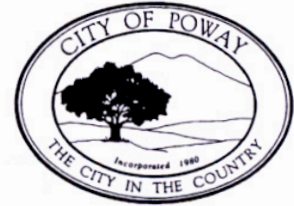


CITY OF POWAY

MEMORANDUM

CONFIDENTIAL



TO: Deputy Mayor Betty Rexford

FROM: Rod Gould, City Manager *RG*

DATE: September 27, 2006

SUBJECT: Conflict of Interest and Interference with Administration

I write to warn that your recent actions constitute a conflict of interest and interference with City administration. Although we have recently discussed these issues, I feel compelled to put this advice in writing, as our conversations on these topics have been ineffective. If you will kindly heed my advice, you will protect both yourself and the City organization.

The first issue has to do with your giving direction to staff on behalf of a property owner who has engaged you as a real estate agent. Specifically, you represent the owner of the Fletcher-Bowron house on Poway Road. During the last week of August and first week of September, you gave planner Jim Lyon direction on at least two occasions to cease staff action to ascertain the viability of moving the structure on this subject property.

As you serve as an agent of the property owner, your involvement with staff is a conflict of interest, as you stand to benefit financially from the transaction once it is consummated. Your argument that you are acting as a Realtor[®] and not as an elected official, does not constitute a defense, either under the law, or in light of public perception. It also runs afoul of the recently adopted City of Poway Code of Ethics.

Because you have a financial interest in the sales transaction involving the property, you are prohibited by the Political Reform Act from making or participating in making City decisions related to the property, or attempting to influence City decisions related to the property. According to Regulation 18702.3 of the Act, this prohibition specifically includes making contacts with the City on behalf of a business client. The only exceptions to this prohibition are purely factual inquiries, or contacts with the City regarding a matter that is related to your personal interests, such as a property interest or a business that is wholly owned by you or members of your immediate family. Regulation 18702.4(b).

As we have discussed, you may make inquiries as to zoning and other matters of fact for clients, but cannot seek to direct staff decision-making. The Fletcher-Bowron house has been a subject of a 2003 Council resolution (for which you voted), and will likely come before the City Council again in the future. At that time you must abstain from voting, citing the conflict of interest.

The second issue involves giving direction to staff in general, even when no conflict of interest exists. We have been over this before, but just in case of doubt, here are the applicable code sections and provisions in my employment agreement.

Section 2.08.070B. of the Poway Municipal Code states that "It shall be the duty of the City Manager, and the City Manager shall have the authority to control, order, and give directions to all Heads of Departments, and to support the officers and employees of the City, under the City Manager's jurisdiction through their Department Heads." Section 2.08.080A. states that "The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinate of the City Manager."

The contract entered into between the City of Poway and myself dated December 20, 2005, Section 3C(3) states that "Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate employees, officers, contractors and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give any orders to any subordinate of the City Manager, either publicly or privately."

Besides giving direction to Jim Lyon in this matter, you criticized a staff member within hours of my cautioning you about staff direction and your conflict of interest regarding the Fletcher-Bowron house. On the morning of September 19, 2006, you called me at 10:00 a.m. to complain that staff had not carried out your direction, and that your client was upset. We met at 11:00 a.m. that day, and I explained the sequence of events to you and reminded you of the conflict of interest and staff interference aspects of your actions. I thought we had an understanding.

That same evening before the City Council meeting, you sought out Jim Howell, Director of Public Works, and berated him in front of his subordinate, Frank Casteleneto, over his department's handling of the above matter. Your criticism continued all the way from the office to the City Council Chamber as the meeting began. Both Jim and Frank were highly embarrassed.

My employment contract, Section 3C(5) states that "The City Council agrees that any criticism of a City staff member shall be done privately through the City Manager." You had agreed previously to bring your criticism of staff to me, and have done so on several occasions.

It is imperative for the effective functioning of this City Council/City Manager form of government that you confine your efforts to policy making and giving staff direction through the City Manager for the administration of the City's business, in concert with your fellow Councilmembers. Giving direction, much less criticism to staff members directly sends very mixed messages to the organization and interferes with the efficient handling of public affairs. Staff and I respect your role. Please respect ours.

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I respectfully request that you avoid conflict of interest situations in your role as a Realtor®, by sending your client to see City staff directly, and/or confining your interaction with staff to inquiries. Penny Riley and I are available to assist you in case of doubt. Further, please resist the temptation to give staff direction, much less criticism. Bring such matters to me. I will endeavor to get answers to your questions and take appropriate actions consistent with City Council policy, and all applicable laws and regulations.

Please let us discuss this memo so that there are no misunderstandings as to its meaning. Interim City Attorney, Lisa Foster, is available to you if you seek clarification of the law in this or related matters.