

MEMORANDUM OF LAW

DATE: July 15, 1986

TO: Jerry Groomes, Deputy Director, Airport
Division, General Services Department
FROM: City Attorney
SUBJECT: Potential Conflict of Interest Issues
Concerning Airport Staff Off-duty Employment
with Fixed Base Operators

Your memorandum of May 9, 1986 requested our comments and advice on whether off-duty employment of airport operations staff as flight instructors by Fixed Base Operators (FBO) creates a conflict of interest. You state that many of your staff are qualified FAA flight instructors who would like to be employed during non-working hours by airport lessees engaged in flying operations, including flight instruction. You provided job descriptions for an "airport operations assistant" and for an "airport supervisor," and a copy of a typical FBO lease agreement for our review in this regard.

According to the position description, an "airport operations assistant" performs airport operation and maintenance services which are of a non-supervisory nature. There is no indication of responsibility for any fiscal or administrative supervision of FBO's. An "airport supervisor," on the other hand, controls the use of airport facilities, conducts routine transactions with tenants and users, obtains estimates for special projects and the operations budget and supervises the enforcement of airport regulations. The list of duties for each of these positions is more extensive, but the above recitals appear to cover those job responsibilities that are germane to the instant question.

Under the lease, the lessee (FBO) has a duty to competently manage the leased premises to the satisfaction of the City Manager (section 1.06) in a "fiscally responsible manner." Two and one-half percent (2. %) of revenues from flight instruction by an FBO are due as part of the rental fee. Under section 3.05, the City is charged with inspection of the FBO's financial records, and section 3.04 defines gross income as revenue from

any source, which includes flight instruction fees. We thus observe that the revenues from flight instruction by the FBO are a revenue element in which the City has a direct financial interest.

Administrative Regulation No. 95.60 (Code of Ethics and Conduct) establishes City policy governing the conduct of City

employees. Section 3.1 first provides that:

No employee 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.

Section 3.2 provides that:

No employee shall engage in any enterprise or activity which shall result in any of the following:

.....

g. Engaging in or accepting private employment or rendering services for private interests when such is incompatible with the proper discharge of his official employment or duties.

The airport supervisors duties require supervision and administration of the lease facilities by the FBO's. This includes, to some extent, consideration of the management practice of the FBO which, in turn, relates to the fiscal competence of that operator. Since flight instruction revenues are an element of the gross revenues and lease payments thereunder, the amount of those payments is of direct interest to the City. Conversely, since the flight instructor's compensation is also related to flight instruction fees, he is perceived to have a direct private interest in a matter in which the City has an official interest. Therefore, we conclude that in the case of the airport supervisor private employment with an FBO appears incompatible with an assigned duty or function regarding supervision or administration of the lease.

We do not perceive that the "airport operations assistant" is in the same position, however, since the assigned duties are of a

routine, non-management nature. None of the exact provisions of Administrative Regulation No. 95.60 apply. Notwithstanding, standards of conduct issues are not merely technical, but also include avoidance of the appearance of an impropriety. Section 3.2(e) prohibits conduct by which it could reasonably be inferred an improper influence is being exerted upon that employee. This standard is more subjective; it is one that requires familiarity by the supervisor with the employee's duties and the nature of his contacts with a particular City contractor.

We cannot conclude that the airport operations assistant does not occupy a position such that private employment as a flight

instructor might or might not tend to influence him in the performance of his duties. To the extent that he deals officially with a particular FBO but is also dependent upon the willingness of that same FBO to hire him as a flight instructor and favorably schedule him (and thereby compensate him), is a question of fact. It may become more of a question of whether the airport operations assistant would be perceived to provide preferential treatment to a particular FBO because of the private employment relationship than a question of whether the FBO is trying to influence or control the employee. The exact parameters need to be analyzed in a concrete rather than an abstract setting. We therefore recommend that you require the employees contemplating outside employment to comply with section 3.3 of Administrative Regulation No. 95.60, and provide you with a detailed statement of the proposed employment, and you review the nature of their duties as they would apply to the particular FBO involved.

If as result of your review you wish additional clarification, please contact the undersigned. As a rule of thumb, however, if there is any doubt in your mind as to the propriety of the proposed relationship under Administrative Regulation No. 95.60, we would merely observe "if in doubt, refrain."

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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