

**From:** Rutan, Ed

**Sent:** Monday, April 19, 2010 6:34 PM

**To:** Christensen, Carlton

**Cc:** Becker, Ralph; Love, Jill; Turner, Van; Penfold, Stan; Garrott, Luke; Martin, JT; Simonsen, Soren; Gust-Jenson, Cindy; Ferguson, Boyd; 'Lisa Watts Baskin'

**Subject:** RE: Potential Conflict of Interest on Bond Issuance for Public Safety Building

Carlton—

For the reasons discussed below, we believe that you should recuse yourself in this matter.

On January 6 and 7, 2009, the City Attorney's Office advised you that you did not need to recuse yourself from the votes on (1) a sales tax revenue bond parameters resolution and (2) a general obligation bond final bond resolution. The core basis for our advice was that the amount of any fees or interest earned by Zions Bank, your employer, was not material when compared to the annual revenues of the bank.

That analysis was relevant to the restrictions of Salt Lake City Code Section 2.44.030. That section requires you to recuse yourself from participating in any vote that would have "an individualized material effect" on your financial, professional or personal interests, distinguishable from its effect on the public generally. In such cases, our office analyzes the materiality of things, and that sometimes involves comparing the money involved in a particular matter with the annual revenues of a city employee's business or employer.

However, we should also have analyzed your situation under City Code Section 2.44.130(A)(1). As applied to you, that section prohibits you from "making, recommending, preparing or performing a discretionary function with respect to any contract with the city "if you have actual knowledge that (a) you have a financial interest pertaining to such contract, or (b) you have a financial interest in a business entity that has a financial interest pertaining to such contract."

Section 2.44.020(J) defines a "financial interest" as (1) a 10 percent ownership interest, or (2) being an officer, director, trustee, partner, employee or the like, of a business entity.

In this case, the final bond resolution authorizes and directs the City to enter into a bond purchase contract pursuant to which the City will sell the bonds to the underwriters, one of which is Zions Bank. That approval clearly constitutes "performing a discretionary function" with respect to the bond purchase contract. Furthermore, as an employee of Zions Bank, you have a financial interest in one of the parties or beneficiaries of the bond purchase agreement. We also believe that Zions Bank has a financial interest (at least in the commonly understood sense) because it will receive income because of that contract.

Unlike Section 2.44.030, Section 2.44.130(A)(1) does not contain a materiality element. It flatly prohibits participation in a contracting process if the conditions are met. Therefore we advise that Section 2.44.130(A)(1) requires that you not participate in the vote on the final bond resolution with respect to the general obligation bonds for the public safety building project.

Because we failed to consider the application of Section 2.44.130 in our January 6 and 7, 2009 opinions, our advice to you on those two occasions was incorrect. However, because you requested our advice

and relied in good faith on our advice that you could vote on those matters, you are protected by Section 2.44.220 of the City Code (“Justifiable Reliance”).

Ed Rutan  
City Attorney  
Salt Lake City Corporation  
PO Box 145478  
Salt Lake City, Utah 84114-5478  
Phone: (801) 535-7788

**IMPORTANT:** E-mail from the City Attorney's Office is likely to contain confidential and privileged material for the sole use of the intended recipient. The use, distribution, transmittal or re-transmittal of any such communication is prohibited without the express approval of the City Attorney or a Deputy City Attorney in writing or by e-mail. If you are not the intended recipient, please contact the sender and delete all copies.

**From:** Christensen, Carlton

**Sent:** Tuesday, April 13, 2010 5:28 PM

**To:** Rutan, Ed

**Cc:** Gust-Jenson, Cindy; Martin, JT

**Subject:** Potential Conflict of Interest on Bond Issuance for Public Safety Building

Ed, for the first time, I heard in tonight's briefing that Zions Bank, my employer is playing a secondary role in underwriting the upcoming bond issuance on the public safety building (at least in this initial offering). My position within the bank hasn't changed, nor any of the other information I've furnished in the past on other bond issues. Do you see a conflict there, or would I be ok to vote next week when the issues comes before us for a vote? Let me know. Thanks.

Carlton