

SALT LAKE CITY CORPORATION

MARGARET D. PLANE
CITY ATTORNEY

LAW DEPARTMENT

RALPH BECKER
MAYOR

MEMORANDUM

TO: Charlie Luke, Chair
Luke Garrott, Vice Chair
James Rogers
Kyle LaMalfa
Stan Penfold
Erin Mendenhall
Lisa Adams

CC: Cindy Gust-Jenson, Council Executive Director

FROM: Margaret Plane, City Attorney
Boyd Ferguson, Senior City Attorney

RE: Conflict of Interest, Appointment to Citizen's Compensation Advisory Committee

DATE: January 10, 2014

In December, 2013, we were asked to provide an opinion regarding whether Dale Cox, if appointed by the City Council to the Citizen's Compensation Advisory Committee (CCAC), would frequently have conflicts of interest between his role on the Committee and his position as an employee of the Utah AFL-CIO.

The CCAC makes recommendations to the Mayor and City Council regarding employee compensation and benefits, including the compensation and benefits of employees who are represented by labor unions affiliated with the AFL-CIO. The City collectively bargains with three unions affiliated with the AFL-CIO, and those employees are subject to the negotiated terms and conditions resulting from the collective bargaining. In a discussion with Mr. Cox, he stated that the Utah AFL-CIO focuses on legislative lobbying and is largely uninvolved in the collective bargaining negotiations of its affiliates. As a member of the CCAC, Mr. Cox may be faced with a decision of whether to vote for or against compensation and benefits recommendations for City employees who are represented by unions affiliated with the AFL-CIO, Mr. Cox's employer.

Salt Lake City Code Section 2.44.030 states:

A. If the performance of a . . . volunteer public servant constitutes any governmental action on any matter involving the . . . volunteer public servant's financial or professional interest and it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally, the . . . volunteer public servant shall publicly disclose such matter: . . . [t]o the mayor and the members of the public body, if any, of which the . . . volunteer public servant is a member.

. . .
C. The . . . volunteer public servant who has a financial interest shall disqualify himself or herself from participating in any deliberation as well as from voting on such matter. The . . . volunteer public servant who has only a professional interest need not disqualify himself or herself.

“Governmental action” is defined in Section 2.44.020 as “official action on behalf of the city,” including “[a]ny legislative, administrative, appointive or discretionary action of any . . . volunteer public servant.” We believe that “governmental action” occurs when members of the CCAC participate in discussions about or vote on recommendations regarding the compensation and benefits of City employees.

Disclosure or recusal under Section 2.44.030C is necessary only if (1) the volunteer public servant’s action would involve his or her financial or professional interest and (2) it is reasonably foreseeable that the decision will have an individualized material effect on such interest, distinguishable from its effect on the public generally.

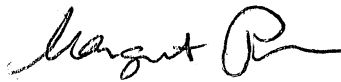
Section 2.44.020 defines “financial interest” to include being an employee of a “business entity.” “Business entity” is defined to include an “organization or entity used in carrying on a business.” Chapter 2.44 does not define “business,” but we believe it is limited to the activity of making, buying, or selling goods or providing services in exchange for money. (See <http://www.merriam-webster.com/dictionary/business>.) Thus, it could be argued that official action not involving a business entity cannot violate City Code Section 2.44.030. However, in past opinions the City Attorney’s Office has interpreted “financial interest” according to its common sense meaning, which includes anything affecting a person’s money or finances.

We believe the Utah AFL-CIO does not clearly meet the definition of a business entity for purposes of Chapter 2.44. Therefore, Mr. Cox’s employment with the AFL-CIO would not, of itself, create a conflict of interest for him on the CCAC. However, it could create a conflict if Mr. Cox felt real or perceived pressure from his employer to vote to recommend higher salaries for union employees when he otherwise might think that was not appropriate. For example, if he thought he might lose his AFL-CIO employment or be demoted if he did not vote for such recommendations, then his CCAC vote would have an effect on his financial interest as described in the preceding paragraph. Any such dismissal or demotion would constitute an individualized material effect on Mr. Cox’s financial interest, distinguishable from its effect on the public generally. However, Mr. Cox has stated that his employment and compensation are not tied to any recommendations he may make on the CCAC or to the relative success of collective bargaining between the City and unions affiliated with the AFL-CIO.

The Council may wish to consider whether the public and/or City employees may perceive a conflict of interest between Mr. Cox's employment and his potential role on the CCAC. There may be a perception that the Utah AFL-CIO and the three unions that the City collectively bargains with are all part of the same team, with the goal of securing for union eligible employees the best compensation packages possible, independent of the impact that may have on other employee compensation packages. Regardless, Mr. Cox and all appointees to the CCAC should be aware of Section 2.44.040A(1), which prohibits the disclosure of confidential information acquired as member of the CCAC. Also, Section 2.44.040A(2) prohibits corruptly using or attempting to use an official position to: a) further substantially the financial or professional interests or the financial or professional interests of others; or b) secure special privileges for the board member or others.

Based on the facts presented, this Office is of the opinion there is not a conflict of interest between Mr. Cox's employment with the Utah AFL-CIO and his potential appointment to the CCAC under Chapter 2.44 of the City Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret D. Plane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Margaret D. Plane
City Attorney