

DATE: February 23, 1990

TO: Jane Potter, Council Representative, Council
District 3

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Arising from
Gift and Forgiveness of Loan from a Parent

By an undated memorandum addressed to the City Attorney, which we received on February 12, 1990, you asked us to give you advice about a potential conflict of interest arising from a gift of money and forgiveness of loan from your mother. The question arises because your mother resides in a mobilehome park at Mission Bay operated by De Anza Corporation, which operates the park under a lease with the City.

BACKGROUND FACTS

You described the nature of the action to be considered by the City in the coming months in your memorandum as follows:

The Public Facilities and Recreation

Committee will be addressing issues relating to the long term use of Mission Bay. De Anza Corporation is the lessee of 120 acres of City land on Mission Bay used as a campground and mobilehome park. The mobilehome park lease expires in the year 2003.

De Anza Corporation proposes a lease extension and redevelopment of the site. The first phase of development would add 400 hotel rooms and shops while requiring the relocation of 115 mobilehomes to other areas of the City land. In 2003, the second phase of the proposed development would add an additional 1,000 hotel rooms and a 13 acre garden and arts center. De Anza Corporation would relocate the displaced mobilehome residents to

other parks and allegedly protect the equity in their homes.

Recent public opposition has forced De Anza Corporation to revise its proposal. The details have not been revealed to date.

You describe the transaction between you and your mother in your memorandum as follows:

Your 77-year old mother and sister (who has Down's Syndrome) reside in the mobilehome park. Your mother purchased the home for

approximately \$60,000 within the last two years. Her home is one of the 115 slated for relocation during the first phase of development. She leases the home site from De Anza Corporation. The expiration of the lease in 2003 coincides with her 90th birthday.

In 1989, you received a loan of \$25,000 from your mother. The loan does not require any specific monthly payment and no interest is charged. The loan is being repaid at the rate of \$500 every other month. In December 1989, you received a gift of forgiveness of this debt in the amount of \$10,000. This leaves a current balance of \$13,500 owing on the loan.

QUESTIONS PRESENTED

You asked for advice regarding two potential conflicts of interest, stated as follows:

1. Does the foregoing interest present a conflict of interest which requires you to remove yourself from participation in briefings, discussions and information gathering tasks on the De Anza issue?
2. Do you need to consider the issue of bias or appearance of bias because of the impact of your mother's place of residence and, possibly, financial condition?

APPLICABLE LAW

To answer your questions requires discussion and analysis of the Political Reform Act of 1974, regarding financial conflicts of interest, and Council Policy 000-4, which sets forth the ethics and conflict of interest policy established by the City Council for all City officers and employees. We will discuss the Political Reform Act of 1974 first.

The disqualification provisions of the Political Reform Act of 1974 are set forth in Government Code section 87100 et seq. Government Code section 87100 declares when a public official must refrain from participating in making, or using his or her official position to influence, governmental decisions when there is a financial interest, as follows: "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."

Government Code section 82048 defines "public official" to

include employees of local governments.

Government Code section 87103 describes the types of financial interests that may require disqualification from governmental decisionmaking within the meaning of Government Code section 87100, quoted above. Government Code section 87103 in relevant part reads as follows:

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:

....

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

....

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts

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.

To determine whether a public official has a disqualifying financial interest under the above-quoted Government Code section, it is necessary to determine the effect of a governmental decision on 1) the official him or herself; 2) the immediate family of the public official; or, 3) on a source of income or a donor to the public official.

Under Government Code section 82029, the term "immediate family" includes only the spouse or dependent children of a public official. A parent is not included in that definition.

Under Government Code section 82030, the definition of the term "income" includes a loan and a forgiveness of a loan. Government Code section 82030(a). The term "income," however, does not include loans from parents, provided that the loans are not made by the parent as an intermediary or agent for another

person. Government Code section 82030(b)(9).

Under Government Code section 82028, the term "gift" does not include a gift from a parent if the parent is not giving the gift as an intermediary or agent of another. Government Code section 82028(b)(3).

ANALYSIS

Since you are employed as a City Council representative to Councilmember Hartley and in that capacity gather information for and advise the Councilmember on various matters for his use in deliberations and votes, you are a public official within the meaning of Government Code section 82048. Therefore, you must abide by the law set forth in Government Code section 87100.

Under that Government Code section you would be required to disqualify yourself from participating or advising on De Anza Corporation matters if your participation may lead to a governmental decision that would have an impact on one of the financial interests described in Government Code section 87103.

From the facts given, there is no direct impact on yourself which would occur as a result of your advising the Councilmember or giving him information regarding De Anza Corporation issues within the meaning of Government Code section 87103. Also, there

will be no impact from the governmental decision(s) on an immediate family member, because a parent does not qualify as an immediate family member within the meaning of Government Code section 87103. (Gov't Code section 82030.)

The true issue under the present set of facts is whether you received "income" from your mother, or received a "gift" from her, which would disqualify you from gathering information for or advising the Councilmember on the De Anza lease and related matters within the meaning of Government Code section 87103.

Government Code section 82030(b)(9) specifically excludes from the definition of "income" loans from a parent, provided that the parent is not acting as agent or intermediary for another. There are no facts to indicate that your mother was acting on behalf of another in making the original loan or forgiveness of part of the loan. Therefore, we conclude that you have not received an "income" interest from your mother within the past twelve (12) months which would preclude you from advising or giving information to the Councilmember regarding the De Anza Corporation lease or related matters.

The next question is whether you have received a gift within the meaning of the law from your mother by virtue of the interest-free loan or forgiveness of part of the loan that would preclude you from such participation. Government Code section 82028 specifically excludes gifts made by parents from the

definition of disqualifying financial interests, if the gifts are not made by the parent as an agent or intermediary of another. In this instance, there are no facts to indicate that your mother gave her gift to you on behalf of another. Therefore, we conclude that the gifts of the interest-free loan and forgiveness of part of the loan do not qualify as prohibited financial interests within the meaning of Government Code section 87100 and 87103.

In conclusion regarding your first question, we find that you do not have a disqualifying financial interest under the Political Reform Act in advising on matters pertaining to the De Anza Corporation lease arising from the fact that your mother in the past year granted you a loan in the amount of \$25,000, forgave a substantial portion of that loan or is not charging interest on the loan.

The second question you raise is whether you need to consider the issue of bias, or appearance of bias, because of the impact of City decisions relating to the De Anza Corporation lease on your mother's place of residence, and possibly, her financial

condition. To answer this question, we refer you to Council Policy 000-4 entitled, "Code of Ethics" published on December 26, 1967 and corrected as of January 18, 1968. We attach a copy of that policy for your information.

We refer you to the first pronouncement of policy in that document, which reads as follows:

No elected official, officer, appointee or employee of the The City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of such duties (emphasis added).

There is no penalty for violating this policy; however, it places a duty on you to examine your own conscience to determine whether, either because of the loan or gifts that you describe in your memorandum or because of your concern for the physical and financial well-being of your mother and sister, your judgment would be so impaired that you would not be able to perform your official duties. If your judgment would be substantially impaired because of these concerns, you should refrain from gathering information for and advising the Councilmember regarding De Anza Corporation matters.

JOHN W. WITT, City Attorney

By
Cristie C. McGuire
Deputy City Attorney

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ML-90-29