

DATE: April 26, 1988

TO: Councilmember Ron Roberts
FROM: City Attorney
SUBJECT: Conflict of Interest Disclosure Requirements on
City Matters Involving Clients of Former
Architectural Firm

In a meeting in your office on March 31, 1988, with Ted Bromfield and myself, you asked us to supplement our memorandum of January 20, 1988, regarding whether you should disqualify yourself from participating in decisions involving clients of SGPA Planning and Architecture San Diego, a California corporation ("SGPA"), and SGPA Partnership I, a California limited partnership ("Partnership"), in situations where SGPA or Partnership appears on behalf of others in city matters.

In our memorandum of January 20, we specifically refrained from answering questions about current or former clients of SGPA and Partnership because of the complexity of the issues and the law. A copy of our January 20 memo is attached for your convenience. You are prompted to seek our opinion again about the clients of SGPA and Partnership, as opposed to SGPA and Partnership themselves, because of two opinions that Ted Bromfield, Chief Deputy City Attorney, has given recently about a similar issue involving a lawyer representing a person before the City Council. In two memoranda of law issued on December 1, 1987, to Mayor Maureen O'Connor, Mr. Bromfield found that the Mayor could participate in a land use variance hearing even though the attorney representing the variance applicant was an obligor on three deeds of trust on property owned by the Mayor and others. Copies of those two memoranda are attached. An attorney for the Fair Political Practices Commission ("FPPC"), Cathy Donovan, concurred in this advice over the telephone. See copy of letter from Ted Bromfield to Cathy Donovan of March 15, 1988, confirming the conversation.

FACTS

The essential facts are as presented in Mr. Wagner's letter of December 1, 1987, and set forth in our prior memorandum of law dated January 20, and will not be repeated here. In our meeting on March 31, you also added that SGPA and Partnership do not accept clients on a contingency fee basis. Rather, an hourly or fixed fee is charged. You further added that SGPA rarely appears before the council on its own projects; instead, it most often represents others before the council.

QUESTIONS

1. Must you disqualify yourself from participating in or voting on governmental decisions where SGPA or Partnership represents others appearing before the City Council?

2. Do you have a duty to investigate whether persons who appear before the council are clients of SGPA or Partnership?

ANALYSIS

The fundamental law regarding disqualification under the Political Reform Act ("PRA") of 1974, was set forth in our memorandum of January 20, and will not be repeated here except as necessary to supplement that memorandum.

In addition to Government Code sections 87100 and 87103, which outlined the basic disqualification rules of the PRA, the FPPC has adopted a rule which clarifies when disqualification is required. 2 California Administrative Code, section 18702.1.

This rule reads in relevant part:

18702.1. Disqualification

(a) Except as provided in subsection (c), a public official shall not make, participate in making, or use his or her official position to influence a governmental decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

(2) Any business entity in which the official has a direct or indirect investment of \$1,000 or

more, or in which the official is an officer, director, partner, trustee, employee, or holds any position of management, appears before the official in connection with the decision;

(3) The decision concerns the zoning or rezoning, annexation or deannexation, sale, purchase or lease, actual or permitted use, or inclusion in or exclusion from any city, county, district or other local government subdivision of, or taxes or fees assessed or imposed on, or any similar decision as to real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more;

(4) It is reasonably foreseeable that the personal expenses, income, assets, or liabilities of the official or his or her immediate family will be increased or decreased by at least \$250 by the decision; or

(5) Disqualification is required pursuant to any other section in this chapter.

(b) A person or business entity appears before an official in connection with a decision when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(1) The effect of the decision on the official or his or her immediate family, on the source of income (including gifts) to the official, on the business entity in which the official has an investment or in which the official is a director, officer, partner, trustee, employee or holds a position of management, or on real property in which the official has a direct or indirect

investment, will not be distinguishable from its effect on the public generally;

....

(Gov. Code Section 87103) Emphasis added

The significance of the underlined portions of the rule is that the FPPC appears to recognize that some individuals or entities may appear as agents on behalf of another at public hearings; and, in so doing, the individual or entity does not necessarily "appear before the public official" within the meaning of the PRA. In order to "appear before a public official," the individual or entity must be 1) an applicant, claimant or appellant; or 2) be a named party in a proceeding before the public official. This provision appears to recognize specifically that lawyers or architectural firms may from time to time appear before public officials on behalf of others. The appearance of those firms, even if they have some tie to a public official, does not automatically render a public official unable to participate in or vote on a particular governmental decision.

It must be cautioned, however, that even though the appearance of a law firm or architectural firm with links to a public official does not necessarily disqualify the official, the appearance may require it, as pointed out in Ted Bromfield's letter to Cathy Donovan of the FPPC staff. For example, if the

law firm or architectural firm is being paid a contingency fee by the client on the matter before the public official, the governmental decision may result in having a material financial effect on the law firm or architectural firm, thereby requiring disqualification of the official.

Absent a showing of how the potential governmental decision could have a material financial effect on either SGPA or Partnership or yourself, the regulation cited above appears to allow SGPA and Partnership to appear before you as a member of the City Council without your being required to disqualify yourself from participating in decisions or voting.

In answer to your second question, we could find no law that requires you to investigate whether each and every person who appears before you as a Councilmember has contracted with SGPA or Partnership to do work for them. Government Code Section 87100, however, does state that a public official has a duty to disqualify himself from participating in or voting on governmental decisions in which he "knows or has reason to know" that the official has a financial interest. The language "knows

or has reason to know" implies a general duty to investigate those docketed matters which would either raise a suspicion of financial interest in your own mind or which would put a reasonable man on notice to check further.

These responses are intended as guidelines only. If you have specific questions regarding an upcoming agenda item, please do not hesitate to ask for our analysis.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:fs:048.7.1(x043.2)

Attachments

ML-88-41