



California Fair Political Practices Commission

December 23, 1985

Manuela Albuquerque
City Attorney
2180 Milvia, 5th Floor
Berkeley, CA 94704

Re: Your Request for Advice
Our File No. A-85-244

Dear Ms. Albuquerque:

Thank you for your letter requesting advice concerning the application of the financial disclosure provisions of the Political Reform Act^{1/} to attorneys in a law firm who provide legal services to the City of Berkeley Redevelopment Agency pursuant to a contract with the City.

QUESTION

The City of Berkeley has contracted with the law firm of Goldfarb & Lipman, a law firm specializing in redevelopment matters, to provide services to the City's Redevelopment Agency. Are the attorneys of the law firm who provide these services considered "consultants" who are subject to the financial disclosure requirements of the Political Reform Act?

CONCLUSION

The attorneys of Goldfarb & Lipman who provide the legal services to the Redevelopment Agency are considered "consultants" who are subject to the financial disclosure requirements of the Political Reform Act.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

DISCUSSION

In its conflict of interest code, each agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. Section 87302. Both the definitions of "designated employee" and "public official" in the Act include any consultants to an agency who make or participate in such agency decisions. Sections 82019 and 82048.

A "consultant" within the meaning of the Act, includes "any natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency...." 2 Cal. Adm. Code Section 18700(a)(2). This term does not include, however, a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section
18700(a)(2)(A) and (B).

Under the City's contract with Goldfarb & Lipman (copy provided with your letter), the law firm agrees to provide legal services to the Redevelopment Agency on specific matters relating to property disposition, legal services as needed with regard to proposed development expansion and financing, and "other services pertinent to redevelopment matters as requested." You attached to your letter a portion of a memorandum from the Executive Officer of the Redevelopment Agency to the members of the Agency, in which the Executive Officer recommended that the Board of the Redevelopment Agency authorize a one-year contract with Goldfarb & Lipman. The Executive Officer explained that the Redevelopment Agency had recently distributed a Request for Quotations for legal services for all redevelopment activities and that one contract with one law firm for all redevelopment-related services would be a more efficient and cost-effective approach than the City's previous method of retaining legal counsel specializing in redevelopment law on a project-by-project basis.

When a law firm is retained under contract to provide general advice and assistance to an agency on an on-going basis, it is our view that the attorneys of the law firm who provide those services are "consultants" within the meaning of the Political Reform Act. The attorneys of Goldfarb & Lipman who provide legal services to the Redevelopment Agency provide advice and assistance to the Redevelopment Agency on all matters relating to redevelopment, and thus are part of the Redevelopment Agency's decision-making process. The attorneys participate in governmental decisions and act as quasi-employees of the City. See Opinion requested by Charles F. Leach, 4 FPPC Ops. 48 (No. 76-092, September 6, 1978). If a City employee were to provide these services, financial disclosure would be required.

In contrast, when the Redevelopment Agency contracts with a law firm to perform legal services for a specific matter (e.g., a particular piece of litigation), the attorneys providing those legal services fall within the exception in 2 Cal. Adm. Code Section 18700(a)(2), and are not "consultants" within the meaning of the Political Reform Act. Under such circumstances, the attorneys use their own judgment and expertise to render professional services, and their decisions are not subject to on-going review or direction by the agency. Essentially, the attorneys are asked to deliver a finished product - such as a settlement - and not to participate in or advise the Redevelopment Agency on general on-going redevelopment decisions requiring legal expertise. See Opinion requested by R. J. Maloney, 3 FPPC Opinions 69 (No. 76-082, August 18, 1977).

Attached to your letter is a letter from Goldfarb & Lipman which provides the following examples of the types of legal services provided to the Redevelopment Agency under the contract:

Disposition and development agreements provide an example of our role. Based upon instructions from the City staff, our firm has drafted the legal agreements which govern the disposition of land to private development entities and, in the course of so doing, we have been called upon to provide our independent advice to the staff regarding the terms and conditions of those agreements. Our advice has not been directed or controlled by staff, but rather has been based on our independent knowledge and expertise. In addition, the decision as to whether the terms and conditions of

those agreements are acceptable to the Agency are initially made by the staff, and, under the Community Redevelopment Law, those staff decisions must obtain the approval of the City Council acting as the Agency board and, in most instances, the City Council acting as the City Council. See Health & Safety Code Sections 33430, 33431, 33433.

