

Dear Council member Christensen,

Ed Rutan asked me to respond to your November 1, 2011 conflict of interest inquiry regarding your participation in matters relating to a parameters bond resolution with respect to certain open space bonds that the City intends to sell to your employer, Zions Bank, in a private placement.

We advise you to recuse yourself from any City Council action regarding this matter, for the following reason.

City Code § 2.44.130(A)((1), as applied to you, 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 City is involved in a multistep process that will ultimately lead to the City entering into of a bond purchase contract with Zions Bank, your employer. A future step in the process will be a final bond resolution in which the City Council will authorize and direct the City to enter into that bond purchase contract. That approval will constitute “performing a discretionary function respect to” the bond purchase contract. As an employee of Zions Bank, you have a financial interest in one of the parties to or beneficiaries of the bond purchase contract. 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. While the parameters resolution matter at issue today does not directly approve the bond purchase contract, it is a necessary preliminary step in the contracting process, so we recommend that you recuse yourself.

Boyd Ferguson
Senior City Attorney