



To: David Everitt, Chief of Staff
Scott Freitag, Director, 911 Communications Bureau

From: Margaret Plane, City Attorney

Handwritten signature of Margaret Plane, consisting of the initials "MP" in a cursive style.

Date: May 12, 2015

Re: Conflict of Interest Opinion

We have been asked to provide an opinion regarding whether Scott Freitag, Director of the 911 Communications Bureau, has a conflict of interest between his role with the City and his role with International Academies of Emergency Dispatch.

Background

Freitag 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). IAED'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."¹

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.²

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 proprietary programs and materials for

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

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

the training and certifications.³ The protocols are used by more than 3,000 communication centers. They are available in 16 languages and used in 44 countries.⁴

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.⁵

When the parties entered into the first Agreement for the medical dispatch protocol system in 1993, Freitag was not yet a City employee and he was not involved with IAED. Freitag became involved with IAED in 2003 and has served as president of the board since that time. As a volunteer member of the organization, Freitag 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. Freitag 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.

No Governmental Action Taken

Freitag 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:

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

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

⁵ 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.

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.

Freitag was not involved in the decisions to use Priority Dispatch or IAED and he was not involved in the negotiations.⁶ Freitag did not become a City employee until 1997 and he did not join IAED until 2003. Although he was a volunteer with the non-profit organization at the time some of the Addenda to 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.

Freitag'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.

Freitag 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 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. Freitag did this through the disclosure form and by disclosing it to the Mayor's office.

⁶ 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, Freitag did not directly or indirectly participate in the contracting process. Any perceived conflict with this provision is also waivable.

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, Freitag 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. Freitag 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 Freitag 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. Freitag 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 Communications Bureau, which Freitag is the Director of. Therefore, without a waiver, Freitag is in violation of this provision.

We believe that a waiver is appropriate in this case both under the terms of the ordinance and under the unique facts at issue. 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.

Freitag believes he has performed, and can continue to perform, his official functions without bias or favoritism. He indicated that if the board or the City were to ask him to

investigate a different dispatch system, then he will recuse himself from that process if he can do that without harming the City's interests. Freitag also indicated that if recusal is not practical or appropriate, then he will dissociate himself from IAED.

Granting the waiver is not detrimental to the interests of the City. In fact, the City benefits from Freitag's expertise in best practices for emergency dispatch. Although Freitag 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.

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