Another recent example involves a tax increment bond issue. The Agency staff requested that we provide information regarding the possibility of selling a tax increment bond issue and the various alternative structures for such an issue. The staff provided us with basic information such as the documents relating to the currently outstanding bonds and the amount of tax increment funds available. Based on that information and upon our knowledge of the applicable law and legislative developments, we produced a memo regarding various bond sale alternatives and the legal constraints upon each of those alternatives. The substance of that memo was developed by our office independent of the control and direction of staff. Obviously our firm has no authority to make a decision to sell or not to sell a bond issue.

The letter from Goldfarb & Lipman indicates that the attorneys of the law firm provide advice regarding the implications of the Redevelopment Agency decisions on a variety of redevelopment matters. The attorneys have regular contact with the redevelopment agency officials, which indicates that they do not act with the independence necessary to trigger the exemption in 2 Cal. Adm. Code Section 18700(a)(2). They do not deliver a finished product, but enter into the on-going decision-making of the Redevelopment Agency. Although we agree that the attorneys do not have the authority to make decisions on behalf of the Redevelopment Agency, such as making a decision to sell or not to sell a bond issue, it is our opinion that the attorneys do participate in the decisions of the Redevelopment Agency (see 2 Cal. Adm. Code Section 18700(c)) and are, therefore, "consultants" within the meaning of the Political Reform Act.

The redevelopment decisions in which the attorneys of Goldfarb & Lipman participate are decisions which affect private financial interests. See Opinion requested by Thomas W. Oglesby, 1 FPPC Ops. 71 (No. 75-083, July 2, 1975).

Manuela Albuquerque
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Therefore, those attorneys should be required to make appropriate financial disclosure under the City's Conflict of Interest Code. I have enclosed an advice letter concerning disclosure by attorneys (Langley, A-85-216), which provides guidance as to when disclosure of clients is required.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

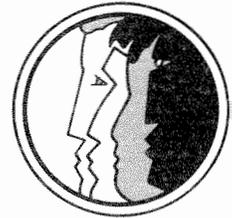
KED:plh



Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704

City of Berkeley

F P P C
Nov 26 3 19 PM '85



(415) 644-6380
TTY (415) 644-6915

November 25, 1985

Fair Political Practices Commission/Legal Division
428 J Street, Suite 800
Sacramento, CA 95814

Dear Sir or Madam:

The City of Berkeley requests you to interpret 2 Cal. Adm. Code Section 18700(a)(2) defining the term "consultant". The City hires numerous consultants to perform a broad variety of services, including architects, accountants, auditing firms, lawyers, computer consultants, management consultants, environmental statement consultants, meeting facilitators, gardening consultants, and compost operation consultants. In particular, the City requests you to interpret the phrase "independent of the control and direction of the agency" in 2 Cal. Adm. Code 18700(a)(2)(A). Under what circumstances must an independent contractor file a Conflict of Interest Disclosure Statement?

A particular case is that of the City of Berkeley's relationship to Goldfarb and Lipman, a law firm which contracts with the City to provide specialized legal services to our redevelopment agency (the "Firm"). The Firm provides services with respect to distinct projects as well as responds to operational, legal questions. The Firm contends in a letter attached as Exhibit A, that the Political Reform Act does not require the Firm to file disclosure statements. The Firm states that its role "is limited to providing independent advice and information. The decisions that are made are made by staff, and in most cases, ultimately by the City Council, acting as the governing body of the agency." The scope of services for the Firm's current contract with the City is attached as Exhibit B. Part of the report to City Council which lead to the selection of the Firm as Agency Counsel is attached as Exhibit C.

I am writing to seek your advice as to two issues:

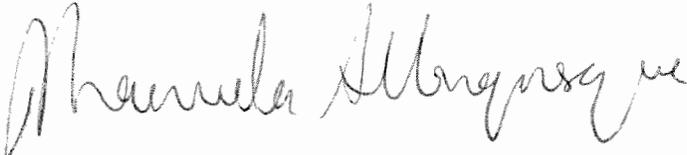
1. Is Goldfarb & Lipman required to file a disclosure statement pursuant to the Political Reform Act?
2. What are the standards which we must employ in order to

Fair Political Practices Commission
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distinguish consultants who are subject to the Political
Reform Act and those who are not?

Thank you.

Very truly yours,

A handwritten signature in cursive script, reading "Manuela Albuquerque". The signature is written in dark ink and is positioned above the typed name.

