

Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Airport Commission
Applicants

DATE: May 27, 2010

BACKGROUND

This Office routinely reviews applications to City Boards and Commissions. The applications do not provide complete information; however, they do occasionally disclose potential conflicts of interest or incompatible offices. The purpose of this memorandum is to highlight major areas of potential conflict that are disclosed by the applications. In order to analyze potential conflicts, it is necessary to consider the duties of the particular commission to which the applicant is seeking appointment.

This memorandum includes additional information regarding a potential conflict for one applicant that was discussed in the April 12, 2010, memorandum from this Office to the Rules and Open Government Committee. Based upon additional information provided by Georgia Painter Nielsen at the May 26, 2010, Rules and Open Government Committee meeting, we have determined that Ms. Nielsen has no apparent conflicts of interest.

COMMISSION DUTIES

Under the Municipal Code, the Airport Commission is an advisory body that makes recommendations to the Council and the Airport Department on matters that are referred to it by the Council or the administration, or on matters that it initiates from time to time. The Commission also hears appeals of administrative citations issued by the Director of Aviation for violations of the City's Curfew Ordinance and appeals of revocations or denials of Airport permits.

APPLICANTS

Gary Cecil Cunningham – Mr. Cunningham works for Northrop Grumman Marine Systems in Sunnyvale. His application discloses neither incompatible offices nor apparent conflicts of interest.

Rosalio Jerry Gandara – Mr. Gandara is retired from Federal government employment. His application discloses neither incompatible offices nor apparent conflicts of interest.

George Garcia Gange – Mr. Gange is retired from Federal government employment. His application discloses neither incompatible offices nor apparent conflicts of interest.

Vijay Giri – Mr. Giri works for IBM in San Jose. His application discloses neither incompatible offices nor apparent conflicts of interest.

Spencer Y. Horowitz – Mr. Horowitz is self-employed in the field of marketing and public relations. His application discloses neither incompatible offices nor apparent conflicts of interest.

Ian Ruben Kluff – Mr. Kluff works for TWiki, Inc. in Sunnyvale as a Software Engineer. His application discloses neither incompatible offices nor apparent conflicts of interest.

Georgia Panter Nielsen – Ms. Nielsen is a retired United Airlines flight attendant. Ms. Nielsen received a pension from United Airlines. However, the United Airlines pension plan was terminated on June 30, 2005, and the Pension Benefit Guaranty Corporation assumed responsibility for the pension plan on that date. Because the pension plan was terminated by United Airlines, Ms. Nielsen no longer has a financial interest in United Airlines that might give rise to an apparent conflict of interest. Her application discloses neither incompatible offices nor apparent conflicts of interest.

Sylvia Jeanneth Ruiz – Ms. Ruiz is the Political Director for Service Employees International Union-United Service Workers West (SEIU-USWW) in San Jose. Ms. Ruiz's application states that her employer, SEIU-USWW represents workers who provide services at the Airport. Therefore, Ms. Ruiz's employment with SEIU-USWW may present potential conflicts of interest to the extent that the Airport Commission considers and makes recommendations regarding any contracts with SEIU-USWW at the Airport. Government Code Section 1090 prohibits public officials or employees from making or participating in the making of a contract in which the official is financially interested. Airport Commissioners would be considered "public officials" for the purpose of Section 1090, and Ms. Ruiz has a financial interest in her employment with SEIU-USWW. Courts have found a prohibited financial interest even though the officer or employee would not directly benefit from the terms of the contract; it was ruled significant that the contract would contribute to the financial health of the contracting party with which the officer or employee was associated or employed. If Ms. Ruiz were an Airport Commissioner, Section 1090 may prohibit the Airport Commission from considering or making any recommendations regarding an agreement with SEIU-USWW. The prohibition is interpreted liberally to protect the public against conflicts of interest. When a Commissioner has a proscribed financial interest, the prohibition extends to the Commission even if the Commissioner with the proscribed financial

interest did not participate in any of the steps involved in the making of the agreement. In other words, if Ms. Ruiz does have a proscribed financial interest, the Airport Commission would be prohibited from considering, advising, or having any involvement with the agreements with SEIU-USWW, even if Ms. Ruiz were to recuse herself from any Commission discussions or actions regarding the agreements.

In addition, the Political Reform Act (Gov. Code Sections 87100 *et seq.*) provides that no public official shall make, participate in making, or in any way attempt to use his or her official position to influence a decision when the official knows that he or she has a financial interest in the decision. Since Ms. Ruiz has a financial interest in her employment with SEIU-USWW, she would have a disqualifying financial interest in an Airport Commission decision if the decision would have a material financial effect on SEIU-USWW. Therefore, Ms. Ruiz would be disqualified from participating in any Airport Commission actions involving SEIU-USWW.

Amal Sinha – Mr. Sinha is retired. He was a City employee in the early 1970's. His application discloses neither incompatible offices nor apparent conflicts of interest.

Vincent J. Tarpey – Mr. Tarpey is Director of Business Development at Swift Test, Inc. in Santa Clara. His application discloses neither incompatible offices nor apparent conflicts of interest.

Dennis P. Uram – Mr. Uram is retired from the field of facilities and operations management. His application discloses neither incompatible offices nor apparent conflicts of interest.

Michael Richard Valladao – Mr. Valladao works in product marketing for NetScout Systems, Inc. in San Jose. Mr. Valladao states in his application that he owns rental property in the Rosemary Gardens neighborhood (1385 San Juan Avenue), which Mr. Valladao describes as in "close proximity" to the Airport. Although we would need more specific information regarding the distance of this property from the Airport, Mr. Valladao could potentially have a conflict of interest in the event that the Airport Commission considers a matter that may have an impact on his property. The Political Reform Act (Gov. Code Sections 87100 *et seq.*) provides that no public official shall make, participate in making, or in any way attempt to use his or her official position to influence a decision when the official knows that he or she has a financial interest in the decision. Mr. Valladao would therefore be disqualified from participating in any Airport Commission actions that might have an impact on his property in the Rosemary Gardens neighborhood.

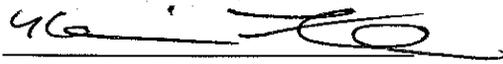
Charles William Weekes – Mr. Weekes is self-employed. His application discloses neither incompatible offices nor apparent conflicts of interest.

CONCLUSION

Ms. Ruiz and Mr. Valladao have potential conflicts of interest that may preclude the Airport Commission from participating in the making of certain contracts at the Airport and that may require that they abstain from participating in certain other matters in which they have a financial interest

The other applicants do not appear to hold any incompatible offices or to have conflicts of interest that would preclude them from serving on the Airport Commission. The Committee may wish to consider the above comments in making its recommendations regarding appointments to the Airport Commission.

RICHARD DOYLE,
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By: 

KEVIN FISHER
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cc: Lee Price