

MEMORANDUM OF LAW

DATE: May 23, 1989

TO: William J. Bamberger, RUIS Administrator
FROM: City Attorney
SUBJECT: Conflict of Interest

This is in response to your memorandum of May 9, 1989 in which you inquire whether you would have a conflict of interest in violation of city law, policy or ethical standards resulting from acceptance of reimbursement of travel expenses from IBM for teaching a course at an IBM workshop.

BACKGROUND FACTS

In lieu of repeating facts you presented in your memorandum, a copy of your memorandum is attached. In addition to the facts in that memorandum, you informed me by telephone that the workshop is to be held in South America and that you anticipate travel expenses to exceed \$250.

LEGAL ANALYSIS

The basic law governing government employee conflicts of interest is located in the Political Reform Act of 1974, as codified in Government Code section 87100 et seq. Government Code section 87100 reads as follows:

87100. Public Officials: State and Local.

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

The term "financial interest" is defined in Government Code section 87103 in relevant part as follows:

87103. Financial Interest.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a)

(b)

(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 twelve (12) months prior to the time when the decision is made.

(d)

(e)

The term "public official" includes City employees. See Government Code section 82048. The term "income" includes, among other things, "reimbursement for expenses paid by any person other than an employer."

It is clear that you are a public official within the meaning of Government Code section 87100 by virtue of the fact that you are a City employee. The fact that one-half your salary is paid by the County is irrelevant. You are still a local government employee. Therefore, you are governed by Government Code section 87100.

The law is drafted to prohibit public officials from making or participating in government decisions if the official has a financial interest within the meaning of the law. The governmental decisions with which you are or will be involved include advising RUIS on the existing contract between IBM and

SDDPC, a corporation wholly owned by The City of San Diego, and evaluating software and hardware for potential purchase by SDDPC on behalf of RUIS. IBM is a possible vendor of the hardware and software. The fact that SDDPC is not your employer does not remove these decisions from the statutory prohibition. You are or would be acting in your role as RUIS Administrator, hence your decisions and recommendations are governmental.

Lastly, the Political Reform Act defines financial interest to include income in the form of reimbursement of expenses by a person other than your employer. If you were to accept IBM's offer of reimbursement of travel expenses, which will exceed \$250, then you would be precluded from acting in your role as RUIS Administrator. That is, you would be precluded from advising on the SDDPC/IBM contract and from evaluating potential purchases of hardware and software from IBM for twelve (12) months from the date IBM promised the reimbursement.

Essentially, the law is drafted such that you are not precluded from accepting the IBM reimbursement; but if you do, you would be precluded from doing your job for one (1) year.

A separate body of law, also located in the Government Code, prohibits City employees from having a financial interest in any

contract made by them in their official capacity by any body of which they are members or employees. Government Code section 1090 et seq. Although there are no facts to indicate that you had a role in negotiating the current contract between SDDPC and IBM, by virtue of the fact that you will be evaluating hardware and software for possible purchase from IBM by SDDPC for RUIS, you could potentially be found to have a prohibited financial interest in the hardware and software contract should IBM be awarded the contract. In any event, the reimbursement from IBM would potentially cause the appearance of impropriety if you were to continue to evaluate hardware and software for purchase in violation of the statute. See, for example, Thomson v. Call, 38 Cal.3d 633, 648 (1985) cert. denied 474 U.S. 1057 (1986).

Lastly, you should be aware of Council Policy 000-4, the City's Code of Ethics, which prohibits City employees from having a financial or other personal interest, direct or indirect, which tends to impair the independence, judgment, or action in the performance of the employee's duties. It is a matter of individual conscience whether acceptance of reimbursement from IBM would impair your judgment in advising on the current SDDPC/IBM contract or evaluating the upcoming purchase of hardware and software. However, the Council Policy is very broad and would appear to at least raise a serious question about the propriety of accepting such reimbursement.

In conclusion, your accepting reimbursement exceeding \$250 from IBM for travel expenses to teach at an IBM workshop would create a conflict of interest under Government Code section 87100 et seq. It would also pose potential problems under Government Code section 1090 et seq. and under Council Policy 000-4.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:048(x043.2)

Attachment

cc Mary Kay Jackson

ML-89-49