



California Fair Political Practices Commission

December 21, 1988

Ms. Gertrude L. Hill
City Clerk - Treasurer
City of Whittier
13230 Penn Street
Whittier, CA 90602-1772

Re: Your Request for Advice
Our File No. A-88-442

Dear Ms. Hill:

This is in response to your request for advice concerning whether Robert F. Woehrmann, a member of the Whittier City Council, faces a potential conflict of interest under the Political Reform Act (the "Act").^{1/}

QUESTION

Councilmember Woehrmann is an officer, director and stockholder in a company that provides ambulance services for employees of the City of Whittier. May he participate in decisions concerning payment of billings submitted to the city for services rendered by the company?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSION

The Act prohibits Councilmember Woehrmann from participating in or using his official position to influence decisions on whether to pay billings submitted to the city by the ambulance company for services rendered to city employees.

FACTS

A.M.E. Ambulance (the "company"), a corporation, contracts with the Los Angeles County Consolidated Fire Protection District (the "district") to provide ambulance and paramedic services in a specific geographic area. This area includes the City of Whittier (the "city"). This arrangement is the result of a contract between the city and the district whereby the district agrees to provide, among other things, ambulance and related services in the city.

When the company provides ambulance and paramedic services in the city it directly bills the person whom has received the services. However, situations arise, such as when a city employee is injured, that the city itself is billed directly by the company. Currently, the city has before it one or more billings from the company for ambulance services rendered to city employees.

Councilmember Woehrmann is a member of the Whittier City Council. He is also an officer, director and shareholder in the company.

ANALYSIS

Section 87100 sets forth the general rule concerning conflicts of interest under the Act. It states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Councilmember Woehrmann is a public official by virtue of his position on the city council. (Section 82048.) He is also a shareholder, officer and director of a private company. However, the fact that he simultaneously has an economic interest in the company and is a member of the city council does not by itself create a conflict of interest under Section 87100.

Section 87100 contemplates that public officials occasionally will be confronted with decisions in which they have financial interests. On these occasions, the Act prohibits officials from both participation in and use of their official position to influence those decisions.

Section 87103 defines "financial interest in a decision" within the meaning of Section 87100. It states that a public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect on the official or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

...

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

...

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Councilmember Woehrmann is an officer and director of the company. Although you have not provided us information as to the extent of his stock interest in and income from the company, we assume that, as an officer and director of the company, he has an investment of \$1,000 or more therein and he has received income from the company of \$250 or more during the past 12 months. Therefore, Councilmember Woehrmann has an

investment interest, an interest as an officer and is a recipient of income from the company. Also, it is foreseeable that the decision concerning payment of the company's billings will have an effect on the company. Our next consideration, therefore, is whether the decision would have a material financial effect on the company.

Regulation 18702.1 sets forth the criteria to determine whether a decision will have a material financial effect on an official's financial interest where, as here, the interest is directly affected by the decision. Subdivision (a) of this section states that the effect of a decision is material if:

(1) ... Any person (including a business entity) which has been a source of income ... to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency (Emphasis added.)

(2) ... Any business entity ... in which the official has a direct or indirect investment of \$1,000 or more ... or any business entity in which the official is an officer, director, partner, trustee, employee, or holds any position of management, is directly involved in a decision before the official's agency (Emphasis added.)

The decision concerning the city's payment of the company's billings is a decision in which the company is directly involved. We conclude, therefore, that these decisions will have a material financial effect upon the company. Councilmember Woehrmann is thus precluded from participating in any decision made by the city concerning payment of billings from the company.

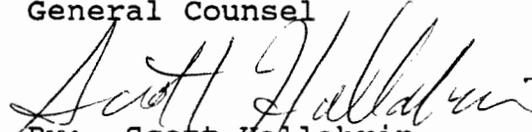
Finally, we note that you have already obtained a legal opinion regarding the possible application of Section 1090 to Mr. Woehrmann's situation. Since the Commission neither administers nor has jurisdiction to enforce this section, we offer no opinion as to its application. Should you require additional advice on the application of that section, please contact the Office of the Attorney General.

Ms. Gertrude L. Hill
December 21, 1988
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We hope that this reply has been of assistance. If, however, you have further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "Scott Hallabrin".

