



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

OPINION NO. 2006:3
JUL 4 2006

OPINION RE:

**THE CITY ETHICS COMMISSION IS DISQUALIFIED ON A MATTER CONCERNING
A SETTLEMENT OF AN ENFORCEMENT MATTER INVOLVING AN ETHICS
COMMISSIONER**

Commissioner Gil Garcetti, President
City Ethics Commission
200 North Main Street, Suite 2400
Los Angeles, California 90012

Dear Commissioner Garcetti:

By your recent communication to us, you sought our opinion concerning whether you and the City Ethics Commission (Ethics Commission) are disqualified, pursuant to Los Angeles City Charter § 222 and other applicable laws, from acting on a matter relating to a proposed settlement in which you are a party to the matter. You have also asked whether an alternate decisionmaker is available.

OPINION SUMMARY:

You and the entire Commission are disqualified from acting on a proposed settlement to which you are a party. Charter section 222 authorizes the City Attorney to issue formal opinions concerning whether it would be contrary to state law or the "public interest" for a City official to act in a particular matter. Based on Government Code section 1090 which prohibits public officials from having a financial interest in a contract including a settlement or stipulation, you are considered to be financially interested in the proposed settlement. Because no exception applies, the entire Commission is also disqualified. The Board of Referred Powers is the only legally available alternate decisionmaker empowered to consider this matter.



BACKGROUND:

You have been a member of the Commission since September 10, 2002. You state that you inadvertently made a campaign contribution to your son, Eric Garcetti, on March 5, 2005, by co-signing a \$1,000 check your wife had written. You stated that you did not realize at the time of signing the check that it was for your son's campaign. City Charter section 700(d) provides that a member of the Commission may not participate in or contribute to a City election campaign or to a City official running for office.

You recently entered into a proposed settlement of this matter with the enforcement staff of the Ethics Commission pursuant to the standard procedures provided for such matters in the Charter and Administrative Code. See Charter § 706; LAAC 24.1.1 et seq.¹ Charter section 706(c) requires the Commission to take final action on all findings of violations and penalty assessments, including proposed settlements.

QUESTION:

Are you and the Ethics Commission disqualified from considering or acting on a proposed stipulation in a matter in which you are a party to settlement?

ANSWER:

Yes, you and the entire Ethics Commission are disqualified from acting on this matter. Pursuant to Charter section 222, the matter must be transferred to the Board of Referred Powers.

DISCUSSION:

Charter section 222(a) requires the City Attorney to provide a written opinion at the request of an elected official, board, board member or employee as to whether the board, board member, officer or employee has a conflict of interest requiring recusal. If the City Attorney concludes that it would either violate state law or be contrary to the public interest for the board, board member, officer or employee to act on a particular matter, that board, board member, officer or employee is disqualified. Pursuant to Charter section 222(b), if the conflict requires the disqualification of the entire board, the matter is transferred to the Board of Referred Powers provided that the transfer is not prohibited by state law.

Government Code 1090 prohibits "city officers and employees" from having a "financial interest in a contract made by them in their official capacity, or by any body or

¹ We note that the Executive Director was recused in this matter given the Ethics Commission's employment authority over the Executive Director. However, other Ethics Commission staff were not recused on this matter.

board of which they are members." If a public official has a financial interest in a contract, and no relevant exception applies, both the public official and the entire body or board to which the official belongs are prohibited from acting on matters relating to the contract. The statute is broadly construed to accomplish its purpose, which is "to remove or limit the possibility of any personal influence, either directly or indirectly, which might bear on an official's decision . . ." *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569. See also, *Thompson v. Call* (1985) 38 Cal.3d 633, 645, 652.

The Attorney General has advised that a settlement agreement is considered a "contract" for purposes of section 1090. See 86 Ops. Att'y Gen. Cal. 142 (2003) (concluding that water district board could not enter into an agreement with its board member to settle a lawsuit). See also, City Attorney Opinion 2004:1 (February 19, 2004) (environmental mitigation plan considered a contract); City Attorney Opinion 2005:3 (September 2, 2005) (settlement agreement in litigation implicates section 1090); City Attorney Opinion 2005:3 (November 21, 2005) (settlement agreement having a financial impact on commissioner would trigger section 1090).

Where an Ethics Commissioner is a party to the settlement in his or her personal capacity, the Ethics Commissioner is financially interested in the contract. Although the statute provides limited exceptions that may permit a body to act notwithstanding the financial interests of one of its members, none is applicable here.² Accordingly, because you are financially interested in the proposed settlement, both you and the Ethics Commission are disqualified from consideration of this matter.

The City Charter requires that when a Board is disqualified, that the matter be transferred to the Board of Referred Powers unless prohibited by state law. City Charter § 222(b). No state law prohibits the transfer of this matter to the Board of Referred Powers, nor do the provisions of the Charter relating to the Ethics Commission indicate that the Commission would not be subject to the provisions of Charter section 222 including its transfer provisions.

The Board of Referred Powers, which currently consists of five City Councilmembers, was created to serve as the alternate decisionmaker and would act in place of the Ethics Commission. The Board of Referred Powers has the same power and jurisdiction as the Ethics Commission. The City Clerk serves as the Clerk to the Board of Referred Powers. See Los Angeles Administrative Code §§ 8.1 *et seq.*

We appreciate your concern that transferring this matter to the Board of Referred Powers may not be the perfect solution given that, as you point out, it is composed of officials who are subject to the Ethics Commission's jurisdiction. However, no other alternate decisionmaker is currently provided for in the law in an administrative

² Moreover, in addition to the state law concerns, you have also expressed your view that the Ethics Commission should not be placed in a position of judging its own colleagues.

enforcement context. Only in the case of a potential criminal or civil sanction are there alternative venues specifically provided in the Charter. We are confident that the Board of Referred Powers can be fair and impartial in this matter. Each member is an elected official. None has a personal financial interest in the settlement. The majority of its members have been in place for the past three years.

CONCLUSION:

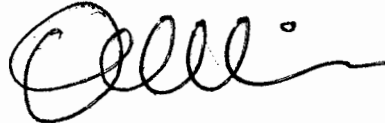
Thank you for giving us the opportunity to address your concerns.

The proposed settlement between the Ethics Commission and Gil Garcetti is hereby transferred to the Board of Referred Powers.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney