

**[NOTE: In 2014, the California Fair Political Practices Commission amended Regulation 18706 to state that an outcome is “reasonably foreseeable” if it is a “realistic possibility.” An outcome need not be “substantially likely” to be considered “reasonably foreseeable.”]**

May 12, 2010

SDEC Formal Advice Letter No. FA10-02

Bill Anderson  
City Planning and Community Investment  
202 C Street, MS 5A  
San Diego, California 92101

Re: Request for Advice Regarding Disqualification from a Municipal Decision Based on Spouse’s Potential Employment With AECOM

Dear Mr. Anderson:

This advice letter responds to your April 26, 2010, request to the San Diego Ethics Commission for guidance interpreting the disqualification provisions of the City’s Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Specifically, you have asked whether your spouse’s potential employment with business entity AECOM raises any disqualification concerns relating to your participation in municipal decisions involving that entity. Because your questions seek guidance with regard to a specific municipal decision (the selection process following a Request for Proposals [RFP] issued by your department), we are treating your inquiry as a request for formal advice.

### **QUESTIONS**

1. Does the Ethics Ordinance prevent your wife from applying for employment with AECOM on the basis that AECOM has done business with your City department in the past and is currently bidding on another project before your department?
2. Does the Ethics Ordinance disqualify you from participating in the RFP process for which AECOM has submitted a bid because your wife is seeking employment with AECOM?
3. Will the Ethics Ordinance disqualify you from participating in the RFP process for which AECOM has submitted a bid if your wife becomes employed by AECOM?

## **SHORT ANSWERS**

1. The Ethics Ordinance does not prevent your wife from applying for employment with AECOM even though AECOM has previously done business with your department and is currently bidding on another project before your department.
2. Your wife seeking employment with AECOM does not disqualify you under the Ethics Ordinance from participating in the RFP process for which AECOM has submitted a bid. If, however, AECOM offers your wife employment, you will be precluded from participating in the RFP process as well as any other municipal decision to which AECOM is a party.
3. If AECOM employs your wife, AECOM will become one of your economic interests. Under the Ethics Ordinance, you may not participate in any municipal decision, including your department's RFP process, that is substantially likely to have a material financial effect on one of your economic interests.

## **BACKGROUND**

You are the Director of the City Planning and Community Investment Department [CPCI]. AECOM is a global provider of professional technical and management support services to a broad range of markets, including transportation, facilities, environmental, energy, water and government. It is a Fortune 500 company. AECOM has done business with CPCI in the past, and has recently submitted a bid in response to an RFP issued by CPCI. You have been involved in the selection process for this RFP. Your wife is an environmental planner, and is interested in applying for a job with AECOM. You have asked whether the above facts raise disqualification concerns under the City's Ethics Ordinance.

## **ANALYSIS**

### **A. Spouse's Employment With AECOM**

The Ethics Ordinance regulates the conduct of City Officials, and in some cases considers the financial interests of an official's spouse, but it does not in any manner regulate the employment of an official's spouse. In other words, nothing in the Ethics Ordinance prevents your wife from seeking or accepting employment from any entity, including an entity that has been, or will be, engaging in business with the City, including entities doing business with your own City department.

You may, however, be disqualified from participating in municipal decisions involving a company that employs your spouse, or otherwise provides your spouse with an opportunity for compensation. These disqualification concerns are discussed below.

## **B. Disqualification Under the Ethics Ordinance**

The Ethics Ordinance contains three different disqualification provisions that are relevant to your inquiry. These provisions are discussed separately, as follows:

### *1. Disqualification under SDMC section 27.3560*

As the Director of CPCI, you are a “City Official” for purposes of the City’s Ethics Ordinance. SDMC § 27.3503. Under section 27.3560 of the City’s Ethics Ordinance, City Officials may not be financially interested in any contract made by them in their official capacity. This section of the Ethics Ordinance is based on California Government Code section 1090’s prohibitions against public officials making contracts in which they have a financial interest. For purposes of both state and local law, an official need not vote on or sign a contract to violate the law; participation in the preliminary stages of the contract, including specifications and solicitation for bids, are sufficient to trigger a violation. *Millbrae Assn. for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968).

Section 27.3560 will not, however, apply to your present involvement in a potential contract between CPCI and AECOM because your wife currently has no relationship with AECOM other than an interest as a prospective employee. In other words, you do not have a financial interest in a contract between CPCI and AECOM simply because your wife *might* work for AECOM at some point in the future. Nevertheless, you should be mindful that if your wife does become an employee of AECOM, you will immediately become financially interested in any AECOM contracts for purposes of section 27.3560. You would, under those circumstances, be prohibited from continuing to participate in any aspect of the RFP process for as long as AECOM remained under consideration for the City contract.

