



**To:** David Everitt, Chief of Staff  
Brian Dale, Deputy Fire Chief

**From:** Margaret Plane, City Attorney *MP*

**Date:** May 12, 2015

**Re:** Conflict of Interest Opinion

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We have been asked to provide an opinion regarding whether Deputy Fire Chief Brian Dale has a conflict of interest between his role with the City and his role with International Academies of Emergency Dispatch.

### **Background**

Dale is a volunteer board member of the International Academies of Emergency Dispatch (IAED was previously the National Academies of Emergency Dispatch or NAED; it will be referred to as IAED throughout this opinion). IEAD's website describes it as a 54,000+ member association "for the professional recognition of dispatchers" and "an Academy that develops and maintains dispatch protocols and curriculum for member use in response to emergency calls for help."<sup>1</sup>

Our understanding is that the concept for standardized emergency dispatch protocols was developed in the late 1970s by then Salt Lake City Fire Department (SLCFD) Medical Director, Dr. Jeff Clawson. Dr. Clawson's work has evolved into three standardized protocols (medical, fire, and police) developed and marketed by Priority Dispatch Corporation, which is based in Salt Lake City. Priority Dispatch describes itself as providing a technology regulated by a qualified body of experts, which is IAED.<sup>2</sup>

Priority Dispatch is the business that develops and markets the products and related services (i.e., software, software support, training materials) while IAED is the non-profit that reviews, modifies, and develops system protocols. IAED also develops and presents emergency dispatch certification training curricula. Under a contract between IAED and Priority Dispatch, Priority Dispatch produces the

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<sup>1</sup> See <http://www.emergencydispatch.org/AboutTheAcademy>.

<sup>2</sup> See <http://www.prioritydispatch.net/about>.

proprietary programs and materials for the training and certifications.<sup>3</sup> The protocols are used by more than 3,000 communication centers. They are available in 16 languages and used in 44 countries.<sup>4</sup>

In 1993, Salt Lake City entered into an Endowment Agreement with Priority Dispatch and IAED (the parties). In that Agreement, Priority Dispatch and IAED gave the City “an endowment of products, services, support, training, certifications and registrations for the Medical Priority Dispatch System.” In 2002, the parties entered into an Addendum of the Agreement, where the City received the Fire Priority Dispatch System. In 2012, the parties entered into another Addendum, where the City received the Police Priority Dispatch System. Through these agreements, the City receives paper and electronic standardized dispatch protocols, as well as support and training.<sup>5</sup>

When the parties entered into the first Agreement for the medical dispatch protocol system in 1993, Dale was a Firefighter/Paramedic with SLCFD. Dale became involved with IAED in 1991, in addition to other volunteer professional teaching commitments. As a volunteer member of the organization, Dale travels to business meetings to study, develop, and recommend best practices for the dispatch protocols and to teach seminars on the best practices. Many of his costs are reimbursed by IAED and he receives an additional \$350/day. He attends these meetings on his own time. Dale has never worked for Priority Dispatch.

## **Discussion**

This matter implicates several sections of the Salt Lake City Code. Under Salt Lake City Code section 2.44.030(A), disclosure of a conflict to the Mayor is required if an employee’s performance as a public servant constitutes governmental action on any matter involving his 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). Disclosure and disqualification are required under the same conditions where the matter involves his professional interest.

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<sup>3</sup> See <http://www.prioritydispatch.net/legal>.

<sup>4</sup> See <http://www.emergencydispatch.org/AboutTheAcademy>.

<sup>5</sup> The 2012 Addendum requires the City to become a Police Accredited Center of Excellence (ACE) within a specified time frame. ACE is recognition that a dispatch center meets a specific level of training and has appropriate processes in place. The City has met this requirement, but under the Agreement a failure to become a Police ACE would have obligated the City to pay Priority Dispatch \$498,925, the value of the endowment for the police protocol. The City would also have been obligated to pay the annual fees associated with the products and services in the amount of \$94,080. Under the Addendum the City is obligated to pay for certain costs for training materials and other items.

*No Governmental Action Taken*

Dale did not take any governmental action related to the Agreement or the Amendments. Governmental Action is defined in City Code section 2.44.020 as:

- Any official action on the part of the city, including, but not limited to:
- A. Any decision, determination, finding, ruling, or order;
  - B. Any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect thereto; or
  - C. Any legislative, administrative, appointive or discretionary act of any public servant or volunteer public servant.

