

California Voter Foundation



October 13, 2009

Elaine M. Howle, California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Attn: Daniel Claypool
Bureau of State Audits
danc@bsa.ca.gov

RE: Citizens Redistricting Commission Modified Text of Draft Regulations

Dear State Auditor Howle:

I am writing on behalf of the California Voter Foundation to request that you reconsider the way you intend to use the Form 700 as stated in the regulations covering the application process for the new Citizens Redistricting Commission.

While I understand your office needs to verify the eligibility of applicants to ensure they have no conflicts of interest as defined in Proposition 11, we recommend against using the Form 700 to accomplish this task. We also object to the inclusion of this provision in the revised regulations, as we consider this change to be highly substantive in nature.

Form 700 currently is required to be filed by people who have already been elected to, appointed to or are a candidate for state or local office, or hired to work in a state office. It has never been used before to vet applicants for a state commission or job. The form itself is burdensome (the entire form and instructions are twenty pages, and the accompanying reference pamphlet at the FPPC web site is an additional fifteen pages) and simply by your collecting it it will become a matter of public record subject to the Public Records Act. It is unclear whether these completed forms would be published online along with commission applications. No other government agency in California has posted completed Form 700's online and if yours were to do so it would be the first to our knowledge.

According to Proposition 11, what you need to know in order to vet applicants for this commission is whether the applicant or anyone in their immediate family has, over the past ten years:

1. Been appointed to, elected to, or have been a candidate for federal or state office.
2. Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
3. Served as an elected or appointed member of a political party central committee.

4. Been a registered federal, state, or local lobbyist.
5. Served as paid congressional, legislative, or Board of Equalization staff.
6. Contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year.

Some fields in the Form 700 may help you verify the accuracy of applicants' responses for some, but not all of the listed conflicts. It will not assist with #1, #3, #6, and it would only assist with #4 if the applicant or his or her spouse was a paid lobbyist.

The Form 700 includes several schedules:

- Schedule A-1: Investments – Stocks, Bonds and Other Interests
- Schedule A-2: Investments, Income and Assets of Business Entities/Trusts
- Schedule B: Interests in Real Property
- Schedule C: Income, Loans, and Business Positions
- Schedule D: Income – Gifts
- Schedule E: Income – Gifts – Travel Payments, Advances, and Reimbursements

Many of these schedules are designed to provide an accountability mechanism for ensuring that officeholders are adhering to officeholder honorarium bans, loan bans, gift bans and limits and do not have conflicts of interest in carrying out the power they wield by virtue of the positions *they already hold*. To use this form prospectively to gather information about applicants in the commission application process who have a one-in-ten chance of getting the position for which they are applying, is invasive and burdensome. It is a fishing expedition, and would gather far more information (and put that information on the public record) than the Bureau needs to carry out its duties to vet these applicants according to Prop. 11's conflict of interest prohibitions. The form is also insufficient for the purposes you seek to use it because it requires the person completing it to cover activities over the prior one-year period, and the period of time covered by conflict of interest activities in Prop. 11 is ten years.

What you really need to know is whether an applicant, or an applicant's immediate family as broadly defined in Prop. 11 (and not defined on the Form 700, which only covers spouses, domestic partners and dependent children, which could also cause confusion) has been a paid consultant or employee to a political party, campaign committee, candidate for state or federal office, or been a congressional, legislative or Board of Equalization staff member.

Using Form 700 as-is would only help you in a limited way in answering these questions. As the directions are written, it would not cover a ten-year period as required and it would not cover all family members as defined by Prop. 11. We urge you to consider a different approach involving the following five steps (the first four are already in place):

1. Ask the applicants specific "yes/no" questions regarding the conflict of interest provisions and whether the applicants meet them;
2. Require them to attest to the truthfulness of their answers;

3. Require them to provide the names, occupations and contact information for their immediate family members;
4. Make their applications public record and provide the public with an opportunity to challenge their answers; and
5. Before deciding the final pool of 120, spot-check the applicants' family members' names against the state payroll database and the Cal-Access campaign finance disclosure database (it is likely that the technical staff people in State Department of Personnel Administration and the Secretary of State's office could assist the Bureau with writing a simple software program that could perform this check in an automated way). Performing this check will verify whether applicants or their family members received any payments for work performed on a campaign, for a political party, or as a state, legislative or Board of Equalization employee. While this analysis would not cover Congressional or federal campaign activity, we believe this extra step, along with the other four provisions listed above are sufficient for vetting candidates' potential conflicts.

While the kind of financial income disclosure required under Form 700 is useful for identifying conflicts of interest in California government generally, the contents of that form stray far from the specific conflicts of interest outlined in Prop. 11. For example, there is nothing in Proposition 11 that disqualifies a Commission applicant because he or she received a gift from a state officeholder, or holds any specific investments or interests in property.

We understand that Form 700 might be useful in determining whether an applicant has a "bona fide" relationship with an immediate family member as defined by the draft regulations (i.e. "A relationship is bona fide if it is so substantial in nature that it includes any of the following within the preceding 12 months: cohabitation for a period or periods cumulating 30 days or more; shared ownership of any real or personal property having a cumulative value of \$1,000 or more, or either party to the relationship providing a financial benefit to the other having a cumulative value of \$1,000 or more. A "financial benefit" includes anything of value, whether tangible or intangible, and includes any payment, gift, discount, or rendering of services"). However, it is important to note that the specifics of this definition are contained in the regulations and not the initiative itself. There may be some fields on the Form 700 that would be useful in making this determination, but those benefits, we believe, far outweigh the costs to applicants' privacy in casting such a wide net on their personal financial information during the application process and asking them to report all gifts received from anyone, and not just from members of their immediate family.

It might be useful for the Bureau to rely on some of the instructions, such as those that accompany Schedule D in the Form 700, which lists the various kinds of transactions that could be described as "gifts" (i.e. tickets to sporting events, food, beverage and accommodations, rebates or discounts, wedding gifts and honoraria, transportation and lodging or forgiveness of a loan) to help vet applicants for conflicts, but applicants should only be asked to answer such questions as they relate to gifts from immediate family members only, and not all gifts received.

Once an applicant is a member of the commission, he or she should be expected to provide all this information on the public record. But to ask them to do so before they have been appointed will likely have a chilling effect on many applicants' desire to participate at all and may cause some would-be applicants to refrain from applying in order to protect their privacy.

We appreciate your consideration of our concerns and are happy to discuss them further with you at any time. I can be reached at 916-441-2494 or via email at kimalex@calvoter.org.

Sincerely,

Kim Alexander, President
California Voter Foundation

cc: California Voter Foundation Board of Directors