

MEMORANDUM OF LAW

DATE: September 22, 1988

TO: Susan C. Hamilton, Deputy Director, Special  
Projects Division, Water Utilities Department  
FROM: City Attorney  
SUBJECT: Potential Conflict of Interest of Chairman of  
the Metropolitan Sewer Task Force

Following the Metropolitan Sewer Task Force meeting of August 23, 1988, you asked this office to review a handwritten letter of the same date presented by Eugene F. Sprofera. In that letter Mr. Sprofera asked for an investigation of "the possible charge of conflict of interest" alleged to have arisen from E. Miles Harvey's representation of Hamel and Associates before the County Board of Supervisors on March 11, 1987 seeking a waiver of County Board Policy No. 1-107 dealing with long-term availability of sewer services in the East County.

Since the activity of representation occurred on March 11, 1987 and the Metropolitan Sewer Task Force of which Mr. Harvey is Chairman wasn't even formed until April 27, 1987, it would be tempting to dismiss this call for an investigation out of hand. However, in the hopes of silencing similar unsupported sojourns against the reputation and honest effort of citizen volunteers, we outline the standard of conduct in conflict of interest cases and our factual finding that Mr. Harvey breached neither the letter nor the spirit of these standards.

The guiding focus of any conflict of interest determination is the Political Reform Act (California Govt. Code section 81000 et seq.) which seeks to insulate all public decisions from financial influences. Cal. Govt. Code section 81001(b). However, as plainly pointed out in our May 11, 1987 memorandum of law on the applicability of the Political Reform Act to the Sewer Task Force, disclosure statements are required only of a "designated employee" which specifically does not include members of solely advisory bodies. Calif. Gov. Code section 82019; Commission on Cal. State Gov. Org. and Econ. v. FPPC, 75 Cal.App. 716 - 724 (1977). Hence Mr. Harvey, as a member of Sewer Task

Force, a City Charter Section 43b strictly advisory body (Resolution R-268232), clearly has no financial disclosure requirements.

The second prong of protection of the Political Reform Act is that of disqualification when any public official knows or has reason to know that he or she has a financial interest in a

governmental decision. Cal. Govt. Code 87100; 87103.

However, citizen members of advisory committees are not "public officials" as defined in Cal. Govt. Code section 82048 unless they fulfill the following test supplied by the Fair Political Practices Commission:

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

2 Cal. Admin. Code section 18700 (a)(1)

Emphasis added.

Since the Sewer Task Force recommendations are advisory only and have been roundly debated and not routinely approved by the Council, Mr. Harvey cannot at this stage be equated to a public official with independent decision-making authority.

Even assuming arguendo that Mr. Harvey were such a public official subject to disqualification, the facts presented by Mr. Sprofera do not even raise an inference of disqualification. First Mr. Harvey's activity consists solely of representing a client before the Board of Supervisors over whom he possess no advisory or inferential advisory authority. Hence he lacks any participation in the governmental decision about which Mr. Sprofera complains (waiving a county policy). Secondly his advocacy predates by over one month the creation of the City task

force which has advisory capacity over only city activities. Hence in each area of capacity, timing and subject matter, Mr. Harvey had no influence over the county governmental decision regarding Policy No. 1-107.

Lacking any connection in terms of capacity, timing or subject matter between the governmental decision and the position of Mr. Harvey, we find absolutely no conflict of interest posed by Mr. Harvey's representation of John H. Hamel before the Board of Supervisors on March 11, 1987. Rather we recognize the charge as verbal vandalism which we firmly reject as presenting neither the presence nor the appearance of a conflict of interest.

JOHN W. WITT, City Attorney

By  
Ted Bromfield  
Chief Deputy City Attorney

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