By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

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CITY OF WHITTIER

13230 PENN STREET, WHITTIER, CALIFORNIA 90602-1772 (213) 945-8200

November 16, 1988

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Gentlemen:

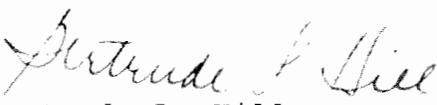
A member of the Whittier City Council elected in April, 1988 is an officer and partner in an ambulance company which provides service to the community at large. The City does not contract directly with the ambulance company for service, however, the City does contract with the Los Angeles County Fire Department for fire and other related services which involves using the ambulance company as the primary provider when ambulance and transport services are needed in the City of Whittier. On several occasions a City employee has been injured in an accident and required ambulance service. The result was the City received a bill for the service from the ambulance company which to date have not been paid.

We have serious concerns regarding a possible conflict of interest and would like the Commissions opinion on this matter.

For your information, the City of Whittier is a Charter City. We have enclosed a copy of the Charter section relating to illegal contracts and financial interests. In addition we have attached a letter written to the City Attorney from the City Manager, as well as the Attorney's response. We feel it is equally important for us to have the opinion of the Commission, in order to provide proper guidance to our elected Council Member.

We look forward to your response.

Sincerely,


Gertrude L. Hill
City Clerk-Treasurer

VICTOR A. LOPEZ
MAYOR

THOMAS K. SAWYER
MAYOR PRO TEM

GENE H. CHANDLER
COUNCILMAN

MYRON D. CLAXTON
COUNCILMAN

ROBERT F. WOEHMANN
COUNCILMAN

THOMAS G. MAUK
CITY MANAGER

SECTION 607. Department Heads; Appointment Powers. Each department head and appointive officer shall have the power to appoint, suspend or remove such deputies, assistants, subordinates and employees as are provided for by the city council for his department or office, subject to the provisions of this charter and of any civil service system adopted hereunder. Any such appointment or removal by a department head appointed by the city manager shall be subject to approval of the city manager.

SECTION 608. Illegal Contracts; Financial Interest. No member of the city council, department head or other officer of the city (except a member of any board or commission), shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the city is a party.

No member of any board or commission shall be financially interested, directly or indirectly, in any contract, sale or transaction to which the city is a party and which comes before the board or commission of which such person is a member for approval or other official action or which pertains to the department, office or agency of the city with which such board or commission is connected.

Any contract, sale or transaction in which there shall be such an interest, as specified in this section, shall become void at the election of the city when so declared by resolution of the city council.

No member of the city council, department head or other officer of the city, or member of any board or commission shall be deemed to be financially interested, within the meaning of the foregoing provisions, in any contract made with a corporation where his only interest in the corporation is that of a stockholder and the stock owned by him shall amount to less than three per cent of all the stock of such corporation issued and outstanding.

If any member of the city council, department head or other officer of the city, or member of a board or commission shall be financially interested as aforesaid, upon conviction thereof he shall forfeit his office in addition to any other penalty which may be imposed for such violation of this charter.

SECTION 609. Acceptance of Other Office. Any elective officer of the city who shall accept or retain any other elective public office shall be deemed thereby to have vacated his office under the city government.

SECTION 610. Nepotism. The city council shall not appoint to a salaried position under the city government any person who is a relative by blood or marriage within the third degree of any one or more of the members of such city council, nor shall any department head or other officer having appointive power appoint any relative of his within such degree to any such position.

SECTION 611. Official Bonds. The city council shall fix by ordinance or resolution the amounts and terms of the official bonds of all officials or employees who are required by ordinance to give such bonds. All bonds shall be executed by responsible corporate surety, shall be approved as to form by the city attorney, and shall be filed with the city clerk. Premiums on official bonds shall be paid by the city.

There shall be no personal liability upon, or any right to recover against, a superior officer, or his bond, for any wrongful act or omission of his subordinate, unless such superior officer was a party to, or conspired in, such wrongful act or omission.

ARTICLE VII. APPOINTIVE BOARDS AND COMMISSIONS

SECTION 700. In General. There shall be the following enumerated boards and commissions which shall have the powers and duties herein stated. In addition, the city council may create by ordinance such additional advisory boards or commissions as in its judgment are required, and may grant to them such powers and duties as are consistent with the provisions of this charter.

CITY OF WHITTIER

13230 PENN STREET, WHITTIER, CALIFORNIA 90602-1772 (213) 945-8200

July 25, 1988

Mr. Robert Flandrick
Burke, Williams and Sorenson
624 South Grand Avenue
Los Angeles, CA 90017

Dear Bob:

As you are aware, the City of Whittier in the past has contracted with A.M.E. (AIDS) Ambulance for service to this City and the community at large. That ambulance arrangement has changed, as you are aware, so that now the County contracts with A.M.E. for ambulance service to the community. The ambulance arrangement, together with the election of Councilman Bob Woehrmann - an officer and partner with A.M.E. - raises the important issue of being sure that in the future we avoid any conflict of interest. The following describes the existing arrangement with A.M.E. providing ambulance service to the community.

