

Bry Laurie Myown  
776 Raymond Avenue  
Long Beach CA 90804  
(562) 433-0233 ≤ [brymyown@webuniverse.net](mailto:brymyown@webuniverse.net)

April 1, 2003

Members of the City Council  
333 W. Ocean Boulevard, 14<sup>th</sup> Floor  
Long Beach CA 90802

Re: Item 13, CVB Exemption, Form 700 Filing

Members:

Thank you for your March 4 vote requiring all City advisory commissions, including the Long Beach Area Convention & Visitors Bureau, Inc. Board of Directors, to file Economic Disclosure Statements (Forms 700). I hope your review of that decision tonight provides a welcome opportunity for open conversation about what constitutes good public policy in this regard.

Unfortunately, it appears that any such a conversation will include very little factual information. To my knowledge, you have been informed only by a statement from the Assistant City Attorney that the Bureau is exempt based on the Attorney's review of "a Huntington Beach opinion" and a 2-page memorandum from the City Manager purporting to portray the practices of four selected California cities. Neither item is included in the public agenda.

If the Attorney's mention of "a Huntington Beach opinion" references a decision by the Fair Political Practices Commission (*FPPC File No. 1-01-164*), you should know that it found that the Huntington Beach bureau is a public agency whose Directors are required to file. The Huntington Beach clerk confirms that its Directors do file. Absent any public analysis of how the facts between Long Beach and Huntington Beach may differ, the Attorney's statement is vague at best. While it is true that Mr. Shannon is your sole and exclusive legal advisor, a confusing opinion in this context could contribute to perceptions of adversarial intent on either side, because it is he who may ultimately be called upon to defend your action.

**If your goal is legal compliance, it might be more helpful to do as Huntington Beach's attorney did and as indeed, many city attorneys routinely do: ask the Fair Political Practices Commission to issue an opinion.**

Long Beach City Council  
April 1, 2003  
Page 2

The Manager's memorandum is equally opaque. It does not indicate whether the selected bureaus are comparable to ours (or even which of San Diego's bureaus is referenced). It fails to indicate what percentage of overall funding the public subsidies constitute (for example, the San Francisco amount is approximately one-half of that bureau's budget) and gives no details regarding whether the municipalities participated in forming their respective bureaus. It provides no evidence that the "stand-alone agency" description is accurate and—this is the real issue before you—it does not attempt to inquire whether the non-filing status of those boards complies with State law. Finally, the statement that our Bureau does not act in an advisory capacity contradicts Ms. Mahood's March 4 remarks:

*You do take the CVB's advice on measures regarding the use of the CVB funds...The CVB is advisory to you on tourism matters.*

However much I welcome a policy debate, I must respectfully point out my belief that the people of California largely decided policy for you when they enacted the Political Reform Act of 1974. I think that your discretion is limited and that you have a duty to require Form 700 filing from whatever entities meet the statutory requirements, as they are interpreted by the Fair Political Practices Commission pursuant to regulations it has adopted through the open and public hearing process.

The decision before you is whether the Long Beach Convention and Visitors' Bureau is a local government agency whose Directors are required to file Form 700. The Commission provided four key criteria for making such a decision in its *Siegel* opinion. (*In re Siegel (1977) 3 FPPC 62.*) They are:

1. Whether the impetus for formation of the corporation originated with a government agency;
2. Whether it is substantially funded by, or its primary source for funds is, a government agency;
3. Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
4. Whether the corporation is treated as a public entity by other statutory provisions.

Long Beach City Council

April 1, 2003

Page 3

My own survey of facts that might answer these questions has been limited by difficulties the public experiences obtaining information regarding a bureau whose meetings and records are deemed private. The lack of agenda materials suggests you may have an equally arduous challenge obtaining information from your own departments. I have relied on numerous source materials, however, and have provided a list of those documents as well as the Commission's *Huntington Beach* and *Siegel* opinions with the attached rationale for my own personal conclusions.

The *Huntington Beach* opinion finds that meeting 3 of the 4 *Siegel* tests is sufficient to make a corporation subject to the Act. It is my belief is that the Long Beach Area Convention & Visitors Bureau, Inc., satisfies all four criteria. Therefore, I think it is a public agency within the meaning of the Act, and I believe you are required to add it to your Conflict of Interest Code and compel its Directors to file Forms 700.

Obviously, others will take a different position. Unless you have been briefed in closed session, however, I see little evidence that you have been fully advised regarding your obligations and authority under State statute, the history of the City-Bureau relationship or the scope of the Bureau's activities. What little advice I have heard in public meetings, and seen quoted in the press is at odds with my research and/or with what I have been told by Commission Technical Services personnel, whose role is neither to prosecute nor defend actions but simply to provide general interpretive guidelines.

