
City Attorney

City of Oakland
Public Ethics Commission
November 3, 2003

In the Matter of)
) Complaint No. 03-11
)

Complaint No. 03-11 was filed by Ralph Kanz on September 30, 2003.

I. SUMMARY OF COMPLAINT AND ALLEGATIONS

Mr. Kanz filed the above complaint alleging that Oakland City Councilmember Jane Brunner voted on two items in which she may have had a financial interest. **Attachment 1.**

II. ANALYSIS

A. A Vote On A Resolution Authorizing The City Manager To Execute A Contract Amendment With Montclair Golf Enterprises, Inc.

On November 19, 2002, the City Council adopted by unanimous consent a resolution authorizing the City Manager to amend an existing contract with Montclair Golf Enterprises, Inc., the company that holds the current concession at Oakland's Montclair Golf Course. Under the amendment, the City agreed to reduce the rent Montclair Golf pays to the City in exchange for the company's agreement to make necessary capital improvements at the golf course. **Attachment 2.** The minutes of the November 19, 2002, City Council meeting indicate that Ms. Brunner voted in favor of the consent calendar which included this proposed contract amendment. **Attachment 3.**

Mr. Kanz contends that local attorney Alan Yee represented Montclair Golf Enterprises, Inc. in its negotiations with the City on the amendment. He alleges that Ms. Brunner has an employment relationship with the law firm of Siegel & Yee and that the law firm's representation of Montclair Golf constituted an impermissible financial conflict of interest that should have precluded her vote on the amendment.

1. Did Ms. Brunner Have A Disqualifying Economic Interest In The Decision Under The California Political Reform Act?

Alan Yee is a partner in the law firm of Siegel & Yee. Ms. Brunner has been employed as an attorney for Siegel & Yee since the 1990's. Ms. Brunner and Mr. Yee both told Commission staff that Ms. Brunner receives a salary as compensation

for her employment that is not supplemented by any bonus or additional income from the firm's clients.

Mr. Yee told Commission staff that he began representing Montclair Golf on its underlying contract with the City of Oakland in the mid-1990's. He represented Montclair Golf on the proposed contract amendment at issue in this complaint. He said he charged and received hourly compensation for his work on behalf of Montclair Golf that was not contingent on the outcome of the City Council's decision to amend the contract.

The California Political Reform Act prohibits public officials from making, participating in making, or using their official position to influence a government decision in which they know or have reason to know they have an economic interest. [Gov't Code 87100]. Public officials may have economic interests in business entities, real property, sources of income or in the provider of gifts. The first step in this analysis is to determine whether Ms. Brunner had an economic interest that was directly or indirectly involved with the decision to amend the contract with Montclair Golf.

As stated above, Ms. Brunner is an employee of Siegel & Yee. She receives a salary for her work. She states she has never performed any work on behalf of Montclair Golf nor is her salary in any way affected by, or dependent upon, payments made to the firm by Montclair Golf. Thus the relevant source of income to Ms. Brunner is through her employer, Siegel & Yee. Since Siegel & Yee did not initiate the proceedings in which Ms. Brunner's decision was made, nor was it the named party in or the subject of the decision to amend the contract, the decision is only deemed to "indirectly" involve Ms. Brunner's economic interest in her employer and source of income, Siegel & Yee. [See 2 Cal. Code Regs. §§8704.1; 18705.3]

In order for a decision that only "indirectly involves" a public official's economic interest to be considered "material" enough to require recusal, the decision must cause a specific increase or decrease in the financial status of the economic interest. For decisions which affect a public official's economic interest in small businesses which provide a source of income to the public official, the government decision must increase or decrease the business' gross revenues by an amount of \$20,000 per fiscal year; result in the business incurring or avoiding expenses of more than \$5,000 in any fiscal year; or result in an increase or decrease in the value of the business entities' assets or liabilities of more than \$20,000 or more. [See 2 Cal. Code Regs. §18705.1(c)(4)].

