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Memorandum

To: Board of State and Community Corrections **File No.:** 82914.00000
From: Harriet A. Steiner
Date: September 6, 2013
Re: Potential Conflicts of Interest Related to the FY 2013 Edward Byrne Memorial Justice Assistance Grant (“JAG Grant”) Program

We were asked to review the actions taken by the Board of State and Community Corrections (“BSCC” or “Board”) at its July and August 2013 meetings and a legal opinion prepared by the Attorney General’s office regarding whether Board members had a conflict of interest under Government Code section 1090 when the Board considered options for funding the JAG program grant. It is our understanding that, following a review of the AG’s opinion, the Board followed the AG’s recommendation that all the Board members had remote interests in the JAG Grant and were required to refrain from participation in JAG grant decisions. In addition, because the BSCC is the only entity that can accept and dispense the JAG Grant funds, under the rule of necessity, in order to permit the State to move forward to accept the JAG Grant, the Board members drew lots as to who would participate in the Board’s consideration and approval of the grant application and award at the July and August board meetings.

We are still in the process of reviewing the issues presented by the JAG Grant and the composition of the BSCC Board. We agree with the Attorney General’s conclusion that if one or more members of the BSCC has a conflict of interest under a proposed contract, the BSCC will be able to take action on the contract despite the member’s conflict due to the rule of necessity as the BSCC is the only agency that may approve the grants, and if the BSCC cannot achieve a quorum without the presence of conflicted member(s), then the members with conflicts may



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draw lots or choose another random selection method to determine which members may participate and vote.¹

However, we believe that, rather than the broad brush view that all the members had conflicts, a more careful and nuanced analysis of each Board member's governmental employment and the remote and non-interest provisions of Government section 1090 is appropriate to determine whether, on a fact specific individual basis, a Board member(s) had a financial interest in the JAG Grant .

We believe there are two important questions that should have been asked and analyzed in order to determine whether any of the Board members had a conflict of interest in discussing the strategic plan and funding priorities:

1. Would the department of any Board member receive funding as a direct result of the Board's decision to develop the strategy and funding priorities based on the state solicitation and allocation among the seven PPAs (instead of continuing with the funding for the drug enforcement strategy from the previous year)?

2. Would the department of any Board member receive funding as a direct result of the Board's decision to continue the current drug enforcement strategy? In other words, would the continuation of funding of the existing 74 grant projects result in monies being provided to any Board member's department?

If the answer to either or both of these two questions is yes, then the Board member(s) whose department would receive funds would have a remote interest in the decision and would have been required to announce their financial interest for the record and recuse themselves from all discussions and participation. If the answer to these questions is no, then the member would not have a conflict and could participate in the decisions related to the JAG Grant.

After conducting this specific analysis, it is determined that there were Board members without a conflict who did not participate, it may be appropriate to review the way in which the rule of necessity was implemented, so that all members that do not have conflicts participate in the decision and only the minimum number of Board members with remote interests are brought back to form a quorum. Those members could then reconsider and consider ratifying the BSCC's action taken at the last meeting, including the grant and the decision to select the option for developing the strategy and funding priorities for the upcoming four-year funding cycle.

¹ Please note, though, that this process may not be used if a non-conflicted member is absent from the meeting. In other words, a conflicted member may not substitute in for a non-conflicted member who is not able to attend the meeting



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Finally, and without waiting for the completion of our analysis, given the likelihood that similar grants will need to be considered and acted on by the BSCC in the future, we believe that the Board should consider seeking a change to the statutory exception to permit the Board members, to vote despite working for a governmental agency that may receive grant funds as a result of Board action.²

² We understand that there is a 1090 exemption for participation on BSCC committees, however, this exemption does not resolve the matter of Board approvals of grants and contracts.