I am sure the public appreciates your demonstrated commitment to ethics issues in the recent past. We are also acutely aware of the city's financial difficulties and your 3-Year Plan to address them that relies, in part, on voter approval for a transient occupancy tax increase (a plan I believe the CVB whole-heartedly embraces). The fact that a decision on this matter singles out the CVB as distinct from all other agencies is therefore unfortunate. If your ultimate decision appears to be based on inadequate staff reports, an Attorney's opinion that has not been publicly communicated or testimony that could be perceived as City-financed lobbying, I fear it could jeopardize all of our mutual interests at this particular time.

For that reason, while I would personally like to see your March 4 vote upheld,

**I respectfully ask you to make and approve a substitute motion directing the City Attorney to request an advisory opinion from the Commission's Technical Services Division.**

Long Beach City Council  
April 1, 2003  
Page 4

You may view the text of the Political Reform Act of 1974 and Commission regulations at <http://www.fppc.ca.gov> or write to the Fair Political Practices Commission, 428 "J" Street, Suite 620, Sacramento, CA 95814. To speak directly with a Technical Services Representative, you may call 1 (866) ASK-FPPC.

Anyone may call the Commission's Technical Services personnel to obtain general information. You may not be aware, however, that only public agencies enjoy the privilege of requesting FPPC advisory opinions. The public's rights are limited to seeking actions against non-compliant agencies through the Commission's Enforcement Division.

Sincerely,

Bry Laurie Myown

Encls.

## **LONG BEACH AREA CONVENTION & VISITORS BUREAU, INC., *SIEGEL* TESTS**

### **Impetus for Formation**

Press reports show that the City instituted a transient occupancy tax in 1962 with the intent of pooling it and a general fund allocation to split among two tourism/promotion organizations (at least one of which was "quasi-official") and smaller identified special event sponsors. They describe hotel/motel resistance due to fears that the tax would adversely impact occupancy. Newspaper stories show that a 1969 Council action authorized creation of a single nonprofit corporation managed by a city-appointed board of directors, and that certain lodging promoters gradually became more favorable to the idea as increased hotel income and/or subsidies materialized. Accounts indicate that an officially appointed body, sometimes in combination with specific event or destination sponsors, continued to promote tourism for slightly more than the next decade.

Press accounts report that the current "independent" board system was adopted after a Council-appointed Task Force obtained Council subcommittee and September, 1982 Council approval for its organizational plan involving a Task Force-appointed private, non-profit board that would subsequently stand for election. A contract through June 1983 was awarded on the same date, and a subsequent 1983 City Auditor's report documents that the body named Long Beach Area Convention and Visitors Council, Inc. was formed on October 1, 1982. It is unknown exactly how and when the name change to Long Beach Area Convention & Visitors Bureau occurred; however, press coverage and organizational materials suggest the change in name did not correspond with any significant Board or executive personnel changes.

The Municipal Code confirms that transient occupancy tax revenue was dedicated to tourism promotion before the inception of the current organization. Recital 1(a) of the Agreement reads, "The City Council of the city has determined that there exists a need for an aggressive and efficiently administered program establishing the City as a site for conventions and tourism...." Because the Bureau was established without capitalization save its initial City contract amount and remains almost wholly dependent on City-derived income, it is doubtful it would have come into existence absent a guaranteed income source.

The Agreement requires the Bureau to prepare and obtain City approval for an annual marketing plan in advance of implementation and to submit monthly income and expense statements and annual certified financials to the City. It gives the City title to all advertising, promotional and sales materials developed or produced by the Bureau or its subcontractors and all personal property acquired with City-provided funds. It appears that many of the same individuals have served successively on the various appointed and elected organizations that have been the recipient of City contracts. The Long Beach City Charter calls for notice and bidding of contracts. I have been unable to find a record that convention bureau contracts have ever been so bid.

It is my belief that the impetus for forming the corporation originated with the City.

## **Funding by a Governmental Agency**

City-provided transient occupancy tax income has constituted 76%-99% of the corporation's annual revenues over the 14 years examined. It has averaged 85% of annual operating income. The Bureau's contract is renewed in 5-year terms.

It is my belief the corporation is substantially and primarily funded by the City and that its public funding is ongoing.