Dale was not involved in the decisions to use Priority Dispatch or IAED and he was not involved in the negotiations.<sup>6</sup> Although Dale was a volunteer with the non-profit organization at the time the Agreements were entered into, his role did not involve, or have any part in, Salt Lake City's decisions to enter into or to finalize any agreements with Priority Dispatch or IAED.

Dale's general expertise and knowledge about the dispatch protocols may have meant that he supported the decision to adopt the protocols, but this support does not amount to governmental action. However, even if his support were governmental action, that action did not have an individualized material effect on his professional or financial interests, as explained below.

A professional interest is defined in City Code section 2.44.020 as:

- Any interest which:
- 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. Professional interest provisions do not apply to a public servant's relative.

Dale has a professional interest in IAED. However, he indicated that although he values the opportunity to work with IAED, IAED is substantially less important to

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<sup>6</sup> We also considered Salt Lake City Code section 2.44.130(A), Public Contracts, which prohibits a public servant from participation in a discretionary function with respect to any contract in which the public servant has a financial interest or any business entity in which the public servant has a financial interest. Again, Dale did not directly or indirectly participate in the contracting process. Any perceived conflict with this provision is also waivable.

him than his career with the SLCFD. We do not believe that there is an individualized material effect. Even if there were, the ordinance only requires disclosure of his interest. Dale did this by disclosing his role with IAED on the disclosure form since at least 2000 and by disclosing it to the Mayor's office.

A financial interest is defined in City Code section 2.44.020 as: "A. To possess a substantial interest, 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." IAED is a business entity under section City Code section 2.44.020, because it is "an organization or entity used in carrying on a business." Therefore, as a board member or director of IAED, Dale has a financial interest in IAED under the ordinance.

We have already concluded that he has not taken governmental action, but even if he had, he did not receive an individualized material benefit from the City's Agreement with Priority Dispatch and IAED. Dale does not sell the products or benefit when the products are sold. He does not have an ownership interest in either entity. And his volunteer position is not dependent on the City's Agreement with Priority Dispatch or IAED. Finally, any compensation Dale receives from IAED is small enough compared to his City salary that it is not material.

#### *Position Was Not Corruptly Used*

City Code also prevents employees from corruptly using their official position to "a) further substantially the public servant's or volunteer public servant's financial or professional interest or the financial or professional interest of others; or b) secure special privileges for the public servant or volunteer public servant or others." SLCC § 2.44.040(A)(2). In this case, we do not have any information suggesting undue influence or corruption. Dale voluntarily disclosed the facts and there is no evidence of any wrongful intent. In fact, his work with IAED seems to benefit the City's dispatch programs and enhance the performance of his public duties.

#### *Any Prohibited Acts Are Waivable*

Salt Lake City Code section 2.44.040(B), Prohibited Acts, prohibits an employee from having a "financial or professional interest in an entity that is doing business with the city department in which the public servant is employed." IAED is doing business with the City's 911 Center, which is not part of the Fire Department or the Police Department. Dale works for the Fire Department and therefore is not in violation of this provision. If Dale receives the City Council's advice and consent for his appointment as Fire Chief, he will be one member of the five-member board that oversees the 911 Center. Although it is not clear under the ordinance, Dale's role on the board could amount to him being part of the department that is doing business with IAED.

However, any prohibited acts under this provision of City Code are waivable and the grant of a waiver is appropriate in this case. City Code section 2.44.180(A) permits the city attorney to:

[G]rant a waiver from the provisions of this chapter upon making a written determination that:

1. The public servant or volunteer public servant will be able to perform his or her official functions without actual bias or favoritism; and
2. The granting of the waiver will not be detrimental to the interests of the city.

Dale believes he has performed, and can continue to perform, his official functions without bias or favoritism. He indicated that he intends to recuse himself from any decisions the board may be responsible for regarding dispatch systems if he cannot act without bias or favoritism. Granting the waiver is not detrimental to the interests of the City. In fact, the City benefits from Dale's expertise in best practices for emergency dispatch. Although Dale takes some time away from City work to fulfill his duties with IAED, he is permitted to take that time for any purpose. Further, his work with IAED should be considered professional development which benefits the City and its residents.

HB Atty #45976