A.M.E., through an arrangement with Los Angeles County, contracts with the County for the provision of ambulance service to a given geographic area in the southeast San Gabriel Valley which includes the City of Whittier. The City of Whittier does not contract with A.M.E. or with any ambulance company for service. When ambulance service is required, the common procedure is that the Whittier Police Department or a Whittier resident will call the County Fire Department for the handling of the emergency. The County Fire Department through its paramedics takes control of the scene and if an ambulance and transport are required the County Fire Department calls the ambulance company designated to serve the area as the primary provider. In Whittier's case, this is A.M.E. That same call procedure holds true when the 911 system for emergency services is used. The City of Whittier does not contract with A.M.E.; the City does not call the ambulance company or anyone else when an ambulance is needed except in what may be very rare instances. The Chief and I have discussed this possibility and we think that in almost 100 percent of the cases we would be calling 911 and County Fire for medical assistance within the above procedure.

LAW OFFICES
BURKE, WILLIAMS & SORENSEN
ONE WILSHIRE BUILDING

684 SOUTH GRAND AVENUE, 11TH FLOOR
LOS ANGELES, CALIFORNIA 90017

(213) 623-1800

TELECOPIER (213) 623-8287

HARRY O. WILLIAMS
(1912-1907)

ROYAL M. SORENSEN
(1914-1983)

August 1, 1988

VENTURA COUNTY OFFICE
880 COUNTY SQUARE DRIVE
SUITE 207
VENTURA, CALIFORNIA 93003
(805) 644-7400

GRAND COUNTY OFFICE
3200 PARK CENTER DRIVE
SUITE 850
COSTA MESA, CALIFORNIA 92626
(714) 868-6558

LIGHTON PLAZA
7300 COLLEGE BOULEVARD
SUITE 220
OVERLAND PARK, KANSAS 66210
(913) 339-8200

OF COUNSEL
DWIGHT A. NEWELL

MARTIN J. BURKE*
GEORGE W. TAUBSBURY*
JAMES T. BRADBANK, JR.*
MARK C. ALLEN, JR.*
MARTIN L. BURKE*
CARL H. NEWTON*
J. ROBERT I. LANDELL*
NORMAN E. LARH*
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CHARLES M. CALDERON*
PETER M. THORSON*
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S. PAUL BRUGUENA*
MICHELLE R. YADON*
S. DELEA BIPAAISHA*
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MICHAEL J. LONG
DIREGURY A. DOLIMO
ELIZABETH L. MANNA
KATHRYN PRUESSNER PETERS*
LISA E. KRANITZ
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JENNIS I. FLOTO
LINDA L. DAUBE
M. LUIS BUMAR
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CECILIA M. BUICK
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ROBERT V. WADDEN
CHRISTOPHER J. THUMAS
MICHAEL R. WOODS
FRANK H. WHITEHEAD, III
SCOTT H. CAMPBELL
MARYANN LINK GOODKIND
TIMOTHY S. MEUGERLN
DIANA L. FIELD*
RITA J. TAYLOR
BILVE J. DAWSON
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Attorney-Client Privilege

Thomas G. Mauk, City Manager
City of Whittier
13230 East Penn Street
Whittier, California 90602

Re: Prohibited Contracts - Section 1090 et seq. Government Code

Dear Tom:

This letter is in response to your inquiry concerning whether the City may deal with the AME (AIDS) Ambulance, a corporation ("AME"), as to which Councilmember Robert Woehrmann is a full-time employed officer, a member of the Board of Directors, and a stockholder.

It is my understanding AME has a contractual relationship with the Los Angeles County Consolidated Fire Protection District under which it provides ambulance and para-medical services in a specific geographic area, which includes, among other territory, the City of Whittier. That District, as you know, is totally separate from the City of Whittier, and there is no connection between the two agencies except that they happen to serve, for different purposes, the same geographic areas. There is no conflict of interest, nor a violation of Section 1090 et seq. of the Government Code, arising out of the AME contract with the County entity.