## **Services which Public Agencies Traditionally Perform**

The *Huntington Beach* opinion holds:

*Even though the operation of a convention bureau is sometimes performed by cities, it is performed equally as often by non-governmental entities. Although the services performed by the Bureau benefit the city, they also benefit private tourism and convention-related businesses throughout Huntington Beach.*

The State has granted certain tide and submerged lands to the City by Chapter 676, statutes of 1911, Chapter 102, statutes of 1925, Chapter 158, statutes of 1935, as further described in Chapter 29, statutes of 1956, first extraordinary session, and Chapter 138, statutes of 1964, first extraordinary session. The State has imposed obligations on the City under the tidelands trust, and the City has represented to the State that it will actively solicit tenants, exhibitors, and trade, shipping and commercial associations whose activities and use of the city-owned improvements promote or accommodate commerce, navigation, fisheries, and marine or aquatic recreational activities. This is a governmental obligation which cities having improvements on tide and submerged lands are legally authorized and obligated to perform and have traditionally performed.

Article II of the corporation's By-laws reads:

*Purpose and Objectives. Section 1. Purpose. The Corporation is organized as a nonprofit public benefit corporation and shall be operated as a sales and services organization to enhance the economy of Long Beach through the development of the convention and visitors industry, and to actively solicit tenants, exhibitors, and trade, shipping and commercial associations, whose activities and use of the Long Beach Convention and Entertainment Center promote or accommodate commerce, navigation, fisheries, and marine or aquatic recreational activities.*

It is my belief that one of the principal purposes for which the corporation is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed.

## **Treatment as a Public Entity by Other Statutes**

Long Beach Area Convention & Visitors Bureau, Inc., is a California Public Benefit non-Profit Corporation and thus enjoys tax benefits similar to public agencies.

It is my belief that the corporation is treated as a public entity by other statutory provisions.

## **Sources**

- "Room Tax at Hotels, Motels Being Studied To Finance L.B. Promotion," *Independent Press Telegram*, 15 January 1962
- "4 Pct. Hotel Room Tax Voted by City; Passage Follows Big Row," *Independent Press Telegram*, 22 August 1962
- "Promoter's Big Task is Selling Long Beach," *Independent Press Telegram*, 27 January 1969
- "New L.B. Promotion Unit Okd," *Independent Press Telegram*, 23 October, 1969
- "Single Corporation Okd to Promote L.B.," *Independent Press Telegram*, November 1969
- "L.B. Promotion Board Approved," *Independent Press Telegram*, 15 January 1970
- "Hostelry Tax Rises Tomorrow," *Independent Press Telegram*, 4 September, 1972
- "Tax on Hotel Rooms Hiked From 5 pct. To 6 pct," *Independent Press Telegram*, 13 September, 1972
- "Varied Use for Room Tax Asked," 11 March, 1976
- "L.B. Council Members Ask Closer Watch on News Bureau," *Independent Press Telegram*, 22 September, 1976
- "Convention Bureau Chief Fired in Shakeup," *Independent Press Telegram*, 17 November, 1977
- "7-Man Board 'Set' to Take Over L.B. Promotions," *Independent Press Telegram*, 12 June, 1977
- "Convention Bureau Approved for L.B. Board to be Formed," *Los Angeles Times*, 6 June 1982
- "City Oks Tourism Bureau Pact," *Press Telegram*, 15 September, 1982
- "L.B. Tourist Bureau Tentatively Approved, Final OK Expected Next Tuesday," *Los Angeles Times*, 18 September 1982
- "Tourism Bureau to Mold L. B. Image," *Press Telegram*, 29 August, 1982
- "Tourist Council Boasts of Bookings," *Press Telegram*, 23 April, 1984
- "Visitors Council Supports Hike in Hotel Occupancy Tax," *Press Telegram*, 1 June, 1987
- "Convention Promoters Urged to Help Fill Office Buildings," *Los Angeles Times*, 19 August, 1990
- "LBACVC Hears Promise of Prosperity: New President Addresses Annual Meeting," *Press Telegram*, 28 October, 1993

**Agreement** between City of Long Beach and Long Beach Area Convention and Visitors Bureau, Inc.dtd. September 30, 1997, covering period through September 30, 2002

**By-Laws**, Long Beach Area Convention and Visitors Bureau, Inc., Revised January, 1996.

**Operational Review**, City Auditor, July 28, 1983

**Combined Review**, City Auditor, September 2, 1986

**Operational Review**, City Auditor, August 10, 1990

**Annual Report**, LBACVI, 1990-91

**Annual Report**, LBACVI, 1991-92

**Annual Report**, LBACVI, 1994-95

**Consolidated Financial Statement, Prior Year Comparisons**, Internal document, LBACVB, 1995-2000

**Long Beach Charter**

**Long Beach Municipal Code.**