

MEMORANDUM OF LAW

DATE: October 21, 1991

TO: Sara Isgur, Project Manager
Economic Development Division, Property Department

FROM: City Attorney

SUBJECT: Conflict of Interest

By memorandum dated October 9, 1991, you requested a legal opinion as to whether you would have a conflict of interest under the Political Reform Act (codified as California Government Code section 81000 et seq.) if you accepted employment as a development consultant for the San Diego Chinese Center.

For your information, I have expanded the scope of your request to include analysis under Council Policy 000-4 and Administrative Regulation 95.60.

As indicated below, it does not look like you would have a conflict of interest under the Political Reform Act. However, depending on the nature of your responsibilities you may be in conflict with City of San Diego Administrative Regulation ("AR") 95.60.

Background

The facts as represented by you are as follows:

You are currently employed by the Economic Development Division ("EDD") of The City of San Diego's Property Department. Your specific role is that of being the Project Manager for the Barrio Logan Redevelopment Project area ("Barrio Logan"). EDD, among other things, serves as the administrative center for the Redevelopment Agency of The City of San Diego (the "Agency").

You have been approached by a representative of the San Diego Chinese Society (the "Society") to act as a development consultant for a project the Society is developing in the Gaslamp Quarter Redevelopment Project Area (the "Gaslamp Quarter"). The Gaslamp Quarter is an adopted redevelopment project which is administered by the Centre City Development Corporation ("CCDC") on behalf of the Agency.

Your duties as a development consultant would include procurement of the necessary financing for the Society's project and possibly seeking appropriate City of San Diego (the "City") and Agency approvals. However, by telephone conversation on October 14, 1991, you indicated that your primary responsibility would be in obtaining financing for the project and that if it were inappropriate for you to assist the Society in obtaining City and Agency approvals, those tasks would not be included

in your contract.

Your contract as a consultant would either be with the Society directly or as a subcontractor with a nonprofit organization hired by the Society to serve as a project manager and coordinator.

Finally, you have indicated that your supervisor at EDD has been informed of the Society's offer and he does not see a problem or conflict in your accepting it.

The Political Reform Act and Council Policy 000-4
Government Code section 87100 states:

No public official at any level of state or local government shall make, participate in making or in any way use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

A "public official" includes an employee of a state or local governmental agency. Government Code section 82048.

At issue here is whether by accepting the Society's offer you would be in a position to use your "official position to influence a governmental decision" in which you know you have a "financial interest." That does not appear to be the case given the scenario you have presented for the following reasons.

First, as Project Manager for Barrio Logan (your "official position") you do not deal with the administration of Gaslamp Quarter projects which are administered solely by CCDC. You do not "make, participate in making" or use your official position to "influence a governmental decision" in which you know you have a "financial interest."

Second, any duties you perform towards procurement of financial backing for the Society's project does not benefit you financially as relates to your official role.

Finally, assuming for the moment that your duties as a consultant would include seeking appropriate City and Agency approvals for the Society's project, your official position as Project Manager of Barrio Logan should have no bearing on the Society being able to obtain those approvals. However, as a caveat, I must advise you that to participate in this level of governmental processing could be perceived as a violation of Council Policy 000-4 (attached hereto as Attachment A). Council Policy 000-4 reads in pertinent part:

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 City office or employment for private gain or advantage of himself or another.

....

(f) Engaging in or accepting private employment or rendering services for private interests when such

is incompatible with the proper discharge of his official employment or duties.

Violation of this Council Policy, if there is one, does not constitute a violation of law. You would have to look at your duties as a City employee in light of your duties as a consultant and make the determination for yourself if accepting the Society's offer would compromise you in performing your duties as a City employee.

AR 95.60

AR 95.60 (attached hereto as Attachment B) is broadly entitled, "Conflict of Interest and Employee Conduct." Of specific relevance to your inquiry here is Section 3.5(c) starting on Page 3 of 8. While most of the Specific Prohibitions are self-explanatory, I call your attention to Specific Prohibitions 1) and 4):

1) Employees shall not work within their discipline or profession for a company or as a self-employed consultant when their work is reviewed, or approved, or is subject to issuance of a permit by their City Department.

4) Employees shall not attempt to influence the City's review, approval, or issuance of a permit pertaining to work submitted by an employee's collateral employer, whether the work submitted was done by the City employee or other staff of the collateral employer.

As to your proposed duties in obtaining funding for the Society's project, these Specific Prohibitions do not seem to apply. As I understand it, you would be negotiating funding agreements between the Society and lending institutions and other investors as necessary.

However, if your duties do include seeking City and Agency approvals for the Society's project, these Specific Prohibitions come directly into play. As an employee of the City, your work (or the end result of your work) for the Society should not be reviewed or approved by the City.

Furthermore, Specific Prohibition 4 goes so far as to say that an employee may not influence the permit process, presumably even after disclosure, for work done by the employee or other staff member of the collateral employer. Should you subcontract with a nonprofit organization, you would be prohibited from participating in the approval process even if the permit application(s) was done by another employee of the nonprofit organization.

Conclusion

Under the facts given, it appears that there is not a conflict of interest under the Political Reform Act for you to accept employment as a development consultant with the San Diego Chinese Society or a nonprofit corporation hired by the Society to serve as its project manager and coordinator. However, if you participate in seeking Agency and City approvals, you may have a conflict pursuant to Council Policy 000-4, but

that issue is one you must decide by weighing all the factors involved.

It does not appear that you have a conflict under AR 95.60 if your duties as a development consultant are limited to obtaining financing. If you are involved in seeking approvals from the Agency or City, you would probably be in violation of Section 3.5(c)(1) and (4) of that Administrative Regulation.

I hope this has addressed your concerns. Please contact me if you need further clarification.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

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cc Cristie McGuire, Deputy City Attorney

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