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REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

CITY ATTORNEY OVERSIGHT OF ATTORNEYS HIRED BY THE SOUTHEAST
ECONOMIC DEVELOPMENT CORPORATION [SEDC] AND THE CENTRE CITY
DEVELOPMENT CORPORATION [CCDC]

INTRODUCTION

As part of the reforms regarding Southeast Economic Development Corporation [SEDC] and the Centre City Development Corporation [CCDC], the City Attorney's office should exercise oversight control of attorneys hired by these corporations.

DISCUSSION

The City Attorney's office has instituted oversight for all outside counsel hired by the City and Redevelopment Agency and would exercise the same level of oversight with regard to CCDC and SEDC legal counsel. It is not uncommon in the private sector for general counsel of a parent corporation to not only oversee the subsidiary's legal affairs, but often to directly

represent the subsidiary.¹ The City Attorney's office is not proposing that our office serve as general counsel for CCDC or SEDC. But, we do believe it is important for our office to exercise the same level of oversight with regard to counsel for those entities as we do for outside counsel for the City and Redevelopment Agency.

This is consistent with good practice and our responsibilities as chief legal advisor under Section 40 of the Charter. The City is the sole member of these corporations. The City, acting through the Council, confirms the Mayoral appointment of their directors.² Agency assets are under control of CCDC and SEDC. The City considers members of both corporate Boards as City officials for conflict of interest purposes and requires them to file Statements of Economic Interest forms. Cal. Code Regs. tit. 2, § 18701. In addition, the City includes these corporate Board members as City officials for City laws governing the behavior of all City officials. See San Diego Municipal Code § 27.4002 [Lobbying Ordinance] and San Diego Municipal Code § 27.3503 [Ethics Ordinance].

¹ [c]orporations can claim an attorney-client privilege over their own communications with attorneys, *Newton v. Yates*, 170 Ind.App. 486, 353 N.E.2d 485, 491 (1976), and courts have extended the privilege to communications between a parent corporation and its attorneys which are also communicated to a subsidiary. *See Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1184-85 (D.S.C. 1974); *United States v. United Shoe Machinery Corp.*, 89 F. Supp. 357, 359 (D.Mass. 1950); *Ins. Co. of North America v. Superior Court*, 108 Cal.App.3d 758, 166 Cal.Rptr. 880 (1980). The language of these cases, however, suggests that the privilege can extend further. In *Duplan*, a corporate patent owner disclosed legal communications to its subsidiaries. The court stated:

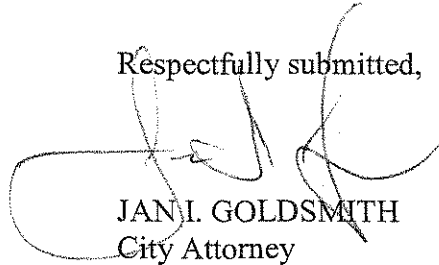
Although an interest of a third party corporation from a commercial standpoint would not establish a sufficient community of interest, the fact that the communications are among formally different corporate entities which are under common ownership or control leads this court to treat such inter-related-corporate communications in the same manner as intra-corporate communications . . . Thus, if a corporation with a legal interest in an attorney-client communication relays it to another related corporation, the attorney-client privilege is not thereby waived. *Roberts v. Carrier Corp.*, 107 F.R.D. 678, 687 (N.D. Ind. 1985). (quoting *Duplan*, 397 F.Supp. at 1184-85) (footnote omitted).

² See City Att'y Report RC-2006-9 (Feb. 26, 2006) at 3 - 6.

CONCLUSION

Based upon the foregoing, we believe it is within the responsibilities of the City Attorney's office to exercise oversight as we would with other outside legal counsel.

Respectfully submitted,



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By



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