



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 4, 2023

Jeffrey Ballinger
City of Palm Springs
City Attorney
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
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Re: Your Request for Informal Assistance
Our File No. I-23-045

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of City of Palm Springs (“City”) Councilmember Ron deHarte regarding conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your request as one for informal assistance.²

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May Councilmember deHarte contact or appear before City staff for the purpose of logistics issues in planning and executing the annual Greater Palm Springs Pride event (the “Pride Event”) on behalf of his deHarte Group, LLC business’ client, Greater Palm Springs Pride (“Greater Pride”), the promoter for the event, where the City and Greater Pride have a pre-existing contract setting the obligations and duties of each party?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

No. While specific decisions have not been identified for analysis, the Act generally prohibits Councilmember deHarte from contacting or appearing before any City official on behalf of his client, Greater Pride, to influence a decision relating to the Pride Event, because it is reasonably foreseeable that those decisions would have a material financial effect on his business and on his client as a source of income interest.³

FACTS AS PRESENTED BY REQUESTER

Councilmember deHarte was elected to the City Council on November 8, 2022, and sworn into office on December 15, 2022.

Councilmember deHarte is the President & CEO of Greater Pride, the local LGBTQ Pride organization. He does not receive salary or other compensation in connection with this position. Greater Pride is a 501(c)(3) nonprofit corporation and has no employees. Greater Pride is the organization responsible for holding the annual Pride Event.

In addition, Councilmember deHarte is the sole owner and President of a limited liability company, deHarte Group, LLC. Councilmember deHarte, through this business, represents Greater Pride in planning the Pride Event. As there are no other employees of deHarte Group, LLC, Councilmember deHarte has acted as the sole representative of Greater Pride in his role as the owner of deHarte Group LLC. Councilmember deHarte received income in the past twelve months of \$500 or more from the LLC, and this income is expected to continue on a rolling basis. At least \$500 of this income was from Greater Pride. The remuneration that Councilmember deHarte received in 2022 for his services forms all of his regular income.

The Pride Event

The Pride Event is a multi-day special event that began in 1999 and is held every year in November. It involves a three-day closure of a main thoroughfare, Palm Canyon Drive, for a parade as well as special event activities such as a festival where companies or individuals can set up booths, a 5K Run & Walk, as well as musical performances by leading performers.

The planning process for the Pride Event is a recurring, approximately 18-month process and involves numerous activities, including fundraising. Special events within the City must be reviewed and approved by the City's Special Event Planning Team ("SEPT"), which is made up of City staff representatives from various City departments, including Parks/Recreation, Police, Fire, and Planning.⁴

³ We caution that this advice only applies to actions related to the planning and logistics of the Event to the extent those decisions are implementing the contract agreement between the parties. Councilmember deHarte should seek additional advice to the extent that a decision could change the terms of the existing contract, including a renewal or amendment, which would implicate Section 1090, as we are only analyzing decisions related to implementing the existing contract.

⁴ You also state that SEPT included representatives from the County Health Department, when applicable.

The Contract Agreement between the City and Greater Pride

Before Councilmember deHarte was elected, the City entered into a multi-year contract⁵ with Greater Pride, the Event promoter, to provide City services such as police, fire, downtown maintenance, street maintenance for the Pride Event at a cost to the City of \$125,000. In a follow-up email, you confirm that this \$125,000 sum is not paid to Greater Pride, but a credit against expenses the organization incurs in orchestrating the Pride Event.

The Contract includes details on staffing requirements for services related to the Pride Event, including police, fire, downtown maintenance, street maintenance, special event staff, and other City services. The Contract itemizes the cost for each category and includes a requirement that Greater Pride pay for all services above and beyond the City's contribution. The Contract states that Greater Pride will undertake tasks including securing the necessary venues, routing and staging, securing and paying service vendors for technical support, recruiting, coordinating, and supervising volunteers, preparing press releases, and coordinating with the Palm Springs Bureau of Tourism.

