have been making governmental decisions and performing substantially the same duties as agency officials is with regard to the Stadium Authority budget. Management Company Chief Financial Officer Scott Sabatino has consistently asserted his authority to override direction from the Stadium Authority Treasurer with regard to myriad budgetary decisions such as the allocation of Shared Expenses including expenditures to third party contractors and vendors, allocation of payroll time of ManCo employees between NFL activities and non-NFL activities, setting of commission structures for ManCo employees who book non-NFL events, allocation of non-NFL revenue to StadCo for advertising and “rental” of equipment and space. But most of all, it is Mr. Sabatino’s more recent usurpation of the Stadium Authority Board’s budget approval process, to the degree that he issues Stadium Authority debt in the form of Revolving Loan draws and repayments, that requires us to conclude that he making governmental decisions and acting in a Stadium Authority staff capacity. Mr. Sabatino cannot both usurp the Stadium Authority’s governmental power and deny that that usurpation does not subject him to the legally mandated ethical standards that go along with the exercise of that power.

Likewise, Management Company’s General Counsel, and for that matter Deputy General Counsel, have usurped the role of Stadium Authority Counsel. They have provided legal advice contrary to Stadium Authority’s clear direction not just with regard to the actions taken by Mr. Guido and Mr. Sabatino with regard to the governmental decisions that they are making and the extent of their authority as agents acting in the role of Stadium Authority officials; they have directly refused to follow clear legal guidance with respect to the Stadium Authority’s contractual and financial records. They have against the advice and direction of the Authority’s Counsel prevented the Authority from possessing its own records. The General Counsel’s actions of providing Stadium Manager legal advice on fiscal, operational, and potential/actual conflicts of interests are yet more examples of their activity taken on behalf of the Stadium Authority. Again, Management Company’s General Counsel and Deputy General Counsel cannot now disavow the state laws governing exercise of the power of agency authority that they have usurped.

In response to Ms. Ziegler’s objection to the Resolution providing the Executive Director with the authority to designate other individuals as consultants, it should be noted that the FPPC advises local agencies to take this approach. See slide 27 of the FPPC’s training to local agencies:

https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Training-and-Outreach/Local_Agency_Code_Video.pdf.

The detail into which the proposed resolution goes in amending the Stadium Authority’s Code in specifically identifying individuals who are subject to the Code is not strictly required because the law already requires consultants like the 49ers to comply with the Act. However, in an effort to ensure that 49ers officials comply with the law, staff is recommending a more specific statement of the designation by identifying individuals who are subject to the Code. It should be pointed out that the City has not had to go to this extent because no other consultants - unlike the 49ers - have been so uncooperative in fulfilling their obligations to comply with state law.

The recommended action will ensure compliance with the California Political Reform Act and updates the list of positions who are required to fil the California Fair Political Practice Commission Form 700 - Statement of Economic Interests for the Stadium Authority.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California

Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

This report has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

RECOMMENDATION

Adopt the Resolution amending the Stadium Authority Conflict of Interest Code required by the Political Reform Act and Regulations of the Fair Political Practices Commission.

Approved by: Brian Doyle, City Attorney

ATTACHMENTS

1. Resolution of the Stadium Authority and attached Conflict of Interest Code and Appendices
2. 04.18.18 FPCC Advice Stadium Authority Consultant in its Conflict of Interest Code
3. 07.22.19 Ziegler Letter to Brian Doyle
4. 02.10.20 Letter to D.Santana re KORE
5. 03.20.20 FPPC Letter re ManCo Consultants
6. 03.23.20 Letter re Form 700 Notices
7. 03.30.20 SCSA Response to 03.23.20 Letter Requesting Determination
8. 05.05.20 Reply to Letter to D. Santana
9. 01.26.21 Public Comment by Forty Niners Stadium Management Company to Agenda Item 2.K (January 26, 2021 Stadium Authority Meeting)
10. 01.27.21 City Attorney Reply Forty Niners Management Company Public Comment_ Santa Clara Stadium Authority- Agenda Item 2.K- January 26, 2021 meeting
11. 01.29.21 Response by Forty Niners Stadium Management Company to Stadium Authority's Request for Additional Information at its January 26, 2021 Meeting
12. 02.01.21 Letter to Ruthann Ziegler re Jan. 29, 2021 Response by Forty Niners Stadium Management Company to Stadium Authority
13. City Clerk Form 700 Letter Notices