



ADVISORY OPINION 97-1

I. Facts

By written correspondence, an inquisitor asks the Ethics Commission to provide an advisory opinion based on our interpretation and application of § 38-11 *Conflicts of Interest* of the Ethics Code. As is set forth more fully below, the inquisitor asks us five separate questions concerning employment and the ethical duties of a city official or employee.

The inquisitor sets forth several facts for us to consider. First, the hypothetical party who is the subject of our advisory opinion is either a city official or a city employee. Second, a law firm employs the city official or employee in an administrative capacity. Third, the city official's law firm is employed by a client who is transacting business with the City or is regulated by the City.

More specifically, the inquisitor requests our opinion concerning; 1) whether a city official or employee would be banned from participating for the City in a matter that would to their knowledge have a direct financial impact on an employer or employer's client, as distinguished from the public generally, 2) if an employer's client has or is negotiating one or more contracts with the City totaling more than \$1,000.00 in a 12-month period, would the City Official be required to report the aforementioned contractual and employment relationship in their conflict-of-interest statement, 3) if a client is regulated by any city body, would the city official or employee be required to report this, 4) would it be sufficient for the city official or employee to simply report these potential conflicts or would the official be required to recuse him or herself on such matters when potential conflicts existed and 5) would we advise differently if the City Official was employed as an independent contractor as opposed to being a full-time, regular employee?

II. Opinion

It is the opinion of the Ethics Commission that the city official or employee first would have a duty to disclose the possible conflict on their annual conflict of interest disclosure statement. [See, questions one and two above] The disclosure

requirement would apply to both the contractual and employment relationship described in the inquisitor's request and to the fact that the "client" is regulated by a city body. As to the first question cited above, the Commission would urge city officials or employees to recuse themselves from participating on a matter before the City when the city official or employee knows that it would have a direct financial impact on an employer or an employer's client as distinguished from the public in general.

While disclosure is a first step, the Commission is of the opinion that city officials and employees should disqualify themselves from participation and refrain from giving any official opinion in such matters that come before a city body. By taking such steps, public trust in the City's elected and appointed officials as well as the City's decision making process is advanced. Our opinion would be the same regardless of how the employment relationship was defined or structured.

Keep in mind that under §38-10 of the Ethics Code, the Commission reserves the authority to grant exemptions and modification to the provisions of Article III and Article IV of the Ethics Code. Of course, each request for such exemptions and modifications would be reviewed and stand on its own merits. The Commission would consider whether such an application would be too restrictive in light of the given request for modification.

Finally, by its opinion and given the inquisitor's questions, the Commission does not in any detail address the first part of the inquisitor's letter, namely, the duty on the city official to make good faith efforts to ascertain who his employer's clients are.

The Ethics Commission

Barbara Cain
Clifford J. Bedore
James I. Shultz
Alan C. Bradford

Ethics Counsel

William G. Salmond

Date: May 11, 1997