



June 4, 2018

Amy Fowler
Council Member District 7
P.O. Box 145476
Salt Lake City, UT 84114-5476

Re: Conflict of Interest Opinion

Dear Council Member Fowler,

You asked for an opinion regarding whether you have a conflict of interest participating in discussions about, or voting on, the Funding Agreement between Salt Lake City and Salt Lake Legal Defender Association's (LDA) for Indigent Misdemeanant Defense.

Short Answer

The short answer is that you may not participate in discussions about, or voting on, the Funding Agreement with LDA because you are an LDA employee. Under Salt Lake City Code Section 2.44.130, a public servant is prohibited from participating in certain public contract decisions when the public servant has a financial interest in the contract. The definition of "financial interest" includes being an employee of an entity like LDA, regardless of whether you represent persons charged with violations of City ordinances, or your salary is funded by the City funds.

Background

LDA annually requests funds from the City to finance legal representation for the defense of indigent persons charged with violation of City ordinances. Although you are not assigned to represent persons charged with violation of City ordinances, you are employed by LDA. The funds LDA requests from the City do not pay for the salary, benefits, or direct overhead costs related to your position.

Analysis

Under Salt Lake City Code Section 2.44.130(A)(1)(a), a public servant may not: "participate directly or indirectly in making, recommending, preparing, or performing a discretionary function with respect to any contract with the city . . . when the public servant has . . . a financial interest pertaining to such contract."

"Financial interest" is defined under Section 2.44.020 to include being an employee of a "business entity." "Business entity" is defined to include an "organization or entity used in

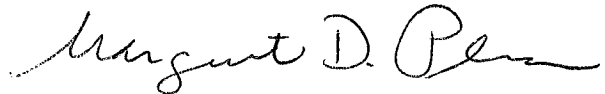
carrying on a business.” Although the Code does not define “business,” we have consistently interpreted it to include nonprofit entities, like LDA. Therefore, you have a financial interest pertaining to the Funding Agreement even though the Agreement does not directly fund your position.

City Code 2.44.130(A)(4) requires that public servants with an actual conflict of interest relating to public contracts or procurement “shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction or matter involved.” An email in response to this memo confirming your disqualification would be sufficient to serve as the required written statement. Going forward, if the City Council is going to discuss or act upon the Funding Agreement, you should state your conflict and recuse yourself from the discussion and vote.

I should note that under a different provision of the City’s Conflict of Interest ordinance your employment alone would not have required you to recuse from discussions about, or voting on, issues related to LDA. That is because under Section 2.44.030(A)(2), while your employment still constitutes a financial interest, recusal would not be required because a decision on the Agreement would not “have an individualized material effect on such interest, distinguishable from its effect on the public generally.” However, the restrictions regarding participating in public contracts and procurement under Section 2.44.130 are stricter than the general disclosure and disqualification provisions under Section 2.44.030.

Please let us know if you have any questions or concerns.

Yours,



Margaret D. Plane
City Attorney

*via Email &
delivered to City
Council Office*