



BEFORE THE ABERDEEN ETHICS COMMISSION

IN THE MATTER OF:

**REQUEST FOR ADVISORY OPINION BY
CITY COUNCILMEMBER [REDACTED]
WITH RESPECT TO A POSSIBLE CONFLICT OF INTEREST
ARISING OUT OF HIS PARTICIPATION AS A COUNCIL MEMBER
IN A MATTER RELATING TO A LEASE BETWEEN THE CITY AND
A THIRD PARTY.**

No. AO 2017-01

* * * * *

City Council member [REDACTED] has submitted to the City of Aberdeen Ethics Commission a request for an advisory opinion, on or about July 17, 2017. He has inquired as to whether his participation as a City Council member in the discussion and decision-making process with respect to a proposed arrangement between the City and [REDACTED] would present an impermissible conflict of interest, given his seasonal employment with an entity known as [REDACTED]. It has been clarified that the correct name of entity for whom Councilman [REDACTED] works is known as [REDACTED] ("[REDACTED]"). According to the records of the State Department of Assessments and Taxation, [REDACTED] is wholly owned by [REDACTED] ("[REDACTED]").

The Commission addressed the request at a meeting on August 2, 2017. Councilman [REDACTED] was given an opportunity to be present at that meeting and did appear, to answer questions from the Commission and to provide any additional information he deemed relevant to the determination.

The Commission has determined that the circumstances Councilman [REDACTED] has described in his inquiry would not constitute a conflict of interest under the City's ethics law, Chapter 43 of the City Code.

Councilman [REDACTED] has advised the Ethics Commission that he has, for the past

several years, been employed as a seasonal employee for [REDACTED] ("[REDACTED]") as a coach for the entity's summer youth baseball camps. He has said that he has worked at [REDACTED] every summer for a number of years, for approximately three weeks each summer. He has regular full-time employment with an employer unrelated to [REDACTED], [REDACTED], or any other person or entity owned by or associated with [REDACTED] or [REDACTED] ("a [REDACTED]").

Councilman [REDACTED] has never received any compensation from any [REDACTED] except his wages for his seasonal work at [REDACTED]. Neither he nor to his knowledge any qualified relative of his has received any gifts from [REDACTED] or from any [REDACTED], including free or discounted tickets or food or beverage to any event at the stadium or sold or sponsored by [REDACTED] or a [REDACTED].

Councilman [REDACTED] has said that the City is attempting to negotiate a lease with [REDACTED]. [REDACTED] has had a lease with the City previously that has expired or is about to expire. He has said that the negotiations for a new lease had been stalled. In his capacity as a City Council member, he has taken the position that an arrangement with [REDACTED] would be advantageous to the City and he has asked certain State officials, with whom he had casual contact at an event sponsored by the [REDACTED] to intervene. Specifically, on June 27, 2017, at a "Round Table" meeting attended by representatives of local governments from across the State and by various members of the Governor's cabinet and representatives of various State agencies, he spoke with [REDACTED] the [REDACTED] who stated he "would reach out to [REDACTED] and assist with getting an agreement completed."

Thereafter, [REDACTED] a representative of [REDACTED] and General Manager of [REDACTED] contacted Councilman [REDACTED] to discuss a possible lease agreement. Councilman [REDACTED] has said, "After several discussions with [REDACTED] all of which the Commission has been told the City Manager, the Mayor and the City Council were aware, there was a proposed lease agreement offered by [REDACTED]" Councilman [REDACTED] has indicated to the Commission that he has stepped back from direct communications and negotiations with [REDACTED] which are now being handled by the City Manager's office.

Councilman [REDACTED] has said that [REDACTED] does not maintain office space in the Stadium. He has no communications regarding his employment with [REDACTED] with anyone associated with [REDACTED] or with any of the other [REDACTED]. He has stated that his son works for [REDACTED]. That entity appears to be owned by [REDACTED]. There is no indication that Councilman [REDACTED] son will benefit directly from any arrangement between the City and [REDACTED].