### *2. Disqualification under SDMC section 27.3561*

The next disqualification provision relevant to your inquiry addresses any type of municipal decision that you may be involved in, not just contracts. The Ethics Ordinance prohibits you, as a City Official, from influencing any municipal decision if it is reasonably foreseeable that the decision will have a material financial effect on any of your economic interests. SDMC § 27.3561. Thus, if AECOM is one of your economic interests, you may not lawfully participate in decisions that are substantially likely to have a material financial effect on AECOM. As set forth below, however, AECOM is not currently one of your economic interests.

The Ethics Ordinance defines “economic interests” as follows:

- (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; and
- (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; and

- (3) any real property which the City Official or a member of the City Official's immediate family has invested \$2,000 or more; and
- (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<sup>1</sup>; and
- (6) the personal expenses, income, assets, or liabilities of a City Official or a member of the City Official's immediate family.

SDMC § 27.3561(b). These provisions are based on the state law contained in the Political Reform Act (Cal. Gov't Code §§ 81000-91014), and are subject to the interpretations of the Fair Political Practices Commission [FPPC] as set forth in their regulations, opinions, and advice letters. Based on the information that you provided to our office, AECOM is not currently one of your economic interests. In particular, your wife is not currently employed with AECOM and has not received any income from AECOM within the past twelve months. The fact that your wife is seeking employment from AECOM is not sufficient to trigger any of the above provisions. In addition, you have not provided us with any information suggesting that AECOM is one of your economic interests under any other provision of SDMC section 27.3561 (e.g., investment interest; source of gifts). Thus, SDMC section 27.3561 does not currently preclude you from participating in decisions that could have a financial impact on AECOM.

As with section 27.3560, this conclusion will change if your wife receives a salary or any other form of compensation from AECOM that provides you (through your community property interest in your wife's income) with \$500 or more in income. Under such circumstances, you would have an economic interest in AECOM that would disqualify you from participating in municipal decisions that are substantially likely to have a material financial effect on AECOM. The effect would be deemed material for any decision in which AECOM is the applicant or named party. FPPC Regulation 18705.3(a). As a bidder on the abovementioned CPCI project, AECOM is clearly "directly involved" in the decision. Therefore, if AECOM becomes a source of income to your wife (and to you through your community property interest in her income), you would be unable to participate in the selection process for any project in which AECOM has submitted a bid.

As an aside, for decisions where AECOM is only "indirectly involved" (e. g., not an applicant or named party), materiality depends on the amount of financial impact the decision is likely to have on AECOM. FPPC Regulations 18705.3(b)(1), 18705.1(c). The larger the business entity, the greater the impact the decision will need to be on that entity in order for the financial effect to be considered material. Because AECOM is a Fortune 500 company, the financial effect of a

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<sup>1</sup> The \$320 gift limits at the time this section went into effect have since been raised to \$420.

decision in which it is “indirectly involved” would be material if the decision was substantially likely to impact the company’s gross revenues by \$10 million in a fiscal year. FPPC Regulation 18705.1(c)(1).

*3. Disqualification under SDMC section 27.3562*

SDMC section 27.3562 provides another disqualification provision relevant to this analysis. This provision of the Ethics Ordinance makes it “unlawful for any City Official to participate in any municipal decision where a party to the municipal decision has given the City Official . . . an opportunity for compensation.” Subsection (b) of this code section states that an opportunity for compensation provided to a City Official includes an opportunity for compensation given to the official’s spouse. An offer of employment, or even just an indication that an offer is forthcoming, may reasonably be construed as constituting an opportunity for compensation. Accordingly, if AECOM offers employment to your wife, you will be precluded from participating in any municipal decisions to which AECOM is a party. More particularly, if AECOM offers a paid position to your wife while also bidding on a CPCI project, you may not participate in the decision to award that project.

**CONCLUSION**

Based on the facts you’ve provided, AECOM is not currently one of your economic interests under the Ethics Ordinance. It has not provided income to your wife, nor has it extended an offer of employment to her. Under the present circumstances, you may continue to participate in municipal decisions involving AECOM. If, however, AECOM offers employment to your wife or otherwise provides her with income, the disqualification provisions of the Ethics Ordinance will be triggered. These provisions will require you to recuse yourself from participating in any decisions that are substantially likely to have a financial impact on AECOM. If your wife does receive or accept an offer of employment from AECOM, you are encouraged to contact the Ethics Commission for additional guidance with regard to any specific decisions involving AECOM that come before your department.

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,

Alison Adema  
General Counsel

By: Stephen Ross  
Program Manager-Technical Assistance