As stated above, Siegel & Yee's compensation from Montclair Golf was not contingent on the outcome of the City Council's decision. Mr. Yee also told Commission staff that his charges to Montclair Golf have never totaled \$20,000 in any fiscal year in which he represented the company. Based on this information, the City Council's decision to amend the contract would not have had the required financial effect on Siegel & Yee's gross revenues in order to constitute a disqualifying conflict for Ms. Brunner.

2. Did Ms. Brunner Have A Financial Interest In The Contract Between The City Of Oakland And Montclair Golf Enterprises?

Government Code Section 1090 states that a government official may not make a contract in which he or she is financially interested. Any contract made in violation of Section 1090 is void. Case law has liberally interpreted this statute to include a broad range of interests and activities which may bring city officials within the reach of this prohibition.

The issue under Government Code Section 1090 is whether Ms. Brunner had a "financial interest" in the contract between the City and Montclair Golf by virtue of her employer's representation of Montclair Golf.

Government Code Section 1090 does not define "financial interest" but case law has applied the term broadly to include both direct and indirect interests. However, Government Code Section 1090.5 sets forth a long list of express exceptions to the definition of "financial interest," one of which appears to apply in this case. Under Government Code 1090.5(a)(10), a public official is expressly deemed *not* to have a financial interest in a contract if an attorney for a contracting party receives no payment or other consideration as a result of the contract and the attorney has less than a 10 percent interest in the law firm representing the contracting party.

As stated above, Siegel & Yee represented Montclair Golf in the negotiations with the City. The firm was compensated on an hourly basis, regardless of the outcome of the decision. Ms. Brunner did not perform any work on behalf of the client, nor was she compensated in any way outside of her usual salary from Siegel & Yee. She also has no equity interest in the law firm. Thus, Ms. Brunner was not "financially interested" in the contract amendment since any payments received by the firm would be expressly excluded as a "financial interest" under Government Code Section 1090.5(a)(10).

B. A Vote On A Resolution Authorizing A Contract With API Cultural Center, Inc.

On January 28, 2002, the Oakland City Council considered and adopted a resolution authorizing the City Manager to enter into a contract with a non-profit entity known as "API Cultural Center, Inc." ("API") The contract authorizes API to operate the Oakland Asian Cultural Center for five years. In return for operating the Asian Cultural Center, API will receive annual grants from the City's Redevelopment Agency in the amount of \$120,000 in FY 2002-2003, \$100,000 in FY 2003-2004, and \$80,000 in FY 2004-2005, according to a staff memorandum. **Attachment 4.**

API was incorporated as a California nonprofit public benefit corporation in April, 2002. Such corporations are typically established to support some form of civic activity consistent with their expressed purpose. The articles of incorporation were drafted and executed by Alan Yee. **Attachment 5.** Mr. Yee also serves on the board of

directors for API and, until recently, served as an officer of the corporation. He is also currently registered as API's agent for service for process. **Attachment 6.**

The minutes of the City Council meeting of January 28, 2002, indicate that the item was approved on unanimous consent with Ms. Brunner voting in favor of the resolution. **Attachment 7.** Mr. Kanz questions whether Mr. Yee's work on behalf of API created a financial interest that should have precluded Ms. Brunner's vote to adopt the API resolution.

According to Alan Yee, all his work on behalf of API Cultural Center has been volunteered. He states that the Cultural Center has always been a personal interest of his and he has never charged for his legal work on its behalf. Commission staff confirmed this statement with API boardmember and president, Corinne Jan. In the absence of any financial compensation to Mr. Yee, none of the financial analysis under applicable conflict of interest law applies.

III. STAFF RECOMMENDATION

Commission staff recommends that the Commission dismiss Complaint No. 03-11 on grounds that the facts do not support a finding that a violation of financial conflict of interest law occurred. There is no sustainable legal or factual basis to support a referral to any other governmental or law enforcement agency.

Respectfully submitted,

Daniel D. Purnell
Executive Director

*** City Attorney approval as to form and legality elates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*