

ERIN MENDENHALL
Mayor



KATHERINE LEWIS
Office of the City Attorney

October 9, 2020

VIA E-MAIL

Council Member James Rogers
Office of the City Council
451 S. State Street, 3rd Floor
Salt Lake City, UT 84111

Dear Mr. Rogers:

On September 17, 2020, you requested an advisory opinion as to whether, under the City's conflict of interest ordinance or other applicable law, any outside interests you may have in a relative's business named Utah Signs would require you to recuse yourself from participating in discussions or voting on revisions to the City's billboard ordinance.

Short Answer: It appears that you do not have a disqualifying conflict of interest with respect to your family's interest in Utah Signs which would prohibit you from participating in discussions or voting on revisions to the City's billboard ordinance. Under Utah's municipal ethics act, you might have a "personal interest" in Utah Signs due to your relatives' ownership of the company. For that reason, we recommend that you disclose your relatives' ownership of Utah Signs prior to discussing or voting on the proposed billboard ordinance revisions. You are not precluded from participating in the discussion or voting.

Process: Under City Code 2.44.210, any public servant (defined as either an elected official or a city employee) may request an advisory opinion from the city attorney concerning the application of the City's conflict of interest ordinance to him or her. The city attorney shall, as soon as practicable but not later than 30 days after the request, render a written opinion to the person who requested the opinion, and shall provide a copy of the opinion to the Mayor and City Council. In addition, all advisory opinions shall be available for public review. When the city attorney's office receives a request for an opinion, it requests the facts from the requestor and relies on the factual information as provided, without doing additional research or due diligence.

I. FACTS

1. You are an elected City Council Member, representing Salt Lake City's District 1.
2. In your position as a Council Member, you consider and vote on revisions to ordinances which are either initiated by the City Council or are requested by the City's Administration.
3. You have represented that your relatives, including your cousin, own a company called Utah Signs, which constructs and leases billboards throughout Utah.

4. You have represented that you do not work for Utah Signs or receive any income or financial benefit from Utah Signs.
5. You have represented that you aren't an officer, director, trustee, partner, employee, or manager of Utah Signs.
6. You have represented that the revisions to the billboard ordinance, which might eliminate the billboard bank and make other changes to the ordinance to comply with Utah law, will have no direct or indirect professional benefit or detriment to you.

II. DISCUSSION

City Code

This matter implicates two sections of the *Salt Lake City Code*. First, section 2.44.030A provides that if the performance of a public servant constitutes governmental action on any matter involving his or her financial or 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), the public servant must publicly disclose the matter to the Mayor and to the public body of which the public servant is a member. Furthermore, in the case of a financial interest, the public servant is disqualified from participating in any deliberation or voting on the matter.

Second, section 2.44.040A prohibits a public servant from “corruptly” using or attempting to use his or her official position to either: (1) further substantially the financial or professional interest of the public servant or others, or (2) secure special privileges for the public servant or others. Section 2.44.030A defines “corruptly” as “[a]n act done with wrongful intent and for the purpose of obtaining or receiving any financial or professional benefit or detriment resulting from some act or omission of a public servant . . . that is inconsistent with the proper performance of his or her public duties.”

It is important to note that both of those applicable provisions relate to either a financial interest or a professional interest. The ordinance does not apply to “personal” relationships with relatives, neighbors, or friends.¹

The following is an analysis of the application of those sections to the situation at issue.

A. Financial or Professional Interest.

¹ At one time, section 2.44.030A provided that a public servant could have a prohibited conflict of interest with respect to a “personal” interest. Some past legal opinions analyzed whether official action by a City official would have an individualized material effect on the official’s personal interest because the action could affect a close relative of the City official. However, in 2011 section 2.44.030A was amended to remove “personal interest” as a potential conflict of interest.

Section 2.44.020 defines “financial interest” as: (1) to possess a “substantial interest” (i.e., ownership of at least ten percent of the outstanding shares of a corporation or a ten percent interest in any other business entity by the public servant or the public servant’s spouse or minor child); or (2) 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.

In this case, while your relatives have a financial interest in Utah Signs, you do not. You also don’t have an ownership interest in any other business entity that is involved with the sale or leasing of billboards. It is not enough, under the conflict of interest ordinance, for you to have a relative with a financial interest in the billboard business, regardless of how close your relationship is with that relative.

Based on the factual information you provided, we conclude that you do not have a financial interest in any entity that would require you to recuse yourself from participating and voting on revisions to the billboard ordinance.

Section 2.44.020 defines “professional interest” as any interest that (1) results in a direct or immediate professional benefit or detriment to a public servant, or (2) 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.” In addition, that definition expressly states that the professional interest provisions of the ordinance don’t apply to a public servant’s relative.

You have represented that revisions to the billboard ordinance will not result in a direct or immediate professional benefit or detriment to you or a create in you a fiduciary duty with respect to a professional interest. We are not aware of any facts to the contrary. Therefore, we conclude that you do not have a professional interest in matters that would preclude you from participating in or voting on the proposed revisions to the billboard ordinance.

Having either a financial interest or a professional interest is a key element of any violation of the applicable sections of Chapter 2.44. Because you lack a financial interest or a professional interest in any entity that would be affected by the revisions to the billboard ordinance, you may discuss and vote on any proposed revisions to this ordinance.

B. Corrupt Use of Official Position.

Section 2.44.040(B) is violated only when action is done “corruptly.” In this case, this office has no information suggesting undue influence or corruption. As discussed above, any discussion or action you take on the proposed revisions to the billboard ordinance will not result in a financial or professional benefit or detriment to you.

Utah Code

The Municipal Officers’ and Employees’ Ethics Act, Utah Code Title 10, Chapter 3, Part 13 (the “Ethics Act”), also governs conflicts of interest for municipal employees. While similar to

the City's conflict of interest ordinance, the Ethics Act includes the following provisions that may be applicable to this situation.

Section 10-3-1304 makes it an offense for a municipal employee to use or attempt to use the employee's official position to: (1) further substantially the employee's "personal economic interest" or (2) secure special privileges for the employee or for others. That provision differs from the corresponding City Code provision in that it doesn't require the behavior to have been done corruptly, and it refers to "personal economic interest" rather than "financial interest."

Section 10-3-1308 provides that any personal interest or investment by a municipal employee that creates a conflict between the employee's personal interests and his or her public duties must be disclosed in open meeting of the related body.

In this case, "personal interest" could include your relationship with your family members who own Utah Signs and the effect your consideration or vote on a billboard ordinance might have on their business operations. For that reason, we recommend that you disclose your relationship to the relatives who own Utah Signs in a public meeting during the discussion of the billboard ordinance revisions and again when the City Council votes on the billboard ordinance revisions. You do not need to recuse yourself from the discussion or from voting.

CONCLUSION

Because the applicable provisions of Chapter 2.44 hinge on the existence of a financial or professional interest, and because you don't have any such interests in your relatives' ownership of Utah Signs, and because you haven't acted corruptly in a manner that would violate section 2.44.040A(2), your discussion and potential vote on any revisions to the billboard ordinance wouldn't violate Chapter 2.44. We are of the same opinion with respect to the Ethics Act, except because you may have a personal interest in your family members' ownership of Utah Signs, we recommend that you disclose that relationship prior to the discussion of or vote upon the billboard ordinance revisions.

Sincerely,


Katherine Lewis (Oct 9, 2020 10:18 MDT)

Katherine Lewis
City Attorney