It further states that the City agrees to provide all necessary public services, including police, emergency medical, street maintenance and other public services deemed appropriate by the City's SEPT, to produce the Pride Event. The total cost for these services is itemized in Exhibit "B" of the Contract. The Contract also stipulates that the City will make a good faith effort to promote the event on the City's government access channel, make available for the event the City's portable stage and entertainment unit known as the "Showmobile" and will make a set number of locations available for promotional banners.

Planning Event Decisions

Planning the Pride Event requires the administration of the financial relationship with the City as well as meeting with City staff and those from various governmental entities, including the California Department of Alcohol Beverage Control, the County Health Department. In a follow up email, you explained that planning would involve interactions with the City's SEPT, which would include contacting City staff (emails, phone calls) as well as occasional meetings at City Hall to discuss with City staff the logistics of the parade and associated events. For instance, there would be discussions about the parade route including where the parade route will go, how long the parade will last, and what time it will start. For the Pride festival (where vendors and other groups set up booths for attendees to visit), the discussions would be about where the vendors will be located, for how long, as well as requirements for set-up and takedown. The discussion will also be about things like the need for security and the levels of that security (i.e., number of police officers, hours of presence) and the need for other public safety personnel, such as ambulances for the parade and festival. Prior to his election and swearing in, Councilmember deHarte has historically contacted and appeared before City staff for the purposes of affecting their decisions regarding the Pride Event.

In a follow up email, you clarified that the decision of whether to have the Pride Event has already been made by the City Council, as memorialized in the Contract. Everything else, in terms

⁵ The Contract runs from July 2022 to June 30, 2027.

of interactions with staff, are implementing that decision. They can be characterized as “logistical” or “operational”, in terms of carrying out the City Council’s decision to have the Event. Moreover, there are no other permits that are issued by the City. The Contract effectively serves as the City’s permit for the event. That Contract spells out substantive decisions involving city staff levels and corresponding costs; everything else is just spelling out the logistics of those decisions that have been memorialized in the Contract. Councilmember deHarte will not be expected to apply for, or discuss, any City permits for the Pride Event.

ANALYSIS

The Act’s conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official’s financial interests distinguishable from the decision’s effect on the public generally. (Sections 87100 and 87103.) As pertinent to your request, an official’s interests that may give rise to a disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- A business interest in any business entity in which the official has a direct or indirect investment worth \$2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position (Section 87103(d)).
- A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)
- An interest in the official’s personal finances including those of immediate family members. (See Section 87103.)⁶

With respect to the potential decisions relating to the Pride Event at issue, you have identified that the official has a business and source of income interest in deHarte Group, LLC, because Councilmember deHarte holds a management position as its President and 100 percent owner and will receive more than \$500 income from the entity in any 12-month period. Councilmember deHarte, the sole owner of the LLC, also has a source of income interest in Greater Pride as a client of deHarte Group, LLC to the extent his business has received \$500 or more in value in the 12 months prior to a decision.⁷

⁶ Regulation 18702.5(c) provides that if the decision would have a reasonably foreseeable financial effect on the official’s financial interest in a business entity or real property, any related effect on the official’s personal finances is not considered separately. Accordingly, we do not analyze any effect on Councilmember deHarte’s personal finances further.

⁷ Under Section 82030, “income” to an official “also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or

Foreseeability

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

Materiality

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest.

Regulation 18702.3 sets forth the materiality standards applicable to a decision’s reasonably foreseeable financial effect on an official’s source of income interest. Subdivision (a)(1) of that regulation provides that a decision’s reasonably foreseeable financial effect on such an interest is material if the source is a named party in, or subject of, the decision. Regulation 18702.1(a)(1) sets forth the same standard applicable to a business interest, including business as a source of income, and provides that the reasonably foreseeable financial effect of the decision on an official’s business interest is material if the entity is a named party or subject of the decision.

