

MEMORANDUM OF LAW

DATE: May 26, 1988

TO: Rod Rippel, Industrial Waste Program Director
FROM: City Attorney
SUBJECT: Potential Conflict of Interest of Backflow
Supervisor

Through your request of May 9, 1988 and supplemented by an independent communication from P. A. Quint, Attorney at Law, we have reviewed the potential conflict of interest flowing from the activities of Industrial Waste Backflow Supervisor William Lokey.

The facts are thankfully not in dispute and are synthesized as follows from the above-referenced documents supplemented by a handwritten statement submitted by Mr. Lokey. Mr. Lokey, as Backflow Supervisor, reviews the reports of private backflow testers. Private backflows at industrial facilities must be periodically tested and their results reported.

Mr. Lokey is active in the professional training of backflow testers and is regularly consulted on problems arising in the industry. In addition, Mr. Lokey obtained a contractor's license (C-525569 Class C-36) which is required for installation of the backflow devices and allowed a private contractor, William Watters of B & H Backflow, to use his license while he (Watters) obtained his own. However, this substitution was not permitted by the Building Inspection Department and Mr. Lokey neither asked for nor received any compensation from the proposed substitution.

Mr. Lokey's foster son Kevin Larson was the operator of L & L Backflow, however, that business has terminated and he is now an employee of B & H Backflow. However, Mr. Larson used Mr. Lokey's telephone number on his business cards and when Western Backflow assumed Larson's business, they continued its use. Mr. Lokey has no association with Western Backflow and has insisted on the removal of any reference to his number on Western's business cards.

Such entanglement of Mr. Lokey with the dual use of his contractor's license and telephone number in association with private backflow testers has prompted legitimate inquiry over the parameters of proper conduct which we now address.

The Political Reform Act (California Government Code section 81000 et seq.) prohibits a public official from making or participating in making a governmental decision in which he or she knows or has reason to believe he or she has a financial interest. California Government Code section 87100. Mr. Lokey

is a public official by virtue of his position as an employee of The City of San Diego. California Government Code section 82048. A person has a financial interest within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or member of his immediate family on:

....

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

....

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

....

California Government Code section 87103.

From all the facts recited above, we find no financial interest in any backflow business either from investment or income. Nor do we need examine the foster son relationship between Mr. Lokey and Kevin Larson as "immediate family" in the Political Reform Act is limited to spouse and dependent children. California Government Code section 82029. There being no financial benefit flowing to Mr. Lokey from the use of his

contractor's license or the use of his telephone, we find no violation of the Political Reform Act.

However, our review is not limited to purely financial standards. The Political Reform Act also mandated that each department adopt and promulgate a separate Conflict of Interest Code. California Government Code section 87300. The Water Utilities complied with this requirement on April 26, 1977 as Resolution No. R-218260 adopted the Conflict of Interest Code for the Water Utilities Department. Section 200 of the Code reads in pertinent part:

SECTION 200 PROSCRIBED ACTIONS

A. An employee shall avoid any action, whether or not specifically prohibited by law, which may tend to affect his or her job

performance creating the appearance of:

1. Using public office for private gain.
2. Giving preferential treatment to any person.
3. Losing complete independence or impartiality.

Since the above facts show no private gain or preferential treatment, we find no violation of the department's Conflict of Interest Code. However, Mr. Lokey must be cautioned that his conduct in offering to substitute his contractor's license number and permitting the use of his personal telephone number on a private business card gives the appearance of a conflict that endangers the confidence every citizen must have in their public employees.

To preserve this integrity, the City Council has adopted Council Policy 000-4, attached hereto, which supplements the requirements of the Political Reform Act. As is readily apparent, it echoes the restrictions on private gain as well as eliminating the use of public information for the advantage of another.

While we find no evidence that Mr. Lokey misused his position or his professional knowledge, the goal of "complete confidence" set by Council Policy 000-4 can only be accomplished by scrupulous observance of ethical standards that avoid both the actuality and the appearance of personal conflict.

CONCLUSION

While we find no conflict of interest established under the Political Reform Act or the department's Conflict of Interest Code, Mr. Lokey should be cautioned to observe the broader standard established by Council Policy 000-4.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:454(x043.2)

Attachment

cc P. A. Quint, Esq.

ML-88-52