

ATTACHMENT 2

From: Jennifer McCain
To: Jay Petrek
CC: Barbara Redlitz; Charles Grimm; Clayton Phillis; Jeffrey Epp
Date: 6/3/2010 10:03 AM
Subject: General Plan Citizen Committee/Follow-Up

Jay,

This e-mail is in response to our conversation yesterday during which you conveyed some concern on behalf of members of the General Plan Citizen Committee ("Citizen Committee") of a footnote contained in my memo to you dated May 24, 2010. In the memo, I concluded that the Citizen Committee was simply advisory at this point in time and not subject to the disclosure or disqualification provisions of the Political Reform Act. In providing you with this advice, I included the following in a footnote:

"Please be aware that an individual Citizen Committee member has no attorney/client relationship with the City Attorney and would be unable to rely on advice from this office to provide immunity from FPPC enforcement or prosecution arising out of their conduct in this matter."

Apparently, some members of the Citizen Committee felt that they should enjoy the same level of representation as the City Council since they were appointed by individual council members. As I explained when we talked, the members of the Citizen Committee do enjoy the same level of representation by the City Attorney's Office in that individual councilmembers also do not have an attorney/client relationship with the City Attorney as it relates to financial conflicts of interest. By law, the City Attorney represents the City as a legal entity and does not represent any one City official (including appointed members of boards and commissions) who may have financial conflicts of interest.

Further, as it relates to immunity from criminal or civil prosecutions from the FPPC (the enforcement agency for violations of the Political Reform Act), it is my ethical duty to advise that only good faith reliance upon written advice from the FPPC on any particular situation at hand can protect the official. (Such immunity only applies to conflicts which arise under the Political Reform Act and then only when the advice is based on accurate assumptions and facts. Govt. Code section 83114.) However, good faith reliance on FPPC advisory rulings (as presented in my memo) is generally a defense against enforcement of civil or criminal sanctions. Okun v. Superior Court (1981) 29 Cal.3d 442.

All that being said, please be aware that the footnote simply serves to fulfill my ethical obligation to advise the Committee that the City Attorneys Office does not represent them (or individual councilmembers individually) and our advice also does not shield them from enforcement action in the future. Certainly, the Committee members are free to contact myself or the FPPC at 1-800-ASK-FPPC for further assistance if they feel that it is necessary.

I hope this addresses the concerns raised. Thank you.
Jennifer