

TO: UVKHO VIRGINIA HENRY
915 I STREET
#304
SACRAMENTO CA 95814

SAC-CL-CL-VKH 11-Apr-96 09:07:06

FROM: UVABO VALERIE BURROWES
915 I STREET
#304
SACRAMENTO CA 95814

SAC-CL-CL-VAB 10-Apr-96 17:40:10

SUBJECT: FYI

SAC-CL-CL-VKH/MA#6157567

To: DEPARTMENT HEADS
DIVISION MANAGERS
From: UVABO VALERIE BURROWES
Date: Wednesday 10-Apr-96 at 5:43pm
Subject: FYI

SAC-XX-XX-DPT
SAC-XX-XX-DML
SAC-CL-CL-VAB

We have been requested to detain any and all agreements that arrive in this office lacking a City Business Operations Tax Certificate No. and a Federal Tax ID No.

If you have any questions on this matter, please contact either Bob Holbrook or Betty Rentz.

Thanks.

The LEGAL ADVISOR

A Quarterly Bulletin for City Employees from the Office of the City Attorney

Issue 3

February, 1996

Contents

- Approval "As To Form" - What Is It?
- Rules Governing Conflict of Interest

APPROVAL "AS TO FORM" - WHAT IS IT ?

Our office periodically is asked what is involved when a contract or agreement is "approved as to form" by the City Attorney. Numerous provisions of the City Code require such approval by the City Attorney's Office. For example, Titles 57 and 58 of the City Code, which regulate supply and nonprofessional service contracts and contracts for public projects, state that *the City Attorney shall approve the form and legality of all formal written agreements prior to the execution thereof*. As a general rule, all contracts and agreements to which the City is a party, including contracts and agreements with consultants, developers and other public agencies, must be submitted to the City Attorney's Office for approval by the City.

Our review of a contract or agreement may be expedited by use of a standard form that was drafted, or was previously reviewed and approved by the City Attorney's Office. In such cases, our review may be limited to verifying that all "blanks" are properly filled in, that no changes are made to the standard terms and provisions, and that the contract or agreement is properly executed by the other party. When changes are made to standard terms and provisions, or when a contract or agreement does not use a previously-approved form, our review may involve legal research and drafting of revisions necessary for approval. For this reason, it is always a good idea to provide our office with a proposed non-standard agreement or proposed changes to a standard agreement well in advance of any deadline for completion of the final document, so that our office has adequate time to review the document and recommend any necessary revisions.

Approval of a contract or agreement "as to form" signifies only that the document is in proper legal form. Approval of the substantive terms and "business points" of a particular contract or agreement usually involves policy determinations that are made by City staff or by the City Council, depending upon the nature and amount of the contract or agreement. However, by reviewing a contract or agreement "as to form", and, in appropriate cases, by assisting staff in drafting and negotiating contracts or agreements, our office is able to ensure that the terms and provisions of a particular contract or

agreement are legally binding and accurately describe the respective rights and obligations of the parties.

RULES GOVERNING CONFLICT OF INTEREST

In California, there are a number of laws, loosely referred to as "conflict of interest" laws, designed to safeguard against conflicts between the private activities and interests of public officials and employees and the performance of their public duties. This article provides a general overview of the significant conflict of interest provisions that apply to the City's elected and appointed officials and City employees. This article is provided for general informational purposes only. Any City official or employee who is uncertain whether he or she may have a conflict of interest under any of the laws, regulations or City Code provisions discussed below may consult the City Attorney's Office; in an appropriate case, the official or employee may be referred to the Fair Political Practices Commission (FPPC).

The Political Reform Act

The basic conflict of interest provision of the Political Reform Act is set forth in Government Code § 87100, which provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

This prohibition, interpreted and supplemented by numerous FPPC conflict of interest regulations, applies to elected and appointed officials, such as members of the City Council and the Planning Commission, and to City employees.