As the promoter for the event, Greater Pride is a named party in, or subject of, any City decisions relating to the planning and execution of the Pride Event. Additionally, Councilmember deHarte is the named contact for Greater Pride in the City’s Contract in his role as president of the nonprofit. And in his role as president of deHarte Group LLC, he has acted as the sole representative of Greater Pride. Based upon these facts, deHarte Group LLC is also a named party in, or subject of, any City Council decisions relating to the planning and execution of the Pride Event. As named parties and subjects of the proceedings it is reasonably foreseeable the decisions regarding the Pride Event will have a material effect on Councilmember deHarte’s interest in Greater Pride and deHarte Group LLC under the applicable regulations. Therefore, the Act prohibits

greater.” Note: the definition of “business entity” under Section 82005 excludes non-profit organizations. Because Councilmember deHarte does not receive salary or other compensation from Greater Palm Springs Pride, and because Greater Pride is a non-profit, it does not qualify as a “business entity” or source of income.

Councilmember deHarte from taking part in decisions relating to the planning and execution of the Pride Event.⁸

Additionally, we must caution that “taking part in the decision” includes making, participating in making, or attempting to use an official position to influence the decision. (Sections 87100 and 87103.) As provided in Regulation 18704:

- A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates, or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency. (Regulation 18704(a).)
- A public official participates in making a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).)
- A public official uses an official position to influence a governmental decision if the official (1) contacts or appears before any official in the official’s agency or in an agency subject to the authority or budgetary control of the official’s agency for the purpose of affecting a decision or (2) contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within the official’s authority or on behalf of the official’s agency in making the contact. (Regulation 18704(c).)

Under the Act, Councilmember deHarte is prohibited from directly taking part in any governmental decision concerning the Pride Event as well as attempting to influence any City official regarding such a decision before that official.⁹ Accordingly, Councilmember deHarte is prohibited from contacting or appearing before City staff, including SEPT, for the purpose of affecting a decision regarding the planning and execution of the Pride Event. Please note that none of the exceptions in Regulation 18704(d) relating to appearances as a member of the general public

⁸ We note that Regulation 18702(b) provides that notwithstanding Regulations 18702.1-through 18702.5, a financial effect is not material if it is nominal, inconsequential, or insignificant. However, there are no facts presented as to a particular decision, circumstances by which Greater Pride generates revenue, and how these decisions may impact that revenue. Thus, we do not have sufficient information to determine if any specific decision would only have a nominal, inconsequential, or insignificant effect on Councilmember deHarte’s interests. Further, we caution that even a “logistics” change can lead to significant financial implications for Greater Pride and deHarte LLC. For example, a decision on the placement of vendors at the Event may impact the number of vendors willing to pay fees and the amount of the fees generated for the Pride Event. If Councilmember deHarte needs additional assistance determining if any specific decision may have only a nominal, inconsequential, or insignificant effect on his interest, he should seek additional assistance identifying the specific decisions, as well as circumstances by which Greater Pride generates revenue and how these decisions may impact that revenue.

⁹ However, Councilmember deHarte is not prohibited from appearing before other entities over which the City does not have authority or budgetary control, such as the California Department of Alcohol Beverage Control and the County Health Department, so long as he does not purport to be acting in an official capacity.

are applicable here, as Councilmember deHarte would not be appearing on matters related solely to his personal interests, as required.¹⁰

Additionally, we note that no particular City decision has been identified for analysis in regard to the City's coordination with Greater Pride in putting on the Pride Event. The facts indicate that the City decisions will relate to logistics, such as parade route and event times. Due to the fact that the City has an existing contract with Greater Pride, we caution that any City decision to alter, amend, renew, or extend the contract will raise the prohibitions under Section 1090. We recommend you seek additional advice, as needed, in the event any City decision involves the existing contract.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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¹⁰ However, we note that a volunteer or employee affiliated with Greater Palm Springs Pride or deHarte Group, LLC would not be prohibited from contacting or appearing before City staff to discuss issues pertaining to the planning and executing the Pride event.