



City of San Antonio, Texas

Ethics Advisory Opinion No. 2013-01

June 14, 2013

Issued By: City Attorney's Office

I. Issue:

May a former City Council member lease or purchase real property from a City-created governmental entity within one year of leaving public office?

II. Inquiry

In the fall of 2001, pursuant to Texas Local Government Code Section 378.002(a), later recodified as Texas Local Government Code, Section 379B.002(a), the City Council established the Brooks Development Authority as a defense base development authority with a boundary coterminous to the former Brooks Air Force Base, now known as Brooks City-Base. Development Authorities under this statute are governmental entities. A City Council member is interested in a lease or purchase of property from the BDA upon termination of his term as a City officer, and has asked whether or not such a contract would be a prohibited contract with the City under the City Charter or the Ethics Code.

III. Prohibited Interests in Contracts Provisions

Section 141 of the City Charter prohibits City officers and higher-level City staff members from having an interest in a contract with the City. Section 141 states:

“No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee. Any willful violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council shall render the contract involved voidable by the City Manager or the Council.”

Sections 2-52 and 2-58 of the Ethics Code restate and interpret this Charter prohibition.

2-52 (b) Financial Interest. An officer or employee is presumed to have a prohibited “financial interest” in a contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- (1) the officer or employee;
- (2) his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- (3) a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
 - a. ten (10) percent or more of the voting stock or shares of the business entity, or
 - b. ten (10) percent or more of the fair market value of the business entity; or
- (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - a. a subcontractor on a city contract;
 - b. a partner; or
 - c. a parent or subsidiary business entity.

For purposes of applying Section 141 of the Charter under this Section, the Ethics Code defines City officers as the Mayor and Council members, Municipal Court Judges and Magistrates, and members of boards and commissions that are more than advisory in Nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the City.

Section 2-58 restates the general prohibited financial interest defined by Section 2-52, and narrows the prohibition even further, applying it to former officers. Section 2-58 provides that a former officer is presumed to have a prohibited interest in a *discretionary* City contract if the former officer, the former officer’s immediate family members, or the businesses in which they hold a 10% or greater ownership interest are parties to a contract or subcontract with the City within one year of termination of official duties.

Section 2-58 Impermissible Interest in Discretionary Contract or Sale.

(a) This Subsection applies only to contracts or sales made on a discretionary basis, and does not apply to contracts or sales made on a competitive bid basis. Within one year of the termination of official duties, a former City officer or employee shall neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service. Any violation of this Section, with the knowledge, expressed or implied, of the individual or entity contracting with the Council shall render the contract involved voidable by the City Manager or the Council. A former City officer or employee has a prohibited “financial interest” in a discretionary contract with the City, or in the sale to the City of land, materials,

supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- (1) the former officer or employee;
- (2) his or her parent, child, or spouse;
- (3) an entity in which the former officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
 - a. ten percent or more of the voting stock or shares of the entity, or
 - b. ten percent or more of the fair market value of the entity; or
- (4) an entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - a. a subcontractor on a City contract;
 - b. a partner; or
 - c. a parent or subsidiary entity.

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(c) Definitions. For purposes of this section:

- (1) A “former City employee” is any person who, prior to termination of employee status, was required to file a financial disclosure statement pursuant to Section 2-73(a) (Financial Disclosure Report).
- (2) A “former City officer” is any person who, immediately prior to termination of official duties, was:
 - a. the Mayor or a member of City Council;
 - b. a Municipal Court Judge or Magistrate; or
 - c. a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the City.
- (3) The term “contract” means any discretionary contract other than a contract for the personal services of the former City official or employee.
- (4) The term “service” means any services other than the personal services of the former official or employee.

It is well established that a lease or sale of property is a discretionary contract. As discussed, the BDA is a separate governmental entity, which enters into leases and contracts independently of the City. Therefore, a contract with the BDA is not a prohibited contract with the City, and would not violate the Charter or the Ethics Code.

V. Conclusion

Because the BDA, created pursuant to Texas Local Government Code, Section 379B.002(a) is a separate governmental entity and not the City, a contract between a former City officer and the Development Authority is not a City contract. The lease or purchase of property by the former City officer from the BDA is not a violation of either the Charter or the Ethics Code.