

MEMORANDUM OF LAW

DATE: April 26, 1990

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Potential Conflict of Interest in Expansion of
the Convention Center

You indicate that you hold a limited partnership interest in the Grand Hotel in Anaheim, California, that is situated two (2) blocks from the Anaheim Convention Center. The hotel to our knowledge does no business in the City of San Diego nor is it related to any business entity that does business in San Diego. A subcommittee of the board of directors of the San Diego Convention Center Corporation, Inc. desires to meet with you to obtain your views on possible expansion of the San Diego Convention Center, and you ask whether there is any legal prohibition in such a meeting in light of your limited partnership interest in the Grand Hotel. There is absolutely no legal prohibition or reason for disqualification. Our reasoning and supporting authority follow.

The San Diego Convention Center ("Center") was built by and is located on land owned by the San Diego Unified Port District ("District") solely at District expense. The City of San Diego manages and operates the facility through a management agreement. The City, in turn, contracts with the San Diego Convention Center Corporation, Inc., a nonprofit corporation, to manage and maintain the Center. It is a subcommittee of the board of directors of this corporation that has requested to meet with you and seek your views.

As to the actual decision on whether to expand the Center, the management agreement between the City and the District is explicit in granting expansion powers to the District.

(p) Expansion of the Convention Center. Either of these parties may, during the first fifteen years of the term of this Agreement, deliver to the other party written notification to the effect that the notifying party requests the other party to meet and confer on whether the Convention Center or the Parking Facility, or

both, should be expanded by additional building(s) and other improvements, either upon the Premises or upon District's nearby lands, or both. Promptly after delivery of said notice, these parties shall meet and confer upon the issues of need, design, cost,

maintenance and operation of said additional buildings(s) and other improvements. Without prejudicing each party's right to make, in its sole discretion, any decision as to any of the foregoing issues, it is contemplated that (i) the District shall, in its sole discretion, have the right to make the decision whether such additional buildings(s) and other improvements shall be constructed emphasis added . . .

Convention Center Management Agreement section 1(p), page 15.

In 1984 while you were a Port District Commissioner, this entire matter of potential conflict was fully and carefully analyzed by Port Attorney Joseph D. Patello in his June 15, 1984 memorandum to you (copy attached). Not only did Mr. Patello not find any basis for disqualification, he attached Advice Letter No. A-84-095 which found in pertinent part:

If the Hotel does not do business in the District and is not part of or related to a business entity which does business or owns real property in the District, then Ms. O'Connor does not have a financial interest under Section 87103 which would require disqualification.

Advice Letter, page 3.

Of substantial significance is the fact that neither the Port Attorney nor the Fair Political Practices Commission staff counsel found any need for disqualification when you were a direct participant in the decisions of the District as they influence the Center. Now, not only do you not have a direct participation, by merely meeting with a subcommittee of the board of directors of the management entity, you are not participating in any governmental decision that can cause expansion. The disqualification provision of California Government Code section 87100 requires the influencing of a governmental decision in which the official has a financial interest. Mr. Patello correctly points out that the limited partnership in a hotel in a wholly separate county does not equate to a disqualifying financial interest. In the instance of simply meeting with a subcommittee of the board of directors, there is additionally not even a "governmental decision" with which to be concerned. 2 Cal. Code of Regs. 18700(b).

Since as a Commissioner you had no legal disqualification requirement when you had direct authority, it manifestly follows that there is absolutely no prohibition where, as Mayor, you have no direct decision making authority. Section 87100 requires both a "financial interest" and a "governmental decision" to be

present for disqualification. The former was absent in 1984 and both are absent today. Hence you may quite properly meet with and express your views to the subcommittee.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:048:(x043.2)

Attachment

cc Ben Dillingham, III,
Chief of Staff to Mayor
Joseph D. Patello, Esq.,
Port Attorney, SDUPD

ML-90-55