

From: Rutan, Ed
Sent: Thursday, October 08, 2009 2:34 PM
To: Weaver, Lehua
Cc: Gust-Jenson, Cindy; City Council Staff; Ferguson, Boyd
Subject: FW: Conflict of interest

You have requested advice concerning the following:

The Sandy City Council has invited Salt Lake City Council members to attend the last Real Salt Lake soccer game of the season. Dinner will be served before the game.

The invitation is for the Council member and a guest to watch the game from the Mayor of Sandy's box and up to three additional people to watch from general admission seats. The Sandy City Council members and mayor will be present

At the outset, it does not appear that the Sandy City Council members consider this to be a public meeting. They presumably consider this to be a "social meeting" for purposes of the Open Meetings Act.

City Code § 2.44.020K defines "gift" as "any gratuity, favor, discount, entertainment, hospitality, loan forbearance, economic benefit tantamount to a gift, or other item having monetary value, unless consideration of equal or greater value is received." In addition, that section provides that if a gift is given to a relative of an elected officer or to any other person based on that person's relationship to an elected officer, the gift shall be considered a gift to the elected officer. (This does not apply to meals given to the spouse or dependent of the elected officer.)

In this case, tickets to a soccer game and the associated dinner clearly have value, and constitute a gift unless the City Council member gives equal value in return. That could be accomplished if there will be a series of meetings with Sandy officials, with the host alternating and providing at the host's expense the entertainment in equivalent amounts. We don't know if that is the situation here, and will assume for purposes of this opinion that it is not. Therefore, we conclude that the game tickets, for both the council member and his or her guests, will be a gift attributable to the council member. Also, the value of the guest's meal will be attributable to the council member unless the guest is the spouse or a dependent of the council member.

City Code § 2.44.080 prohibits a council member from accepting, for himself or herself or another, a gift that the council member knows, or with the exercise of reasonable care should know, (1) would influence the council member to depart from the faithful and impartial discharge of his or her public duties, or (2) is primarily for the purpose of rewarding the council member for official action taken or not taken.

Section 2.44.090D makes a "safe harbor" exception to the gift prohibition for an occasional non-pecuniary gift with a value of under \$50. We suspect that the value of the gifts in this case will exceed that amount. However, if they don't, the council member may accept the gift without violating the ordinance.

A council member who is considering accepting the gift is in the best position to determine whether the gift would be adversely influential. While there are situations in which it would be very obvious to a reasonable observer that a particular gift would be influential, in most cases that determination isn't easy or obvious, and must be based on the facts and circumstances. In this case, one consideration should be whether the "public duties" of the City Council are likely to ever involve a matter in which Sandy City would have an interest. If so, then the game tickets and dinner might look like an effort by Sandy to win favor with the City Council. On the other hand, if such action is unlikely ever to happen, then the risk of adverse influence seems small. We should note that in the past the City and Sandy have sometimes been on opposite sides of an issue, such as the dispute in recent years about whether the RSL stadium would be located in Sandy or in Salt Lake City.

If a Council member did accept the tickets, sincerely thinking that it was highly unlikely that his or her public duties would ever involve Sandy, and the Council subsequently became involved in a matter involving Sandy, a potential recusal situation would be presented.

In a similar situation last May, we advised the Mayor that it would be an appropriate expense to pay for the soccer tickets and dinner from either City funds or from his leadership expense fund. However, we advised that because the interests of Salt Lake City are not necessarily the same as those of Sandy, from a potential conflict of interest point of view, the "meeting" with Sandy officials at the soccer game was no different than the Mayor meeting with executives of RSL. We observed that the concern for the potential of improper influence that underlies the conflict of interest ordinance was present in that case.

Please let us know if you have additional questions.

Boyd