

SALT LAKE CITY CORPORATION

LAW DEPARTMENT

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April 23, 2010

Babs Delay, Chair
Salt Lake City Planning and Zoning Commission
451 South State Street, Rm. 406
Salt Lake City, UT 84111

Re: Ethics Opinion Pursuant to Salt Lake City Code Section 2.44.210

Dear Chairperson Delay:

This is to elaborate on the brief opinion that I sent you yesterday.

On April 20, 2010, you received a complaint letter from Jeff Salt on behalf of the Spirit of Utah Wilderness, Inc. and Jordan River Restoration Network claiming, inter alia that in voting on matters related to Petition PLNPCM2010-00028 SLC Regional Sports Complex (the "Sports Complex Petition") Commissioner Michael Gallegos had a conflict of interest due to his employment by Salt Lake County and should have recused himself.

For the reasons discussed below, it is my opinion that there was no conflict of interest that would have required Commissioner Gallegos to recuse himself under the City Code, Section 2.44.030 in particular.

Background

The Sports Complex Petition involves a proposed rezone of part of the property on which the sports complex is proposed to be built. The Planning Commission heard presentations by the Administration, held a public hearing and held several votes related to the Sports Complex Petition on April 14, 2010. In response to a question from a Commissioner about maintenance costs for the complex, Rick Graham, the City's Public Services Director, said that the City was discussing both operations and funding with Salt Lake County. (The Commissioner pointed out that the County has been cutting back.)

Planning Commissioner Michael Gallegos is employed by Salt Lake County as the Director of the County's Community Resources and Development Division. The Community Resources and Development Division in turn is part of the County's Human Resources Department. The City's discussions have been with the County's Parks and Recreation Division which is part of the County's Department of Community Services.

Neither Mr. Gallegos nor the County's Community Resources and Development Division have been involved in the City's discussions with the County. The County has not appeared before the Planning Commission to advocate on the Sports Complex Petition.

Discussion

Salt Lake City Code Section 2.44.030 provides that:

Whenever the performance of a public servant's or volunteer public servant's official duty shall require any governmental action on any matter involving the public servant's or volunteer public servant's financial, professional, or personal 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 public servant or volunteer public servant shall disclose such matter to ... the mayor and to the members of the body, if any, of which the public servant or volunteer public servant is a member. ... The public servant or volunteer public servant shall disqualify himself or herself from participating in any deliberation as well as from voting on such matter."

(emphasis added)

A "financial interest" is defined in Section 2.44.020J as either a substantial interest in a business or holding a position of employment or management in a business entity. To begin with a "county" is not included within the definition of a "business entity." See Salt Lake City Code Section 2.44.020. However, even if Salt Lake County were a business entity for purposes of the City's conflict of interest chapter, there was no violation here.

When a potential "financial interest" based on employment is involved, we begin by examining the nature of the employee's involvement, if any, with the matter. Here, neither Mr. Gallegos nor the county division he heads has been involved in the discussions with the City.

Section 2.44.030 also requires that it must be "reasonably foreseeable" that the potentially disqualifying interest "will" have the specified effect. A speculative effect is not sufficient. With respect to "reasonable foreseeability" that the specified effect will occur, the key factor here is that the discussions between the City and the County are still preliminary. No commitments have been made. The budgets of all local governments are under pressure at this time.

Thus in my opinion, the "reasonable foreseeability" requirement has not been met.

We have expressed concern in the past, in conjunction with other factors, when the public servant's employer or business partner appears before the public body to advocate a particular

position. The County has not appeared before the Commission to advocate on the Sports Complex Petition, so that concern is not applicable here.

Section 2.44.030 also requires that the effect be material, but there is no need to address materiality given my previous conclusions.

Section 2.44.030 also applies to a "personal interest" or a "professional interest," but Commissioner Gallegos' employment with Salt Lake County does not raise issues of personal or professional interest.

Finally, Salt Lake City Code Section 2.44.040A(2) prohibits a volunteer public servant from "corruptly" using his or her official position to either: (1) further his or her personal, financial or professional interests or those of someone else; or (2) secure special privileges, treatment, or exemption for himself or herself or someone else.

Section 2.44.040A(2) is violated only when action is done "corruptly." "Corruptly" is defined as "done with wrongful intent and for the purpose of obtaining or receiving any personal, financial, or professional benefit resulting from some act or omission of the public servant ... which is inconsistent with the proper performance of his or her public duties."

I am not aware of any information that would even remotely suggest a violation of Section 2.44.040A(2).

Mr. Salt's letter also raises Utah Code Section 10-3-826; but based on the foregoing discussion, I see no violation of that section either.

Very truly yours,

A handwritten signature in black ink, appearing to be 'EJ' followed by a stylized, elongated flourish.

Cc: Mayor
City council
Recorder