A different question arises, however, where the City of Whittier, by and through its officers or employees, orally or in writing contract with AME for ambulance and/or paramedic services. A verbal request by a Whittier police officer to AME, asking AME to provide ambulance services, regardless of the fact that the call for such services is made for the benefit of a third party, i.e., an injured citizen, would result in a prohibited contract within the meaning of Section 1090 of the Government Code, if AME were to be paid from City funds. Obviously, the person receiving such ambulance service is obligated to AME for payment of the same.

Section 1090 of the Government Code provides that the city officer can not be "financially interested" in any contract made by a public body of which such officer serves as a member. A contract made in violation of Section 1090 is void for all purposes. Such a contract is void, whether or not a disclosure of the interest is made, and whether or not the officer "participates" in the decision to enter into the contract.

Section 1091 provides that certain contracts are exempted from Section 1090 if they are, pursuant to Section 1091, only a "remote interest," i.e., not a direct financial interest in the contracting entity. If the interest the officer holds is a "remote interest," and:

- (1) the officer does not participate in any action with reference to the contract;
- (2) a full disclosure is made as a matter of public record; and
- (3) the involved officer's vote is not necessary for the approval of the contract,

no conflict pursuant to Section 1090 exists.

In the instant circumstance, any attempt to formally contract with AME would be invalid by virtue of Bob's position as a member of the City Council. The same is true with respect to calls by City employees for specific occasional ambulance services. Such requests for services are, in fact, oral contracts and thus are within the scope of Section 1090.

Thomas G. Mauk
August 1, 1988
Page 3

Unfortunately, Section 1090 precludes any financial dealings, in my judgment, between the City and AME. I am enclosing herewith, copies of Section 1090 et seq. of the Government Code for your information. You may recall, several years ago the Supreme Court dealt with a case involving this Section. In that case, Thomson v. Call (38 Cal.3d 633), severe penalties were imposed upon the councilmember, who, at all times, acted in good faith upon the advice of his attorney. I am enclosing a copy that opinion also for your information. That opinion demonstrates the harshness with which the courts enforce the provisions of Section 1090.

Please note particularly the provisions of Subdivision (b)(2) of Section 1091 with reference to Bob's status. If it were not for the last full sentence of that section, Bob arguably, would have only a "remote interest." However, the last sentence is quite clear that stockholder status eliminates any possibility of his interest being declared a "remote interest" within the meaning of this Section.

Should you or Bob desire, we can request a formal opinion from the FPPC. If you have further questions concerning this matter, please do not hesitate to call upon me.

Sincerely,



J. Robert Flandrick
of BURKE, WILLIAMS & SORENSEN

JRF/jt

enclosure

cc: Robert Woehrmann (w/encl)



California Fair Political Practices Commission

November 22, 1988

Gertrude L. Hill
City Clerk-Treasurer
13230 Penn Street
Whittier, CA 90602-1772

Re: 88-442

Dear Ms. Hill:

Your letter requesting advice under the Political Reform Act was received on November 21, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
for
Diane M. Griffiths
General Counsel

DMG:plh

FPPC

Nov 21 8 12 AM '88

CITY OF WHITTIER

13230 PENN STREET, WHITTIER, CALIFORNIA 90602-1772 (213) 945-8200

November 16, 1988

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Gentlemen:

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Gertrude L. Hill
City Clerk-Treasurer

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July 25, 1988

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ONE WILSHIRE BUILDING

824 SOUTH GRAND AVENUE, 11TH FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 623-1900

TELEFAX: (213) 623-8897

HARRY O. WILLIAMS
(1912-1907)
ROYAL M. SORENSEN
(1914-1993)

August 1, 1988

VENTURA COUNTY OFFICE
850 COUNTY SQUARE DRIVE
SUITE 207
VENTURA, CALIFORNIA 93003
(805) 644-7480

ORANGE COUNTY OFFICE
3200 PARK CENTER DRIVE
SUITE 850
COSTA MESA, CALIFORNIA 92626
(714) 645-5555

LIGHTON PLAZA
7300 COLLEGE BOULEVARD
SUITE 220
OVERLAND PARK, KANSAS 66210
(913) 339-8200

OF COUNSEL
DWIGHT A. NEWELL

MARTIN J. BURKE*
GEORGE W. TACARABURY*
JAMES F. BRADSHAW, JR.*
MARK C. ALLEN, JR.*
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BOB G. KIRCHER*
VIRGINIA R. PESULA*
S. PAUL BRUGUERA*
MICHELE R. VADON*
B. DEBRA STRANATISMA*
SCOTT F. FIELD*

