

MEMORANDUM OF LAW

DATE: December 10, 1991
TO: Councilmember Valerie Stallings
FROM: City Attorney
SUBJECT: Potential Conflict of Interest/Item 335 on Council Docket of
December 10, 1991

By handwritten memorandum to Assistant City Attorney John Kaheny, you ask whether you have a potential conflict of interest in an item appearing on the Council Docket of December 10, 1991. The question arises because of a letter addressed to you (and to other Councilmembers and the Mayor) dated November 20, 1991, from Ingrid E. Varon (copy attached).

BACKGROUND FACTS

In lieu of reciting the facts pertaining to Item 335 on the December 10 Council Docket, we attach a copy of the Council's agenda pertaining to that item.

We also obtained further facts from your Chief of Staff Ruth Ann Hageman by telephone on December 9. You were a salaried employee for twenty (20) years at the Salk Institute. You were paid out of federal grant monies that were administered by the Salk Institute. You resigned from the Salk Institute before you were sworn into office and you received your last paycheck from them on or about September 15, 1991. You have no expectation of returning to work for the Salk Institute after leaving the City Council. Dr. Dulbecco, who is mentioned as a potential source of conflict for you in the Varon letter, is President of the Institute and, as such, is Chief Administrative Officer and a salaried employee of the Institute. Although you know Dr. Dulbecco, he was not your supervisor and had no direct control over your work and had no hiring or firing authority over you.

There are no facts indicating that either Salk Institute or Dr. Dulbecco are financially interested in the outcome of Item 335.

QUESTION PRESENTED

Should you disqualify yourself from participating in or voting on Item 335 because of your employment relationship with the Salk Institute, or because of its President, Dr. Dulbecco, who opposes the project that is the subject of Item 335?

The Varon letter also asserts that you have a conflict of interest in the matter, because in the late 1970's you dated a close friend of the Varons' and you were in that time period a frequent guest in their home. These facts simply do not raise a conflict of interest question.

ANALYSIS

Any analysis of whether a public official may participate in a governmental action begins with the Political Reform Act of 1974 ("the Act"), as found in California Government Code section 87100 et seq., which provides in pertinent part:

Section 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.

Relevant to the instant inquiry, the term "financial interest" is further defined as follows:

Section 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:

.....

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

The term "income" includes a salary or wages. Government Code section 82030(a). It does not include salary received from the federal government. Government Code section 82030(b). However, it does include a salary that is paid by a private institution out of federal grants. The Salk Institute, a private organization paid you out of federal grant monies. The Salk Institute therefore was clearly a source of income to you during the past twenty (20) years under Government Code section 87103. However, there is nothing to indicate its President, Dr. Dulbecco, was himself a separate source of income to you. He was (and continues to be), essentially another employee of the Institute. The mere fact that Dr. Dulbecco is President of your former employer is not enough to trigger operation of the conflict of interest statutes.

Although we note that Dr. Dulbecco is an opponent of the proposed project that is the subject of Item 335, unless he is a source of income to you, or there is some other showing that he is financially connected to you, you have no economic interest within the meaning of the statutes that would result in a conflict of interest for you.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachments

ML-91-102