MEMORANDUM OF LAW

DATE: February 15, 1996

TO: David Watson, Planning Commission Member

FROM: City Attorney

SUBJECT: Conflict of Interest Analysis

By letter dated February 12, 1996, you have asked the City Attorney for a written legal opinion as to whether you have a financial conflict of interest that would prohibit you from participating in or voting on the proposed initiation of an amendment to the East Elliott Community Plan that is on the Planning Commission's agenda for February 15, 1996.

QUESTIONS PRESENTED

1. Are you prohibited from participating in or voting on the proposed initiation of an amendment to the East Elliott Community Plan by virtue of the fact that one of the shareholders in the law firm in which you are employed as an associate is also a general partner in a partnership that owns a thirty-two (32) acre parcel in the community plan amendment area?
2. Are you prohibited from participating in or voting on the proposed initiation of an amendment to the East Elliott Community Plan by virtue of the fact that one of the corporate clients of the law firm in which you are employed as an associate is an owner of a fifteen (15) acre parcel in the community plan amendment area?

SHORT ANSWERS

1. You are not prohibited from participating in or voting on the proposed initiation of an amendment to the East Elliott Community Plan by virtue of the fact that one of the shareholders in the law firm in which you are employed as an associate is also a general partner in a partnership that owns a thirty-two (32) acre parcel in the community plan amendment area.
2. You are not prohibited from participating in or voting on the proposed initiation of an amendment of the East Elliott Community Plan by virtue of the fact that one of the corporate clients of the law firm in which you are employed as an associate is an owner of a fifteen (15) acre parcel in the community plan amendment area.

BACKGROUND

You are a Planning Commissioner in this City and an attorney who is an associate in a major law firm. The law firm is a professional

corporation with approximately ninety (90) voting shareholders. You are not a shareholder in the firm.

Approximately twenty (20) landowners of 806 acres (approximately one-third of the East Elliott Community Plan area) have applied for a community plan amendment to designate East Elliott a solid waste planning area for the purpose of accommodating a private landfill in Oak Canyon and/or Spring Canyon. You personally do not own any property in the community plan amendment area, and you do not have any investments in companies that own property within the affected area.

However, one thirty-two (32) acre parcel in the proposed community plan amendment area is owned by a general partnership; and, one of the general partner-owners happens also to be a shareholder in the law firm for which you work. Another fifteen (15) acre parcel is owned by the majority shareholder of one of the law firm's corporate clients.F

In this memorandum, the majority shareholders of this law firm's corporate client will be referred to as the "corporate client." For purposes of analysis in this memorandum, the "majority shareholders of corporate client" and the "corporate client" are equivalent.

You confirmed by telephone on February 13 that your law firm will not be representing any property owners or opponents in this matter before either the Planning Commission or the City Council.

ANALYSIS

The applicable law necessary to analyze the legal issues presented by your questions is the Political Reform Act of 1974 (the "Act"), which is codified at California Government Code sections 81000-91015. The Act specifies when economic conflicts of interest prohibit a public official from participating in or making a governmental decision, 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." Cal. Gov't Code Section 87100.

As a member of the City's Planning Commission, you are clearly a public official within the meaning of this statute. Decisionmaking on whether to approve or disapprove initiation of a community plan amendment is clearly a "governmental decision" within the meaning of the statute. The real issue presented by both of your questions is whether you have a financial interest that may be affected by the governmental decision within the meaning of the statute, thereby preventing you from participating in or voting on whether to initiate the community plan amendment. We think you do not have a disqualifying economic interest arising from either fact situation for the reasons set forth below.

The term economic or "financial" interest is defined in relevant part as follows:

A public official has a financial

> interest in a ╒governmentalσ decision within the meaning of ╒California Government Codeσ 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 on any of the following:
>
> (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars ($1,000) or more.
>
> . . . .
>
> (c) Any source of income, . . . 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.
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> . . . .
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> For purposes of this section, indirect investment or interest means any investment or interest owned by . . . a business entity . . . in which the official . . . own ╒sσ directly, indirectly, or beneficially a 10-percent interest or greater.

Cal. Gov't Code Section 87103.

The term "investment" is also defined in California Government Code section 82034. The definition does not include salary. The term "income" is defined in relevant part to include "salary." Cal. Gov't Code Section 82030(a). The definition of "income" also "includes a pro rata share of any income of any business entity . . . in which the individual . . . owns, directly, indirectly or beneficially, a 10-percent interest or greater." Cal. Gov't Code Section 82030(a).

I. Do you have an investment interest that will be affected by the Planning Commission's decision on whether to approve or deny initiating the community plan amendment?

According to the facts presented, you are not a property owner in the affected area and you do not have any investments in companies that own property in the area. However, you are a salaried associate in a law firm, one of whose shareholders owns property in the area and one of whose corporate clients owns property in the area. Because you are a salaried member of the law firm, not a shareholder, you do not have an investment interest in the law firm. Cal. Gov't Code Sections 87103(a); 82030(a); and 82034. The mere fact that one of the law firm's

shareholders also happens to be a general partner in a partnership that owns property in the area does not create an investment interest for you. Also, the mere fact that one of the law firm's corporate clients is a source of income to the law firm does not create an investment interest for you in either the law firm or the corporate client.

On the facts given, we conclude that you do not have an investment interest within the meaning of California Government Code section 87103 that would trigger disqualification under California Government Code section 87100.

II. Do you have an income interest that will be affected by the Planning Commission's decision on whether to approve or deny initiating the community plan amendment?

You receive income from the law firm. Therefore, it is a source of income to you. On the facts presented, the fact that one of the shareholders in the law firm is also a partner in another venture, a general partnership that happens to hold property in the affected community plan area, does not make either that law firm shareholder or the general partnership a source of income to you.

The corporate client is a source of income to your law firm, but is the corporate client also a source of income to you? We think not. Since you are a salaried member of the law firm, not a shareholder, the fact that a business entity is a source of income to your employer does not make that business entity a source of income to you. Only if you are a ten percent (10%) or greater owner in the law firm itself is a pro rata share of the law firm's income from the corporate client attributable to you. Cal. Gov't Code Section 82020(a).

On the facts given, we conclude that you do not have an income interest within the meaning of California Government Code section 87103(c) that would trigger disqualification under California Government Code section 87100.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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