MEMORANDUM OF LAW

DATE: September 1, 1992

TO: Maureen A. Stapleton, Assistant City Manager

FROM: City Attorney

SUBJECT: Does Serving on a Redevelopment Corporation Board and a Project Area Committee Simultaneously Present a Conflict of Interest?

Background

This memorandum is in response to your August 13, 1992, memorandum asking the question indicated above.

Redevelopment Corporations

The Redevelopment Agency of The City of San Diego (the "Agency") contracts with two nonprofit corporations, and is about to contract with a third, to oversee and administer redevelopment projects in specific geographical areas. The Boards of Directors ("Directors") of these corporations are chosen by the City Council on behalf of The City of San Diego (the "City") which is the sole member of the corporations.

The duties of these corporations include providing over-all executive direction for the redevelopment projects and making recommendations to the Agency through the corporations' chief executive officer; contracting with consultants for such activities as reports, appraisals, engineering studies, project improvement data, surveys and legal advice; providing planning services for implementation; and coordinating project execution activities, including but not limited to land acquisition and sale.

The Directors oversee corporation activity and make decisions regarding project implementation activities to be recommended to the Agency, and at times the City, for final action. As the Directors also hire the corporations' chief executive officer, they set the tone and manner in which redevelopment activities are be carried out.

Project Area Committees

Redevelopment Project Area Committees ("PACs") are a creation of the California Community Redevelopment Law (as codified in the California Health and Safety Code section 33000

et set.). Section 33385(a) states:

> The legislative body of a city or county shall call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee.

The duties of PACs are found in Section 33386:

> The redevelopment agency through its staff, consultants, and agency members shall, upon the direction of and approval of the legislative body consult with, and obtain the advice of, the project area committee concerning those policy matters which deal with the planning and provision of residential facilities or replacement housing for those to be displaced by project activities. The agency shall also consult with the committee on other policy matters which affect the residents of the project area.

Interaction of the Directors and PACs

In those redevelopment project areas in which the Agency has delegated their administration to corporations, the PACs work with the corporations and advise them as to the matters set out in Health and Safety Code section 33386. The Directors take the PACs' recommendations, along with those of corporation staff, consultants and other interested persons into account in formulating their recommendations to the Agency for action on a matter.

Analysis

While your question asks whether there is a "conflict of interest" with an individual serving simultaneously as a Director and a PAC member, the real inquiry is whether there is an incompatibility of offices. The common law doctrine of incompatible offices holds that "╒tσwo offices are said to be incompatible when the holder cannot in every instance discharge the duties of each." People ex rel. Chapman v. Rapsey, 16 Cal. 2d 636, 641 (1940).

This doctrine is further clarified in Rapsey, 16 Cal. 2d at 642:

> It is not an essential element of incompatibility at common law that the clash of duty should exist in all or in the greater part of the official functions. If one office is superior to the other in some of its principal or important duties, so that the exercise of such duties might conflict, to the public detriment, with the exercise of other important duties in the subordinate office, then the offices are incompatible.

In 1983, the Attorney General was asked to analyze whether one person could hold the position of fire chief of a county fire protection district and be a member of the Board of Supervisors for the same county without violating the common law doctrine of incompatible offices. In 66 Op. Att'y. Gen. 176, 177 (1983), the Attorney General said:

> Offices are incompatible, in the absence of statutes suggesting a contrary result, if there is any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either office exercises a supervisory, auditory, or removal power over the other.

In the case of a person serving as a Director and a PAC member in the same redevelopment project area, it appears that the offices would be incompatible.

The PAC is an advisory body to the Board of Directors. It has a statutory mandate to advise as to a redevelopment project's impact on low- and moderate-income housing, and other residential concerns, that must be taken into account by the Directors, along with other considerations in making decisions. Indeed, being a vigorous advocate of a PAC's position may preclude a Director from fulfilling the duties of a Director, because a Director has to weigh all considerations and, at times, render a decision contrary to the PAC's recommendation. Furthermore, public policy would seem to dictate that one advisory body not have any greater access to the Directors than any other advisory body. If a PAC

member serves as a Director, the argument can be made that that person has gone from being an advisor to a decision-maker, thereby giving the PAC greater decision-making clout than was set out by the legislature.

Finally, as the corporations staff the PAC and run the PAC elections, there would be an appearance of impropriety that the Directors, through the corporations' staff, were "packing" the PAC.

Conclusion

The simultaneous holding of the offices of redevelopment corporation Director and PAC member, serving the same redevelopment project area, would violate the common law doctrine of incompatible offices.

The legal affect of this is stated in Rapsey, 16 Cal. 2d at 644:

> The rule is settled with unanimity that where an individual is an incumbent of a public office and, during such incumbency, is appointed or elected to another public office and enters upon the duties of the latter, the first office becomes at once vacant if the two are incompatible.

Please contact me if you wish to discuss this further, or have any other questions.

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