The Ethics Commission has determined that the relevant provisions of the City's ethics law are found in Section 43-3 of the City Code, Subsections C, D and G. Subsection C provides as follows:

C. Participation prohibitions. Except as permitted by the Ethics Commission's regulation or opinion, an official or employee may not participate in:

(1) Any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest. This Subsection C(1) does not regulate the official or employee specified in Subsection B above if that person is exercising an administrative or ministerial duty that does not affect the disposition or decision of the matter in question.

(2) Any matter, in which any of the following is a party:

(a) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know.

(b) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee.

(c) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment.

(d) A contract that reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative.

(e) An entity, doing business with the City in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know both direct financial interests.

(f) A business entity that:

[1] The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

[2] As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(g) Subsection C(2) above does not regulate the official or employee as specified in Subsection B if that person is exercising an administrative or ministerial duty that does not affect the disposition of the matter in question.

(3) A person who is disqualified from participating under Subsection C(1) or (2) of this section shall disclose the nature and circumstances of the conflict and may participate or act if:

(a) The disqualification leaves a body with less than a quorum capable of acting;

(b) The disqualified official or employee is required by law to act; or

(c) The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of Subsection C(1) and (2) of this section do not apply if participation is allowed by regulation or opinion of the Ethics Commission.

The Ethics Commission finds that that Councilman [REDACTED] participation as a Council member in discussions and deliberations relating to a possible lease between the City and [REDACTED] is not prohibited because he has no interest in the lease. (§ 43-3(c)(1)). Based on the

information it has before it, the Ethics Commission has no reason to believe any entity covered by the list set forth in § 43-3(c)(2) will be a party to the matter about which the Councilman has inquired (the negotiation of a lease with [REDACTED]). The fact that the [REDACTED] may be under common corporate ownership by [REDACTED] and that he does a de minimis amount of work for an entity that is also owned by [REDACTED] does not automatically mean that he has a prohibited interest in those entities.

Section 43-3(D) of the City's ethics law provides:

D. Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Ethics Commission, when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(a) Be employed by or have a financial interest in any entity:

[1] Subject to the authority of the official or employee or the City agency, board or commission with which the official or employee is affiliated; or

[2] That is negotiating or has entered a contract with the agency, board or commission with which the official or employee is affiliated; or

(b) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(c) This prohibition does not apply to:

[1] An official or employee who is appointed to a regulatory or City licensing board or commission pursuant to a statutory requirement that appointees of that board or commission have certain professional and educational qualifications needed to bring relevant expertise to that board or commission;

[2] A member of a board or commission who held a financial interest or employment regulated by the chapter held at the time of appointment, provided the financial interest or employment is publicly disclosed to the Mayor and Council;

[3] An official or employee whose duties are ministerial, if the private employment or financial interest does not create conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Ethics Commission; or

[4] Employment or financial interests allowed by regulation of the Ethics Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

For the reasons stated above and based on the information before it, the Commission has no reason to conclude that Councilman [REDACTED] has a prohibited employment or financial interest. It does not appear that he is employed by or has a financial interest in an entity subject to the authority of the City or its boards, agencies or commissions. He is not apparently negotiating employment and has no contract with such entity. In the Commission's view, his employment as a seasonal coach for three weeks in the summer by [REDACTED] does not constitute an employment relationship that would impair his impartiality or independence of judgment. Because Subsections (D)(1)(a) and (b) do not apply to his employment, the Commission does not address subsection (D)(1)(c).

Section 43-3 (G) of the City Code prohibits the use of the prestige of office for personal gain. It provides:

G. Use of prestige of office.

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

In the view of the Ethics Commission, the Councilman's participation in the discussion and deliberations relating to a potential lease with [REDACTED] is not an intentional use of the prestige of his position as a Council member for his private gain or that of another, outside of usual and customary constituent services.

ABERDEEN ETHICS COMMISSION

By:


Donald Collier, Sr., Chair

8/18/17

Date