Under the Political Reform Act, determining whether a conflict of interest exists first requires a determination of whether a public official or employee has a "financial interest" in a governmental decision. An official or employee generally is deemed to have a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect (i) on the official or employee, or on his or her immediate family, (ii) on any business entity or real property in which the official or employee or his or her spouse or dependent child has an investment or interest worth \$1,000.00 or more, (iii) on any

source of income totalling \$250.00 or more that is provided or promised to the official or employee within 12 months prior to the time when the decision is made (other than gifts and loans by a commercial lending institution), (iv) on any business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management, or (v) on any donor of a gift or gifts totalling \$280.00 or more in value provided or promised to the official or employee within 12 months prior to the time when the decision is made. The gift limit is adjusted bi-annually to reflect changes in the cost of living index.

If an official or employee has a financial interest in a decision, he or she has a conflict of interest if the foreseeable effect of the decision on the financial interest of the official or employee is material, unless such effect is not distinguishable from the decision's effect on the public generally. There is a complex series of FPPC regulations defining when the effect of a governmental decision is considered to be material and when the effect of a decision is considered to be similar to the effect on the public generally.

If there is a conflict of interest, the Political Reform Act generally prohibits the official or employee from making, participating in, or using their official position to influence the governmental decision. A public official or employee "makes or participates in" a governmental decision when he or she votes, responds to comments, takes part in discussions, or makes recommendations to the decision-maker, regardless of whether the advice is followed. With certain specified exceptions, a public official or employee is considered to be attempting to "influence" a governmental decision when he or she has contact with any individual within a governmental agency for the purpose of urging a particular result.

In addition to the foregoing "disqualification" provisions, the Political Reform Act requires City officials and designated City employees to file a so-called "statement of economic interests" disclosing all private economic interests that the official or employee may possibly affect by the exercise of his or her public duties. The Political Reform Act also imposes restrictions and specific annual dollar limits on the acceptance of gifts by officials and designated employees, and prohibits the acceptance of honoraria. Violations of the Political Reform Act's gift and honoraria provisions and financial disclosure requirements, or participation in a governmental decision by an official or employee with a conflict of interest, may subject the official or employee to civil and criminal penalties as well as forfeiture of office.

Sacramento City Code, Title 53

The City has adopted its own supplemental conflict of interest rules, found in Title 53 of the City Code. Generally, these rules (i) broaden the scope of familial relationship that must be considered in determining whether a conflict of interest

exists in certain situations, and (ii) require a City official or designated City employee to disqualify himself or herself from making or participating in the making of any decision on another person with whom the official or employee has an economic or familial relationship is an applicant or is principally involved in a matter before the City. Title 53 also prohibits any City employee from being financially interested in any contract to which the City is a party. This latter prohibition does not apply to appointed or elected officials, although both employees and officials are subject to the restrictions of Government Code § 1090 discussed below.

Government Code Section 1090

Section 1090 of the Government Code prohibits public officials from having a financial interest in any contract made by the official in their official capacity, or made by the body of which they are a member, regardless of whether the official abstains from participation in the actual decision to award or enter into the contract. For example, the City Council may not enter into a contract with a business entity in which a councilmember has a financial interest, regardless of whether the councilmember abstains completely from participation in the transaction.

Section 1090 also prohibits public employees from having a financial interest in any contract they are involved in making. Employees are deemed to be involved in the making of a contract when they participate in the preparation of specifications for bids, participate in formulating the scope of the contract, or make recommendations regarding the contract. Contracts which are entered into in violation of § 1090 may be held null and void, and may subject the public official or employee to civil and criminal penalties as well as forfeiture of office.

Other Legal Requirements

Under Government Code § 1126, employees of the City performing any activity for compensation outside of their City employment, must abstain from such outside activity in any specific situation in which a potential conflict with their public duties or with the City is presented. Existing City policies and procedures regarding outside employment by City employees are intended to prevent such conflicts from occurring. Another legal principle that may be relevant to conflict of interest issues is the common law doctrine of "incompatibility of office," which generally prohibits an official from holding two public offices simultaneously, where there is a potential conflict or overlap in the functions or responsibilities of the two offices. There also may be situations requiring a public official or employee to abstain or disqualify himself or herself from acting on a matter even though no specific law or regulation applies, based on the common law doctrine that requires public officials to exercise the powers conferred on them for public, not private benefit.