

MEMORANDUM OF LAW

DATE: August 15, 1986

TO: William Sannwald, City Librarian
FROM: City Attorney
SUBJECT: Conflict of Interest Issues Regarding the
Appointment of Arthur Brody to the Library
Commission

You have requested our comments on whether the appointment of Arthur Brody to the Library Commission raises any problems from a conflict of interest viewpoint. According to his resume, Mr. Brody is the Chief Executive Officer of Brodart Company, a manufacturer of library supplies and equipment. He has been and is a member and officer of numerous professional library organizations. He is also Chairman of the Board of BDI Investment Corporation which invests primarily in state and city government securities, which we interpret to include municipal bonds. As a Library Commissioner, Mr. Brody would serve in an advisory capacity to the City Manager and City Council on matters pertaining to library policy.

As a general observation, we do not perceive Mr. Brody's appointment to create an inherent conflict of interest. However, that observation is subject to the limits that a particular fact situation may otherwise bring to bear. Our analysis follows:

City Charter section 43 authorizes the City Council to create advisory boards whose duty is to "consult and advise with the Mayor, Council or City Manager, as the case may be, but not to direct the conduct of any Department or Division." San Diego Municipal Code section 26.01 creates the Board of Library Commissioners whose function is to "consider all policy matters relating to the development and operation of the Library System of The City of San Diego, and . . . be advisory to the City Manager, and through the City Manager to the City Council on all questions of Library policy."

The City Charter and the Municipal Code clearly limit the role of the Commission and each individual commissioner to policy. Mr. Brody's background lends itself well to this policy advisory function.

You have advised this office that the Commission has no role in the procurement or contracting processes for the library, nor does it become involved in the regulation or administration of the public library system for San Diego. You have likened the Commission to a group of community advisors regarding library

policy, usage, budget allocations and the like. You have also indicated that the recommendations of the Commission are not necessarily followed by either the City Manager or the City Council as a matter of routine, nor in a substantial number of instances.

Attached is a copy of a Memorandum of Law dated December 11, 1984 which thoroughly discusses the roles and conflict of interest situations that may be presented in the case of nonpaid appointees to City boards and commissions. That Memorandum concludes that such appointees are subject to the provisions of Council Policy No. 000-4, but are not "Public Officials" unless there is a regularity of approval associated with their recommendations to the legislative body. Page 6 of the Memorandum of Law advises that any appointee with an affected financial interest must abstain from any decision or vote of any public entity in which the competing financial interest could be possibly affected. We believe this Memorandum shows that members of advisory boards and commissions such as Mr. Brody pose no substantive conflict of interest problem.

Attached also is a copy of Memorandum of Law dated July 13, 1966 which advises that there is no conflict of interest if the City buys park equipment from a company in which one of the Park and Recreation Commissioners is financially involved. It relies upon the policy advisory role such Commissioners play.

While no substantive conflict of interest restrictions are apparent, we would be remiss if we did not point out the broader impact of Council Policy 000-4 referenced above. If Mr. Brody, while a Commissioner, were to make a recommendation to the Library Department or the Purchasing Department that involved the purchase or use of Brodart products, we are of the opinion that Council Policy No. 000-4 would be violated. Similarly, if the Library Commission were to make a similar recommendation and Mr. Brody were to participate in this decision or recommendation, the policy would again be violated. Such a violation would not, of course, affect the contract since the role of the Commission is purely advisory.

Thus, we conclude that Mr. Brody's position as an executive in a library supplier will not normally constitute a conflict of interest with his appointment to the Library Commission because such a role is advisory in nature and function and would not involve the influencing of library administration and procurement practices.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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Attachments

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