

From: Ferguson, Boyd
Sent: Wednesday, February 16, 2011 9:03 AM
To: Mulé, Daniel
Cc: Rutan, Ed
Subject: Conflict of interest inquiry

Dan,

You asked the City Attorney's Office if you have a conflict of interest in the following situation.

You are currently the president of the Utah Municipal Treasurer's Association. That Association has a conference upcoming in St. George. The hotel that is hosting the conference, consistent with its past practice, is providing a few hotel rooms free of charge for the leadership of the Association. You asked whether the City's conflict of interest laws would prohibit you, as president of the Association, from staying in one of those free rooms.

City Code § 2.44.080 prohibits City employees from accepting certain gifts, and the Mayor has enacted an executive order that further restricts the receipt of gifts.

The first question is whether a gift is involved in this case.

We have interpreted § 2.44.080 as applying only to gifts to employees personally, rather than gifts to the City as an entity (but accepted by an employee for the City). In this case, in no event would you have to pay for a hotel room with your own money. Rather, you would stay in a hotel room either at the expense of the City or at the expense of the hotel. In that sense, the hotel's payment for your room means that the City doesn't have to pay, and the gift is actually to the City rather than to you personally.

However, you told us that the free room that the hotel is providing is nicer and more expensive than the room that you would stay in if you were not the president and the City were paying for the room. So, to the extent of the difference in the price of the room between what the hotel is paying and what the City would have paid for a lesser room, you are getting finer accommodations and are getting a personal gift to that extent.

However, we do not believe that such a gift would be likely to influence you to depart from the faithful and impartial discharge of your City duties. You realize that the hotel is trying to impress the Association (so it will continue to use the hotel for its conferences) rather than trying to impress you personally. You are getting the nicer room solely because you are the president of the Association, and not because you work for Salt Lake City.

We also believe that the Mayor's executive order on gifts would not prohibit you from staying in the free room. Section 1.4 says that the test is whether you are getting the gift because you work for the City. As noted above, that is not true. You are getting the gift only because you happen to be the current president of the Association. It is also arguable that, under § 1.6, you are attending a business function on behalf of the City, and may accept the hospitality of the occasion (in this case, an upgraded room).

In summary, we believe that you may stay in the free room at the conference without violating either the City's conflict of interest ordinance or the Mayor's executive order on gifts.

Boyd Ferguson
Senior City Attorney