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MEMORANDUM OF LAW

DATE: May 18, 2004

TO: Councilmember Jim Madaffer

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Issues Related to San Diego Data Processing Corporation

INTRODUCTION

On May 1, 2004, a citizen sent a letter by electronic mail to City Attorney Casey Gwinn, requesting that the City Attorney's Office direct you to recuse yourself from City Council decisions related to San Diego Data Processing Corporation [SDDPC]. In the letter, the citizen argues that you have failed to report economic interests related to SDDPC, and argues that you have financial interests that would be materially affected by San Diego City Council [City Council] decisions related to SDDPC. You have asked this Office for a legal opinion regarding the issues raised in the citizen's letter because the City Council will be discussing the potential dissolution of SDDPC at upcoming meetings, including the May 5, 2004 meeting of the Rules, Finance and Intergovernmental Relations Committee. For reasons set forth in more detail below, based on facts supplied by you, it is the opinion of this Office that you are not disqualified from participating in City Council matters related to SDDPC based on the issues raised in the letter.

QUESTIONS PRESENTED

1. Did you have an economic interest in Madaffer Technologies, LLC, during the last two years that you would be required to report on your economic disclosure statement?
2. Are there inaccuracies in your economic disclosure statements for 2001 related to gifts of dinners from former SDDPC Chief Executive Officer Roger Talamantez?
3. Do you have an economic interest in a business called Art Street Interactive that you would be required to disclose on your economic statement?

4. Are you disqualified from participating in City Council matters related to SDDPC because of a citizen's allegations that you are under investigation by the District Attorney's Office, or for any other reason contained in the citizen's complaint?

SHORT ANSWERS

1. No. Based on your representation that Madaffer Technologies, LLC, has no assets, and is not an active business, it is not a business interest of \$2000 or more and therefore does not have to be disclosed pursuant to the Political Reform Act.
2. There has been inadequate time to fully investigate this issue, which will require obtaining documentation from SDDPC and comparing it to your 2001 economic statements. You reported six dinners with Roger Talamantez on your 2001 economic statements based on information provided to you at the time by SDDPC. You are willing to amend your 2001 statement if necessary based on new information, however, this issue has no relevance to your ability to participate in City Council matters related to SDDPC.
3. No. You have no economic interest of any kind in Art Street Interactive, and therefore have no disclosure obligation related to that business.
4. No. Although you are not aware of any facts that suggest you are being investigated by the District Attorney's Office, even if it was known that such an investigation was occurring, you would not be required to disqualify yourself from City Council matters related to SDDPC for that reason. Further, there are no other issues raised in the citizen's May 1, 2004 letter that require you to disqualify yourself from participating in City Council matters related to SDDPC.

FACTUAL BACKGROUND

The following are the facts supplied by you to this Office in response to the issues raised in a citizen's memo to the City Attorney's Office, dated May 1, 2004:

Madaffer Technologies, LLC. On April 2, 2002, you incorporated a business called Madaffer Technologies, LLC. Since its incorporation, Madaffer Technologies, LLC, has been a business in name only, with no accounts, no assets, and no business activities. It is essentially a place holder for a business that you wish to develop in the future. As such, your interest in Madaffer Technologies, LLC, does not have a value of \$2000 or more.

Gift Reporting Related to Dinners Paid for by Roger Talamantez. A citizen has alleged that you did not properly disclose two dinners attended by you that were paid for by Roger Talamantez of SDDPC: one at a restaurant called Roy's La Jolla on March 23, 2001, and another at Bertrand's at Mr. A's on June 5, 2001. Your 2001 economic statement, and a later amendment that you filed to your 2001 statement, report a total of six dinners paid for by Roger Talamantez

during that reporting period, on the following dates: January 15, 2001, March 23, 2001, June 5, 2001, December 3, 2001, June 18, 2001, and December 18, 2001. Two of the dates for dinners that you reported correspond with the dates of the dinners mentioned in the citizen's complaint. Because you have had no opportunity to review any documentation from SDDPC regarding these dinners, it is unknown whether there is any conflict between their documentation and the information previously provided to you by SDDPC about the dinners and their values. You have indicated to this Office that you will amend your 2001 statement if new information arises that indicates that such a conflict exists. You have represented that you have received no gifts from Mr. Talamantez or SDDPC in the past twelve months.