MANUELA ALBUQUERQUE
City Attorney

Attachments

LAW OFFICES OF
GOLDFARB & LIPMAN
LA SALLE BUILDING
491 NINTH STREET
OAKLAND, CALIFORNIA 94607

STEVEN H. GOLDFARB
BARRY R. LIPMAN
M. DAVID KROOT
LEE C. ROSENTHAL
ROGER A. CLAY, JR.
PAULA S. CROW
NAOMI A. VARGAS
JOHN T. NAGLE
POLLY VERENA MARSHALL
ANNIE M. WONG
LYNN HUTCHINS

TELEPHONE
(415) 839-6336
ZAP MAILER
NET NUMBER
4154659828

November 15, 1985

RECEIVED
NOV 18 1985
CITY ATTORNEY

Manuela Albuquerque
City Attorney
2180 Milvia
5th Floor
Berkeley, CA 94704

Dear Manuela:

I write in response to a phone call I received from Arthur Shealy regarding conflict of interest disclosure by members of our firm in connection with our representation of the City of Berkeley Redevelopment Agency.

Our firm has represented approximately 30 California government entities in the 11 years since passage of the Political Reform Act of 1974. Our representation of these entities has generally involved the same kind of work we have done for Berkeley. None of those entities have ever requested that our firm or members of the firm file conflict of interest disclosure statements in connection with providing services to those entities.

The fact that none of the government entities we have served have required disclosure is an indication that the members of our firm are not "consultants" as that term is defined under the Political Reform Act and implementing regulations. This interpretation is confirmed by a reading of 2 Cal. Adm. Code Section 18700(a)(2) defining the term "consultant." Under that regulation, "consultant" does not encompass contractors who supply advice, recommendations or counsel independent of the control and direction of the government agency and do not possess authority to make government decisions. This is typical of our firm's role in Berkeley. Our role is limited to providing independent advice and information. The decisions that are made are made by staff and, in most cases, ultimately by the City Council, acting as the governing board of the Agency.

Disposition and development agreements provide an example of our role. Based upon instructions from the City staff, our firm has drafted the legal agreements which govern the disposition of land to private development entities and, in the course of so doing, we have been called upon to provide our independent advice to the staff regarding the terms and

EXHIBIT A

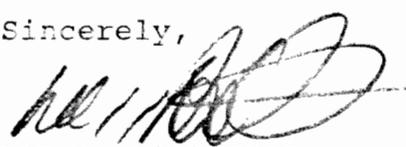
Manuela Albuquerque
November 15, 1985
Page 2

conditions of those agreements. Our advice has not been directed or controlled by staff, but rather has been based on our independent knowledge and expertise. In addition, the decision as to whether the terms and conditions of those agreements are acceptable to the Agency are initially made by the staff, and, under the Community Redevelopment Law, those staff decisions must obtain the approval of the City Council acting as the Agency board and, in most instances, the City Council acting as the City Council. See Health & Safety Code Sections 33430, 33431, 33433.

Another recent example involves a tax increment bond issue. The Agency staff requested that we provide information regarding the possibility of selling a tax increment bond issue and the various alternative structures for such an issue. The staff provided us with basic information such as the documents relating to the currently outstanding bonds and the amount of tax increment funds available. Based on that information and upon our knowledge of the applicable law and legislative developments, we produced a memo regarding various bond sale alternatives and the legal constraints upon each of those alternatives. The substance of that memo was developed by our office independent of the control and direction of staff. Obviously our firm has no authority to make a decision to sell or not to sell a bond issue.

If you have any questions, please do hesitate to give me a call.

Sincerely,



LEE C. ROSENTHAL

LCR:dm

cc: Arthur Shealy

#007/A11804

SCOPE OF SERVICES

I. Property Disposition

- A. Contractor shall provide legal advice and create or review pertinent documents such as contracts, deeds and escrow instructions during the marketing of the residential structures, selection of occupants, negotiation of contract provisions, and escrow closings.
- B. Assuming units are to be sold, rather than rented, Contractor shall work with Agency and prospective occupants to arrange financial package(s) for each unit. This may include a number of combinations, with a variety of downpayment amounts, financial assistance provisions, live-work arrangements, sweat-equity credits, interest rates, shared equity, limited equity, etc.
- C. Contractor shall provide legal assistance and financial analysis for disposition and development of vacant lot on Fifth Street.

II. Proposed Area Expansion

- A. Contractor shall provide legal services as needed in connection with Phase I of the proposed redevelopment expansion (blight survey and feasibility study).
- B. Contractor shall provide legal services needed for Phase II of the redevelopment expansion if a determination is made to proceed with the expansion.

