

MEMORANDUM OF LAW

DATE: November 26, 2001

TO: Councilmember Byron Wear

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Related to Boy Scout Lease

INTRODUCTION

You have asked the City Attorney's Office to determine whether a conflict of interest would be created by your participation and voting on an upcoming Council decision involving a ground lease that the Boy Scouts' organization has with the City of San Diego in Balboa Park. Because you do not have any financial interest which would be affected by Council decisions on the Boy Scouts' lease, you do not have a conflict of interest which would legally disqualify you from participating in this decision.

BACKGROUND FACTS

The City Council will be making a decision in the near future regarding a ground lease that the Boy Scouts' organization has with the City for a 15.61 acre parcel in Balboa Park. You are an Eagle Scout with the Boy Scouts' organization, your wife is a volunteer Cub Scout leader with the Boy Scouts, and both of your sons participate in the Boy Scouts' program. No member of your family holds a paid position with the Boy Scouts, and you and your immediate family have no financial interest in the Boy Scouts' organization. You do not have any other financial interest, such as a real property interest, that would be affected by the Council's decision regarding the Balboa Park lease.

ANALYSIS

I. Political Reform Act of 1974

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000-91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code 81001.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member or his or her immediate family, or on any of six economic interests delineated in California Government Code section 87103. Those six interests are investments in business entities; interests in real property, income received in the previous twelve months, positions in business entities, and gifts received in the previous twelve months. Investments, income and gifts must meet threshold dollar values set by the Act before they become potential sources of disqualification. Cal. Gov't Code 87103.

You are a public official within the meaning of the Act, and Council decisions regarding the Boy Scouts' lease with the City are governmental decisions within the meaning of the Act. However, from the facts provided, it does not appear that you have any financial interests which would be affected by the Council's decision on the Boy Scouts' Balboa Park lease.

The term "business entity" is defined as an organization or enterprise operated for profit. Cal. Gov't Code 82005. A nonprofit entity, such as the Boy Scouts' organization, is not a business entity under the Act. Therefore, the involvement that you have in Boy Scouts is not a "position in a business entity" for purposes of the Act. You and your family members receive no income from the Boy Scouts, and that organization has not been a source of gifts to you. Finally, from the facts presented, it does not appear that you have any other economic interest, such as a real property interest, which would potentially be affected by the Council decision on the lease. Therefore, you have no economic interest in the Boy Scouts' organization that would be disqualifying under California Government Code section 87103, and you are not disqualified under the Act from participating in discussions and voting on the subject of the Boy Scouts' Balboa Park ground lease.

II. Council Policy 000-4

San Diego City Council Policy 000-4 states in pertinent part:

No elected official, officer, appointee or employee of the City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of such duties.

Under this policy, when a Councilmember has an interest in a matter, whether that interest is financial or personal, it is within a Councilmember's own discretion to determine if that interest in a matter makes participation in a decision on that matter "incompatible with the proper discharge of his official duties." If you determine that your participation in the decision on the Boy Scouts' lease would be inappropriate under Council Policy 000-4, you may choose to abstain from participating in the item. It should be emphasized however, that this result is not required under the law, and is a matter for your own discretion.

CONCLUSION

You and your family have no financial interest in the Boy Scouts' organization, and no other financial interest that would be potentially affected by decisions on the Boy Scouts' Balboa Park lease. Therefore your participation in the discussion and votes on Council decisions related to the Boy Scouts' lease does not present a conflict of interest. If you have any further questions, please feel free to contact me.

CASEY

GWINN, City Attorney

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By

Lisa A.
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Deputy City Attorney

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