

## **MEMORANDUM OF LAW**

**DATE:** May 10, 1999

**TO:** Deputy Mayor Byron Wear

**FROM:** City Attorney

**SUBJECT:** Whether Former Business Relationship Gives Rise to a Conflict of Interest

You have asked for the City Attorney's help in responding to a letter dated April 8, 1999, you received from Peter J. Direnza, Foreman of the San Diego County Grand Jury. This memorandum of law supersedes the informal memorandum that was delivered to you on April 23, 1999. The conclusions have not changed.

### **BACKGROUND**

The Foreman of the San Diego County Grand Jury has sent you a letter asking whether you have current or former personal or financial interests with Mr. Douglas C. Perkins, or in the Pacific Gateway Group, Baja Printing Inc., or Art Orona Painting. The questions arise because of a citizen's complaint concerning the City Council's award of the Ultra-Low Flush Toilet (ULFT) contract to Pacific Gateway Group.

We obtained the following facts from your Chief of Staff Kay Carter. You have no current or former financial or personal interests with any of the companies mentioned. In particular, at the time of Council's award of the ULFT contract to Pacific Gateway Group on December 7, 1998 (Resolution No. R-291077), you had no investment interest and did not hold any management or business positions in the Pacific Gateway Group, Baja Printing, Inc., or Art Orona Painting. Furthermore, you received no income or gifts from any of those companies in the twelve months prior to participating in discussions or voting on the ULFT contract. You do not own any real estate in common with any of those three companies. Several years ago, you were partners in business with Mr. Perkins, but that business relationship ended approximately ten years ago. You have no remaining financial ties to Mr. Perkins, although he may have contributed to your campaigns for elective office from time to time.

### **QUESTIONS PRESENTED**

1. Does a Council member have a duty to vote?
2. Did you have a financial or personal interest that would have prevented you from participating in discussions and voting on the award of the ULFT contract to Pacific Gateway Group?

### **SHORT ANSWERS**

1. Yes, under San Diego Charter section 15, a Council member has a duty to vote, except on matters involving consideration of his own official conduct or in which his own personal or financial interests are involved.
2. On the facts presented, at the time of the Council's vote on the ULFT contract awarded to Pacific Gateway Group, you had no financial or personal interest that would have prevented you from voting on the contract.

### **ANALYSIS**

#### **I. Council Member's Duty to Vote**

San Diego Charter section 15 reads in relevant part: "No member shall be excused from voting except on matters involving the consideration of his own official conduct or in which his own personal interests are involved." More simply stated, this charter section creates a Council member's duty to vote, unless the matter being voted upon involves the Council member's personal conduct or his or her "personal" interests. "Personal" interests include financial interests.

#### **II. No Disqualifying Financial Interest**

Whether disqualification from governmental decision making is required due to conflicting financial interests is determined under the California Political Reform Act or California Government Code sections 1090 1097 (governing contractual conflicts of interest).

Under the Political Reform Act, a public official is required to disqualify himself or herself from making governmental decisions only if the official has one of the economic interests listed in California Government Code section 87103. On the facts given, you have no current or former investment or business position in any of the companies listed. You received no income or gifts in the year prior to the vote on the ULFT contract from any of the companies listed. You have no continuing financial relationship with Mr. Perkins. Your business partnership with Mr. Perkins was severed ten years ago. Therefore, under the Political Reform Act, you did not have a financial interest that would have prevented you from participating in or voting on the ULFT contract.

There are no facts to indicate that you have or had a financial interest in the ULFT contract itself. Therefore, there is nothing that gives rise to a disqualifying financial interest under California Government Code sections 1094 1097.

### **III. No Disqualifying “Personal” Interest**

Council Policy 000-4, the City Council’s Code of Ethics, implements Charter section 15 by stating what elected officials, among others, should do if they are faced with a personal or financial interest in performing their job. This policy prohibits covered persons, including elected officials, from “engaging in any business or transaction, or from having a direct or indirect financial or other personal interest, which is incompatible with the proper discharge of his [or her] official duties or which would tend to impair his [or her] independence or judgment or action in the performance of such duties.”

The City Attorney has consistently held that to determine whether someone is disqualified from participating in or voting on a matter under this Council Policy, that person should examine his or her own conscience and decide whether the potentially disqualifying interest would impair the person’s judgment so much that he or she could not properly discharge the job duties. See, for example, 1990 City Att’y MOL 329 (Mayor’s potential acceptance of position on an honorary fund raising committee for a private non-profit entity); 1989 City Att’y MOL 144 (Council member’s potential agreement to chair a regional park’s “Friends” group). There is no legal penalty for violating this Council Policy.

On the facts given, we have no reason to believe that disqualification by reason of “personal interests” should have been triggered by any of the facts provided. We assume that you were aware of this policy when you voted on the ULFT contract and had determined that you had nothing of a personal interest that would have impaired your judgment on this matter.

### **IV. Campaign Contributions Do Not Count as Disqualifying Financial Interests.**

Campaign contributions are not considered either gifts or income. Cal. Gov’t Code 82028(b)(4); 82030(b)(1). The mere fact that an elected official has received campaign contributions from someone does not create a disqualifying financial interest that prohibits the official from making governmental decisions affecting that person. *In re Mims*, 1990 FPPC Inf. Adv. Ltr. I-90-615; *In re Leatherbury*, FPPC Inf. Adv. Ltr. I-90-193. Therefore, assuming Mr. Perkins has made political contributions to your campaigns for office, those contributions would not constitute a basis for you to disqualify yourself from decision making on the ULFT contract.

### **CONCLUSION**

On the facts provided by your Chief of Staff Kay Carter, the City Attorney finds no financial or personal reason for you to have disqualified yourself from participating in or voting on the ULFT contract award to the Pacific Gateway Group.

CASEY GWINN, City Attorney

By  
Cristie C. McGuire

Deputy City Attorney

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