

February 28, 2006

SDEC Formal Advice Letter No. FA06-03

Advice Provided To:
Councilmember Toni Atkins
City Council District 3
202 "C" St., 10th Floor
San Diego, CA 92101

Re: Request for Advice Regarding Disqualification from Municipal Decisions that
Involve Jennifer LeSar and Centre City Development Corporation

Dear Councilmember Atkins:

This advice letter has been prepared in response to your memorandum to the City of San Diego Ethics Commission dated February 21, 2006. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Your letter seeks the Commission's assistance with regard to whether you may participate in municipal decisions involving Jennifer LeSar and Centre City Development Corporation [CCDC].

QUESTION

Does your personal relationship with Jennifer LeSar, a member of CCDC's Board of Directors, create a conflict of interest that precludes your participation in municipal decisions involving Ms. LeSar, particularly with respect to CCDC?

SHORT ANSWER

As a City Official, you are prohibited from influencing a municipal decision if it is reasonably foreseeable that the municipal decision will have a material financial effect on you, a member of your immediate family, of any of your economic interests. Ms. LeSar is not a member of your immediate family, and she is not one of your economic interests. Accordingly, your personal relationship with Ms. LeSar does not create a conflict of interest that precludes your participation in municipal decisions involving any entity that Ms. LeSar is associated with, including CCDC.

BACKGROUND

According to information provided in your memorandum, you have a dating relationship with Jennifer LeSar, who is a member of the Board of Directors of CCDC. Ms. LeSar currently serves as the chairperson of the Board. You stated that you do not share a residence with Ms. LeSar, and that your finances and property are entirely separate. Your memorandum states that the two of you are not registered as domestic partners, and that you have no formal, government-recognized legal or financial relationship with Ms. LeSar.

DISQUALIFICATION ANALYSIS

SDMC section 27.3561 prohibits a City Official from knowingly influencing a municipal decision if it is reasonably foreseeable that the municipal decision will have a material financial effect on you, a member of your immediate family, of any of your economic interests. One of the key steps in a disqualification analysis (and for purposes of this advice letter, the only step that is required) is to determine whether you have an “economic interest” in the decision.

“Economic interests,” according to section 27.3561, are limited to:

- (1) any business entity in which the City Official or a member of the City Official’s immediate family has invested \$2,000 or more;
- (2) any business entity for which the City Official or a member of the City Official’s immediate family is a director, officer, partner, trustee, employee, or hold any position of management;
- (3) any real property which the City Official or a member of the City Official’s immediate family has invested \$2,000 or more;
- (4) any person from whom a City Official or a member of the City Official’s immediate family has received (or by whom you have been promised) \$500 or more in income within twelve months prior to the municipal decision; and
- (5) any person from whom a City Official or a member of the City Official’s immediate family has received gifts which total \$320 or more within twelve months prior to the municipal decision.¹
- (6) the personal expenses, income, assets, or liabilities of or a member of the City Official’s immediate family.

Because the inquiry before us does not involve investment interests in a business entity, we need not evaluate the first type of financial interest listed above. With regard to the second type, although Ms. LeSar is a member of the Board of Directors of CCDC, she is not a member of your immediate family² and therefore her position in CCDC is of no consequence to the analysis.

¹ The \$320 gift limits at the time this section went into effect have been raised to \$360.

² California Government Code section 82029 and FPPC Regulations 18229 define immediate family to include registered domestic partners. You have stated, however, that you and Ms. LeSar are not registered domestic partners.

The third type of interest is irrelevant because your inquiry does not involve an investment in real property. The fourth type, pertaining to income of \$500 or more, is also inapplicable unless Ms. LeSar is a source of income to you. There is nothing in the information you supplied, however, which indicates that Ms. LeSar has provided you with any amount of income. Skipping the fifth type for the moment, it is also clear that the sixth type of economic interest (personal expenses of the official or the official's immediate family) is also not relevant to this analysis because, as stated above, Ms. LeSar is not a member of your immediate family.

The fifth type of financial interest, which involves gifts valued at \$360 or more, may, at first glance, appear to be relevant. Even though we have no facts regarding whether or not you have received gifts from Ms. LeSar, it would be reasonable to expect that she may have given you one or more gifts during the course of your relationship. For this reason, it would be prudent to analyze whether gifts from Ms. LeSar could cause you to have a conflict of interest in decisions that have a financial effect on her.

There is nothing in the Ethics Ordinance that specifically addresses gifts exchanged between two persons in a dating relationship. Nevertheless, applicable definitions and provisions contained in the Political Reform Act and the related regulations adopted by the California Fair Political Practices Commission [FPPC] expressly apply to the City's Ethics Ordinance. SDMC § 27.3503. We therefore turn to interpretations of state law from time to time for guidance in interpreting the City's Ethics Ordinance. These interpretations typically occur in the form of advice letters.

The FPPC has consistently advised that gifts received within the context of a bona fide dating relationship are not considered "gifts" for purposes of conflict of interest laws. The FPPC has stated: "In such a relationship, truly personal gifts such as gifts of entertainment, meals, personal property or expenses involved in recreational travel are not prohibited and need not be disclosed on an official's statement of economic interest. The [Fair Political Practices] Commission has determined that such a relationship is similar to a family or spousal relationship, in which personal gifts are frequently exchanged . . ." *In re Brown*, FPPC Adv. Ltr. A-96-155. The FPPC has also repeatedly stated that public officials in dating relationships are not required to recuse themselves from making or participating in making governmental decisions even when the decisions may have a material affect on the individuals they are dating. See, e.g., *In re Alsop*, FPPC Adv. Ltr. A-03-032; *In re Harvey*, FPPC Adv. Ltr. I-04-097. Accordingly, even if Ms. LeSar financially benefits from a decision you participate in making (regardless of whether it involves CCDC or any other entity), your personal dating relationship with her does not create a prohibited conflict of interest in that decision.

As is seen by the above discussion, Ms. LeSar's role as the chairperson of the CCDC Board is of little consequence to the disqualification analysis. What is important to the analysis is the fact that Ms. LeSar is not a member of your immediate family and is not one of your economic interests. Thus, the nature and extent of Ms. LeSar's association with CCDC are essentially irrelevant to any analysis of decisions that come before you involving CCDC.

CONCLUSION

Based on the facts you have presented, Jennifer LeSar is not a member of your immediate family, and your relationship with her is not of a nature that constitutes an “economic interest” as that term is defined in the Ethics Ordinance. In particular, as detailed by advice letters issued by the FPPC, involvements in bona fide dating relationships do not require public officials to recuse themselves from making governmental decisions that have a financial impact on individuals they are dating. Thus, your personal relationship with Ms. LeSar does not create a conflict of interest that precludes your participation in municipal decisions involving any entity she is associated with, including CCDC.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

Sincerely,

Cristie McGuire
General Counsel

By: Stephen Ross
Program Manager-Technical Assistance