MICHAEL J. LONG
ELIZABETH A. DOLIMO
KATHRYN PRUESSNER PETERS*
LISA E. KRANITZ
BLADE J. NEIGHBOURS
KIM E. MONALTY
STEVEN A. DROWN
JACK R. LEHACK
JENNIS I. FLOYD
LINDA L. DAUBE
M. LOIS SUBAR
DEENA C. LEIBOWITZ
CECILIA M. BUICK
FELICIA J. NELSON
ROBERT W. WADDEN
CHRISTOPHER J. THUMAS
MICHAEL R. WOODS
FRANK H. WHITEHEAD, III
SCOTT H. CAMPBELL
MARYANN LINK GOODKIND
TIMOTHY B. MCGURKIN
DIANA L. FIELD
RITA J. TAYLOR
STYVE J. LAWSON
JAMES K. RIGALI
GABRIELLE STUDD

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Thomas G. Mauk, City Manager
City of Whittier
13230 East Penn Street
Whittier, California 90602

Re: Prohibited Contracts - Section 1090 et seq. Government Code

Dear Tom:

This letter is in response to your inquiry concerning whether the City may deal with the AME (AIDS) Ambulance, a corporation ("AME"), as to which Councilmember Robert Woehrmann is a full-time employed officer, a member of the Board of Directors, and a stockholder.

It is my understanding AME has a contractual relationship with the Los Angeles County Consolidated Fire Protection District under which it provides ambulance and para-medic services in a specific geographic area, which includes, among other territory, the City of Whittier. That District, as you know, is totally separate from the City of Whittier, and there is no connection between the two agencies except that they happen to serve, for different purposes, the same geographic areas. There is no conflict of interest, nor a violation of Section 1090 et seq. of the Government Code, arising out of the AME contract with the County entity.

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A different question arises, however, where the City of Whittier, by and through its officers or employees, orally or in writing contract with AME for ambulance and/or paramedic services. A verbal request by a Whittier police officer to AME, asking AME to provide ambulance services, regardless of the fact that the call for such services is made for the benefit of a third party, i.e., an injured citizen, would result in a prohibited contract within the meaning of Section 1090 of the Government Code, if AME were to be paid from City funds. Obviously, the person receiving such ambulance service is obligated to AME for payment of the same.

Section 1090 of the Government Code provides that the city officer can not be "financially interested" in any contract made by a public body of which such officer serves as a member. A contract made in violation of Section 1090 is void for all purposes. Such a contract is void, whether or not a disclosure of the interest is made, and whether or not the officer "participates" in the decision to enter into the contract.

Section 1091 provides that certain contracts are exempted from Section 1090 if they are, pursuant to Section 1091, only a "remote interest," i.e., not a direct financial interest in the contracting entity. If the interest the officer holds is a "remote interest," and:

- (1) the officer does not participate in any action with reference to the contract;
- (2) a full disclosure is made as a matter of public record; and
- (3) the involved officer's vote is not necessary for the approval of the contract,

no conflict pursuant to Section 1090 exists.

In the instant circumstance, any attempt to formally contract with AME would be invalid by virtue of Bob's position as a member of the City Council. The same is true with respect to calls by City employees for specific occasional ambulance services. Such requests for services are, in fact, oral contracts and thus are within the scope of Section 1090.

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Unfortunately, Section 1090 precludes any financial dealings, in my judgment, between the City and AME. I am enclosing herewith, copies of Section 1090 et seq. of the Government Code for your information. You may recall, several years ago the Supreme Court dealt with a case involving this Section. In that case, Thomson v. Call (38 Cal.3d 633), severe penalties were imposed upon the councilmember, who, at all times, acted in good faith upon the advice of his attorney. I am enclosing a copy that opinion also for your information. That opinion demonstrates the harshness with which the courts enforce the provisions of Section 1090.

Please note particularly the provisions of Subdivision (b)(2) of Section 1091 with reference to Bob's status. If it were not for the last full sentence of that section, Bob arguably, would have only a "remote interest." However, the last sentence is quite clear that stockholder status eliminates any possibility of his interest being declared a "remote interest" within the meaning of this Section.

Should you or Bob desire, we can request a formal opinion from the FFPC. If you have further questions concerning this matter, please do not hesitate to call upon me.

Sincerely,


J. Robert Flandrick
of BURKE, WILLIAMS & SORENSON

JRF/jt

enclosure

cc: Robert Woehrmann (w/encl)