Art Street Interactive. You have informed this Office that you own a business called Cyber Ace Internet Services, which you have reported as a business interest on your economic statements for 2001, 2002, and 2003. The web site for Cyber Ace indicates that a business called Art Street Interactive is an affiliate of Cyber Ace; however that statement on the web site is inaccurate, to the extent that it might lead a reader to believe there is a business or financial relationship between Cyber Ace and Art Street Interactive. You have never had any economic interest of any type in Art Street Interactive. The intent of the reference to Art Street Interactive on the Cyber Ace web site was to recommend the services of Art Street Interactive to readers of the Cyber Ace web site.

District Attorney's Investigation. Although the District Attorney's Office is apparently conducting an investigation related to SDDPC, you have never been contacted by the District Attorney's Office about the investigation. To your knowledge, you are not the subject of an investigation by the District Attorney's Office.

ANALYSIS

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000–91015. Although this matter is also governed by the City of San Diego Ethics Ordinance, codified at San Diego Municipal Code sections 27.3501–27.3595, the economic disclosure and disqualification requirements under the Ethics Ordinance are identical to the requirements of the Act, for purposes of this memorandum, and therefore will not be discussed separately.

Economic Disclosure. The Political Reform Act requires public officials to file annual economic statements reporting the following types of economic interests: interests in real property valued at \$2000 or more, investments valued at \$2000 or more, business positions, sources of income of \$500 or more, and sources of gifts of \$50 or more. Cal. Gov't Code §§ 87200–87210.

The citizen's letter to the City Attorney dated May 1, 2004, makes allegations that you have not accurately disclosed several economic interests, including a business investment in Madaffer Technologies, LLC, a business interest in Art Street Interactive, and gifts of dinners from Roger Talamantez. Although you have incorporated a business called Madaffer Technologies, LLC, you are not required to disclose that business because it is an inactive

business with no assets, and you have not valued it at \$2000 or more. Cal. Gov't Code § 87206. You have no financial interest of any kind in Art Street Interactive; therefore, you have no disclosure obligation related to that company.

Finally, regarding dinners in 2001 with Roger Talamantez, you disclosed six dinners with Roger Talamantez on your 2001 economic statements, based on information provided to you at the time by SDDPC. In the absence of documentation from SDDPC regarding these dinners, it is unknown whether a conflict exists between SDDPC documents and the information that they previously gave you. If there is credible documentation that conflicts with your statements, you will file an amendment to correct the mistake. This issue has no relevance to your current ability to participate in decisions related to SDDPC. As will be discussed in more detail below, only gifts received in the twelve months prior to a decision are a basis for disqualification under the Political Reform Act. Cal. Gov't Code §87103(e). You have represented that you received no gifts from Mr. Talamantez or SDDPC in the past twelve months. Therefore, you are not disqualified from participating in decisions related to SDDPC in relation to dinners attended in 2001.

Disqualification. A public official has a disqualifying financial interest in a decision 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, a member of his or her immediate family, or on any of five economic interests delineated in California Government Code section 87103. Those five interests are investments in business entities valued at \$2000 or more; interests in real property valued at \$2000 or more, income of \$500 or more received in the previous twelve months, positions in for-profit business entities, and gifts received in the previous twelve months valued at \$250 or more.

You are a public official within the meaning of the Act, and City Council decisions related to SDDPC are governmental decisions within the meaning of the Act. The City Council will be taking up issues related to the future of SDDPC, including the possible dissolution of SDDPC, in upcoming meetings, including the May 5, 2004 meeting of the Rules, Finance and Intergovernmental Relations Committee. However, from the facts provided, you do not have any financial interests which would be materially affected by a City Council decision regarding SDDPC. You have no business interests valued at \$2000 or more that would potentially be affected by the City's actions related to SDDPC. You have no financial interest of any kind in Art Street Interactive, a business which has been awarded some past contracts by SDDPC. You have not received gifts of \$250 or more from Mr. Talamantez or SDDPC in the past twelve months. Finally, although you are not aware of being the subject of any investigation by the District Attorney's Office, even if such an investigation was known to be occurring, it is not an economic interest and therefore not a basis for disqualification under the Act. Therefore, you are not disqualified from participating in City Council matters related to SDDPC as a result of any of the issues raised in the citizen's complaint.

CONCLUSION

Based on the facts presented, you have no financial interest which would disqualify you from participating in City Council discussions and votes regarding SDDPC. There are also no facts that support the allegation that you have not complied with your reporting obligations related to your business interests. Our opinions are based on the facts presented, and are subject to change if new facts are presented. We will continue to work with your office to attempt to resolve the dispute regarding the reporting of dinners with Roger Talamantez on your economic statement in 2001. However, that issue is not relevant to your ability to participate in decisions regarding SDDPC.

CASEY GWINN, City Attorney

By

Lisa A. Foster
Deputy City Attorney

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