III. Financing

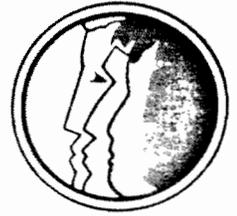
- A. Contractor shall provide legal and financial assistance on Redevelopment Agency bond issues. Prepare resolutions, prospectus, legal opinions and other required documents as needed.

IV. General

- A. Contractor shall provide other services pertinent to redevelopment matters as requested.
- B. Contractor shall provide independent and competent advice and opinions to the Executive Officer or his representative, based upon broad experience in redevelopment and public agency law, real estate law, land development, housing rehabilitation and housing construction.
- C. Contractor shall work cooperatively with the Agency/City Attorney's Office and Agency staff and shall be responsible directly to the Executive Officer of the Redevelopment Agency. Contractor shall also work cooperatively and in concert with other professional consultants to the Agency.
- D. Consultant shall endeavor to protect the interests of the Redevelopment Agency, the City of Berkeley and its citizens against losses resulting from the development of the proposed housing project.



REDEVELOPMENT AGENCY



City of Berkeley

Planning and Community
Development Department
Civic Center Building
2180 Milvia Street, 2nd Floor
Berkeley, California 94704

(415) 644-6073

TTY (415) 644-6915

FOR BOARD ACTION
November 5, 1985

To: Members of the Redevelopment Agency
From: ~~David~~ Daniel Boggan, Jr., Executive Officer
Subject: RETENTION OF LEGAL COUNSEL FOR THE REDEVELOPMENT AGENCY

Introduction

The Redevelopment Agency recently distributed a Request for Quotations for legal services for all redevelopment activities. Out of ten mailed, three firms responded with their qualifications and quotations. Two of these were selected by the Interdepartmental Task Force for interviews. Based upon the interviews, the selection committee (consisting of staff and a representative of the Project Area Committee--other Task Force members were unable to attend) recommended that Goldfarb & Lipman be retained for a period of one year as the legal counsel to the Redevelopment Agency. The Project Area Committee, at its meeting of October 7, 1985 also recommended that Goldfarb & Lipman be retained for these services (Ayes: Hammond, Manning, Herbert; Noes: None; Absent: Kehoe, Morant).

RECOMMENDATION

That the Board authorize the executive Officer to enter into an agreement for a period of one year with Goldfarb & Lipman for legal services in an amount not to exceed \$150,000.

Background

On July 2, 1985 the Board approved a Request for Proposals to retain a consultant to carry out the feasibility study for redevelopment area expansion as well as the adoption process if such a course was pursued. Subsequent discussions with the Social Services Union representatives and various Council members resulted in the decision to utilize existing and temporary staff to handle the expansion efforts, but to contract outside for legal and EIR services. Staff is preparing a separate report outlining the proposed work program and staffing for the expansion study.

EXHIBIT C

RETENTION OF LEGAL COUNSEL FOR THE REDEVELOPMENT AGENCY FOR BOARD ACTION
November 5, 1985

With this in mind, staff prepared and distributed an RFP for legal services. The RFP was broad, to include not only assistance on the expansion project but also services for all redevelopment related activities.

For some time the Redevelopment Agency has retained counsel specializing in redevelopment law on a project by project basis (i.e., the Oceanview Housing Project, the Delaware Street Project, and the project involving rehabilitation and disposition of agency owned structures). This has proven to be cumbersome and has left a gap when miscellaneous redevelopment issues develop which are not related to the projects covered by the various contracts. Staff feels that having one contract for all redevelopment related legal services is a more efficient and cost effective approach.

There are five primary redevelopment activities underway or anticipated which will require legal assistance:

- o Implementation of the disposition and rehabilitation program of Agency-owned structures.
- o Developmental planning and marketing of small vacant lots.
- o Refinancing
- o Blight survey and feasibility study for possible area expansion.
- o Process leading to adoption of plan amendments if Council decides to proceed with area expansion.

The activities are very often interrelated and should not be dealt with independently: the structures and vacant lots are all part of the "D" and "E" Zones, a mix of sales strategies may be needed to help finance the rehabilitation program, the refinancing has a bearing on the sales strategy as well as the expansion, etc.

Listed below are the firms which responded and a brief description of each:

Adams & Webb



California Fair Political Practices Commission

December 5, 1985

Manuela Albuquerque
Berkeley City Attorney
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: A-85-244

Dear Ms. Albuquerque:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh