

MEMORANDUM OF LAW

DATE: January 15, 1991

TO: Mark Reynolds, Executive Assistant, Council
District No. 3

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Arising from
Sharing District Office Space with San Diegans
United for Safe Neighborhoods

Your memorandum of December 11, 1990, to Senior Chief Deputy Jack Katz has been referred to me for response. In that memorandum you ask whether Councilmember Hartley has any possible conflict of interest arising from his association with San Diegans United for Safe Neighborhoods, a nonprofit organization which Councilmember Hartley helped establish.

BACKGROUND FACTS

Some background facts were supplied in your memorandum and further facts were obtained by telephone from yourself and from District No. 3 Council Representative Chris Kehoe.

Recently Council District No. 3 opened an office at 3937 Adams Avenue. The district office space was made available pursuant to a three (3) year lease agreement between The City of San Diego and San Diego Youth and Community Services Inc. ("San Diego Youth"), as approved by Council Resolution No. R-275989, on June 25, 1990. As part of the agreement between the City and San Diego Youth, that corporation was required to sublease space to San Diegans United for Safe Neighborhoods and also office space for Council District No. 3.

According to the facts provided, there is no financial relationship between Councilmember Hartley and San Diegans United for Safe Neighborhoods. Specifically, the Councilmember has not received any income from that organization, nor does he have any investment in or with that organization, nor does he hold any real property interest with that organization. It is anticipated that the District 3 office space will be in close proximity to

the office space used by San Diegans United for Safe Neighborhoods. It is also anticipated that Councilmember Hartley and his staff will continue to support and assist San Diegans United for Safe Neighborhoods in attaining their goals.

APPLICABLE LAW

Potentially applicable laws and policies include the Political Reform Act of 1974, codified at Government Code section 81000 et seq., Council Policy 000-4, and the "Public Purpose"

Doctrine.

A. Government Code Section 81000 et seq.

Government Code section 87100 prescribes when a public official must disqualify him or herself from making governmental decisions when financial interests are involved. This Government Code section reads 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." The term "financial interest" within the meaning of Government Code section 87100 is defined in Government Code section 87103. Essentially, there are three (3) financial interests of potential concern: 1) income interests, 2) investments interests, and 3) real property interests.

Under the facts as presented, there is no financial relationship between the Councilmember and San Diegans United for Safe Neighborhoods. Although Councilmember Hartley was one of the founders of this organization, he has no financial ties to it. Therefore, there is no financial interest to trigger operation of Government Code section 87100, and he is not disqualified from making decisions pertaining to that organization as a result of the Political Reform Act.

Council Policy 000-4 and the "Public Purpose" Doctrine.

The "public purpose" doctrine and Council Policy 000-4 were discussed at length in a memorandum of law dated March 22, 1990, to Raquel Beltran, then Chief of Staff of Councilmember Hartley's office. A copy of that memorandum of law and the council policy are attached for your reference. In lieu of repeating the material in the memorandum of law, I ask you to refer to it for background and legal analysis of the doctrine and the council policy.

I take this opportunity, however, to alert you to questions raised by the present facts under the council policy and the "public purpose" doctrine.

First, under Council Policy 000-4,

No elected official, . . . 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.

Under this part of Council Policy 000-4, a question would perhaps arise if, for example, San Diegans United for Safe Neighborhoods, applied for a grant or bid on a contract with the City. If the matter then came before the City Council or Council Committee on which he sits, the Councilmember would have to examine his conscience to determine whether his personal interest in San Diegans United for Safe Neighborhoods would be so strong that he could not fairly assess whether to award the grant or contract to that organization or to other parties. If he decided that he would be so impaired, then he should refrain from taking action on the application or contract. This policy would not, however, prevent the Councilmember from continuing to lend support to that organization in order to accomplish the goals and purposes for which it was formed.

Other questions arise under another portion of Council Policy 000-4, which reads as follows:

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

...
(b) Using time, facilities, equipment or supplies of The City of San Diego for the private gain or advantage of himself or another.

This portion of the Council Policy basically parrots the "public purpose" doctrine. The question raised by the present

facts under this quoted material is whether, by "sharing office space," the Council District office would be impermissibly lending time, facilities, equipment or supplies of The City of San Diego for the private gain or advantage of San Diegans United for Safe Neighborhoods. The facts provided do not indicate to what extent the Councilmember intends to lend support to San Diego United for Safe Neighborhoods. Under this policy, however, support could not be lent in the form of providing City staff and equipment to San Diegans United for Safe Neighborhoods to pursue its projects. District Office City employee(s), therefore, would not be permitted to use City time to work on San Diegans United for Safe Neighborhoods' projects. This policy and doctrine would also prohibit San Diegans United for Safe Neighborhoods from using the City's computer equipment, typewriters, telephone and similar supplies and equipment housed at the district office.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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Attachments

ML-91-08