

MEMORANDUM OF LAW

DATE: March 13, 1990

TO: Mayor Maureen O'Connor via Citizen's
Assistance

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Arising from
Request for Mayor to Serve on Honorary
Fundraising Committee for New Gymnasium at Our
Lady of Peace Academy

This memorandum is in response to a route slip dated February 21, 1990, regarding the principal of Our Lady of the Academy's request of the Mayor to serve on the Honorary Committee for the fundraising campaign for a new gymnasium/multi-purpose building at the school. The Mayor would like the City Attorney's advice on whether she would have conflicts of interest from serving on this committee. Attached to the route slip was a written booklet describing the campaign. We also obtained further information from Alexandra Hart of the Mayor's office.

FACTS

The Academy of Our Lady of Peace is a Catholic secondary school for young women located in The City of San Diego. The Academy intends to build a multi-story, 24,000 square foot gymnasium/multi-purpose building within the next few years. It has embarked on a campaign to raise \$2,500,000 for the construction of the building and related expenses. The work will involve demolition of an existing dormitory and construction of the new facility. The Academy may acquire some new land as part of the project.

The Academy will seek building and demolition permits from the City and may also seek some discretionary permits, which are unknown and unidentifiable at this time.

The Principal of the Academy, Sister Dolores Anchondo, has asked the Mayor to serve on the Honorary Committee for the campaign to assist the Academy's fundraising effort. The position on the Committee would be unpaid.

The Mayor was raised in the Catholic Church and formerly taught at another Catholic secondary school for young women in San Diego. The Mayor is concerned whether she would have a conflict of interest in performing her duties as Mayor if she were to accept the invitation to serve on the Committee.

LEGAL ANALYSIS

To answer the questions raised in the route slip, we need to examine the conflict of interest law embodied in the Political

Reform Act of 1974, codified in Government Code section 81000 et seq., and the Council's Code of Ethics (Council Policy 000-4), copy attached. These are treated separately below.

Political Reform Act

Government Code section 87100 states when a public official must disqualify him or herself from participating in or making a governmental decision, 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.

Under this statute, a public official is disqualified from participating in or making a governmental decision only if he or she has a "financial interest" within the meaning of the law that may be affected. Government Code section 87103 defines the types of financial interests that pose potential conflicts: 1) interests in real property valued at \$1,000 or more, 2) sources of income of \$250 or more in the previous twelve (12) months; and, 3) investment interests valued at \$1,000 or more.

According to the facts presented, there appears to be no financial conflict of interest within the meaning of the Political Reform Act that would result from the Mayor's accepting the invitation to participate on the Honorary Committee for this Academy campaign. There are no facts to indicate that the Mayor has a real property or investment interest in the Academy. Also, the position on the Committee will be unpaid; therefore, the Academy would not become a source of income to the Mayor.

Therefore, we conclude that the Mayor would not have a disqualifying financial conflict of interest under state law if

the Mayor were to accept the invitation to serve on the Honorary Committee of the Academy campaign.

Council Policy 000-4

Council Policy 000-4 was adopted in December 26, 1967 and was corrected on January 18, 1968. Two sections are relevant here.

These sections are quoted below:

First: No elected official, officer, appointee or employee of 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.

Second: No elected official, officer, appointee or employee shall engage in any enterprise or activity which shall result in any of the following:

- (a) Using the prestige or influence of The sic City office or employment for private gain or advantage of himself or another.

Acceptance of the position on the Honorary Committee may pose conflicts under either one or both provisions of the Council Policy quoted above.

First, service on the Honorary Committee may create the type of direct or indirect personal interest addressed by the First Statement of Policy. Therefore, if at some point the Academy were to appear before the City Council to obtain a discretionary permit to build the new gymnasium (e.g., a variance or street vacation), the Mayor would need to examine whether she had a personal interest in the Academy such that her judgment would be so impaired that she could not render an impartial decision. If so, she would need to refrain from voting on that permit.

Second, if the Mayor's name and the title of Mayor were to be listed on Academy stationery as supporting the campaign, the Second Statement of Policy in Council Policy 000-4 may be violated, because the Office of Mayor would be used for the

private gain of another, that is, for the Our Lady of Peace Academy.

We point out that there is no legal penalty for violating Council Policy 000-4. Acceptance of the invitation to serve on the Honorary Committee for the Our Lady of Peace Academy campaign may, however, create conflicts for the Mayor under the above-quoted policies of the City Council.

CONCLUSION

Acceptance of the invitation to serve on the Honorary Committee of the fundraising campaign for Our Lady of Peace Academy would not create a disqualifying financial conflict of interest for the Mayor under the Political Reform Act. Acceptance of that position, however, may create a conflict with the City Council's Code of Ethics set forth in Council Policy 000-4.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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Attachments
ML-90-37