



City of San Antonio, Texas

Ethics Advisory Opinion No. 2012-02

February 12, 2012

Issued By: City Attorney's Office

I. Issues:

May the business, of which a member of a City Commission that is more than advisory in nature owns more than 10% interest, have an "on-call" contract with the City?

II. Inquiry

A recently appointed commissioner of a city board that is more than advisory in nature, owns 15% of a business that does work for the City. The company does not currently have any pending contracts with the City, as the company does work on a purchase order "on-call" type basis.

III. The Ethics Code

A. The Prohibited Contracts Provision of City Charter and Ethics Code

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."

Section 2-52 of the Ethics Code restates and interprets this prohibition as well. The Ethics Code establishes that a member of a city board that is more-than-advisory in

nature is an “officer” for purposes of the prohibited contracts provision. Section 2-52 further states that an officer is presumed to have a prohibited interest in a city contract if the officer, the officer’s immediate family members or the businesses in which they hold a 10% or greater ownership interest are parties to the contract or subcontract with the city.

Section 2-52 (a) further states that:

"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."

Given this, the “prohibited-interests-in contracts” provisions of the City Charter and the Ethics Code would prohibit the member’s firm from contracting with the city or from having partnerships with other firms that contract with the city, even on an “on-call” basis.

B. Conflicts of Interests Provisions

The Ethics Code has two “conflicts-of-interest” provisions applicable to all city officials and employees. First, a city official cannot take any official action that is likely to affect the economic interests of the:

- 1) official;
- 2) the official’s family within the 2nd degree, and members of the official’s household;
- 3) businesses in which the official or his or her family members hold an ownership interest;
- 4) employers of the official or the official’s family members;
- 5) business entities or non-profit organizations for which the official serves in an executive or decision-making capacity;
- 6) individuals or businesses with whom the official is engaged in business or employment negotiations; and
- 7) any outside client of the official.

Ethics Code, Section 2-43. Should a matter that could affect the financial interests of any of these individuals or entities come before the member’s board, the Ethics Code requires that he recuse herself from voting or any other participation in the matter.

The second conflict-of-interest provision states that a city official cannot use his or her position with the city to unfairly advance or impede private interests or to secure for any person any form of special consideration, treatment, exemption or advantage beyond that which is lawfully available to other persons. Ethics Code, Section 2-44. This provision requires officials and employees to render decisions based on the merits and not on

personal considerations or relationships. In the event a matter came before the member's board that might relate to business interests of her firm, Section 2-44 might also require recusal, even if no specific financial interest is at stake.

C. Prohibited interest in discretionary contracts.

Section 2-58 (a) prohibits former city officers or employees from having a financial interest, directly or indirectly, in any discretionary contract with the city, and from having a financial interest, directly or indirectly, in the sale to the city of any land, materials, supplies, or service, within one year of the termination of their official duties. 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. Any violation of this section, with the knowledge, expressed or implied, of the individual or business 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, if the former officer or employee, their spouse or minor child, or a business entity in which the former officer or employee owns a requisite amount of the business entity is a party to the contract or sale.

On-call contracts are discretionary contracts. Therefore, the member must be cognizant of the prohibition against obtaining a financial interest in a contract with the City for one year following termination of duties for the City.

D. Conclusion

Because the member is on a more than advisory board, and has an ownership interest of more than 10% in the company, he would be considered to have a financial interest in any contract or sale of services to the City. If the company had an existing contract with the City at the time the member was appointed to the board, that contract could have continued through its end term as authorized by Section 2-52(d) without creating a prohibited interest in a contract. However, because there is not an on-going contract with the City the member should not enter into any new contract, work order or job with the City as of his date of appointment to the board, as doing so would constitute a new contract or sale in violation of this section.

As set out in 2-52(a), if the member's company engages in business with the City while he serves on the board, he would forfeit his position on the board and could render his company's contract with the City void.

Additionally, if any aspect of business comes up before the board related to the member's work or business, he should recuse himself from any discussion or vote related to those matters.

Finally, upon termination of his official duties for the City, the member is prohibited for a period of one year from having a financial interest, directly or indirectly, in a contract with the City.