

SALT LAKE CITY CORPORATION

MARGARET D. PLANE
CITY ATTORNEY

LAW DEPARTMENT

RALPH BECKER
MAYOR

July 16, 2013

VIA E-MAIL AND HAND DELIVERY

Mayor Ralph Becker
451 S. State Street, 3rd Floor
Salt Lake City, UT 84114

Dear Mayor Becker:

On June 26, 2013, the Salt Lake City Planning Commission voted on the Conditional Use, Planned Development, Conditional Building and Site Design Review for the replacement of the Parley's Meetinghouse (the "Meetinghouse") at 2350 South 2100 East. Lisa Adams, a member of the Planning Commission, voted in favor of the application. On July 5, 2013, Scott Kisling filed a formal conflict of interest complaint about Ms. Adams, alleging that Ms. Adams had a conflict of interest in the matter and should have recused herself from that vote.

Pursuant to Salt Lake City Code § 2.44.290, Mr. Kisling filed his complaint with you, as Mayor. That section requires you to investigate the complaint and refer to the matter to the City Attorney who may prosecute a violation of the conflict of interest ordinance. You forwarded the complaint to this office.

For the reasons explained below, we decline to prosecute Ms. Adams for the alleged violation of the conflict of interest ordinance.

I.

FACTS

1. Ms. Adams is a member of the LDS congregation ("ward") that meets in the Meetinghouse. She disclosed that fact to the Planning Commission when the Meetinghouse matter came up on the June 26 meeting agenda and said she believed she could be objective in voting on the application. Pursuant to its bylaws, the Planning Commission agreed by a majority of its members present to allow Ms. Adams to participate in the Meetinghouse vote.

2. Although Ms. Adams is a member of the LDS congregation that meets in the Meetinghouse, neither she nor her spouse or minor child owns at least ten percent of the

outstanding shares of stock in her ward or has a ten percent interest in her ward. Ms. Adams does not hold a position of officer, director, trustee, partner, or employee, or any other position of management, in a business entity related to the Meetinghouse.

3. Ms. Adams's LDS ward is a religious entity, not a business entity.

4. Ms. Adams does not have an interest in her LDS ward that (a) results in a direct or immediate professional benefit or detriment to Ms. Adams, or (b) that creates a fiduciary duty with respect to her professional interests.

5. Among other things, Mr. Kisling alleged that Ms. Adams, as ward member who attended religious services in the Meetinghouse, voting in opposition to the application "would have represented a serious detriment to her relationship with her neighbors and with her local religious leaders."

II.

DISCUSSION

This matter implicates three sections of the *Salt Lake City Code*.¹ First, § 2.44.030A provides that if the performance of a volunteer public servant (which Ms. Adams is) constitutes governmental action on any matter involving his or her financial or professional interest and it is reasonably foreseeable that the decision will have an individualized material effect on that interest (distinguishable from its effect on the public generally), the volunteer public servant must publicly disclose the matter to the Mayor and to the public body of which the volunteer public servant is a member. Furthermore, in the case of a financial interest, the volunteer public servant is disqualified from participating in any deliberation or voting on the matter.

Second, § 2.44.040A prohibits a volunteer public servant from "corruptly" using or attempting to use his or her official position to either: (1) further substantially the financial or professional interest of the volunteer public servant or others, or (2) secure special privileges for the volunteer public servant or others.

Third, § 2.44.040B prohibits Ms. Adams from having a financial or professional interest in an entity that is doing business with the city department or division to whom the Planning Commission primarily provides direct assistance of direction.

It is important to note that all three of those applicable provisions relate to either a financial interest or a professional interest. The ordinance does not apply to relationships with neighbors or with religious leaders.

The following is an analysis of the application of those sections to the situation at issue.

¹ No State law is inconsistent or more restrictive than the City ordinance on this issue. Therefore, this opinion focuses on the more specific City ordinance.

A. Financial or Professional Interest.

Section 2.44.020 defines “financial interest” as: (A) to possess a “substantial interest” (i.e., ownership of at least ten percent of the outstanding shares of a corporation or a ten percent interest in any other business entity by the volunteer public servant or relative); or (B) to hold a position in a business entity as an officer, director, trustee, partner, or employee, or hold any position of management in a business entity. In this case, Ms. Adams’s LDS ward is not a business entity for purposes of the ordinance, and she has no financial interest (as defined in the ordinance) in her ward².

We conclude that Ms. Adams does not have a financial interest in her ward that meets IN the Meetinghouse. This is because (1) LDS wards are not a “business entity” for purposes of the ordinance, and (2) it is our understanding that members of LDS wards do not own shares of stock in those wards or otherwise have an ownership interest in them.

Section 2.44.020 defines “professional interest” as any interest that (A) results in a direct or immediate professional benefit or detriment to a public servant, or (B) creates a fiduciary duty with respect to a professional interest and is distinguishable from the professional benefit or detriment to the public generally or the public servant’s profession, occupation, or association generally.”

We believe that the definition of professional interest does not include membership in a religious congregation such as an LDS ward. Therefore, Ms. Adams does not have a professional interest in her LDS ward.

Having either a financial interest or a professional interest is a key element of any violation of the applicable sections of Chapter 2.44. Because Ms. Adams lacks a financial interest or a professional interest in her LDS ward, her June 26, 2013 vote on the Meetinghouse application did not constitute a violation of those sections.

B. Corrupt Use of Official Position.

Section 2.44.040(B) is violated only when action is done “corruptly.” Section 2.44.020 defines “Corruptly” as “any act done with wrongful intent and for the purpose of obtaining or receiving any financial or professional benefit or detriment resulting from some act or omission of a public servant . . . that is inconsistent with the proper performance of his or her public duties.”

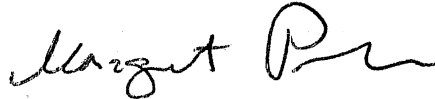
In this case, this office has no information suggesting undue influence or corruption. As discussed above, the vote could not result in a financial or professional benefit or detriment to Ms. Adams. Also, Ms. Adams’ voluntary disclosure to the Planning Commission that she was a member of the LDS ward that meets in the Meetinghouse strongly negates any hint of corruption.

² Even if Ms. Adams engages in volunteer service through a “calling” or otherwise in her ward, such voluntary service is not the kind of position or management responsibility contemplated by the ordinance.

C. Conclusion

Because the applicable provisions of Chapter 2.44 hinge on the existence of a financial or professional interest of Ms. Adams, and because she does not have any such interest in the Meetinghouse matter, her June 26, 2013 vote in the Meetinghouse matter did not violate Chapter 2.44.

Sincerely,

A handwritten signature in cursive script, appearing to read "Margaret Plane".

Margaret D. Plane
City Attorney

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