

CNC
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2007 DEC 19 A 10:40

CITY CLERK'S OFFICE
CEDAR RAPIDS, IOWA

(319) 365-9461

December 17, 2007

Council Member Pat Shey
City Council Chambers
City Hall
50 Second Avenue Bridge
Cedar Rapids, IA 52401

RE: City of Cedar Rapids/Conflict of Interest Issues

Dear Mr. Shey:

I am writing in response to your email to Ann Ollinger dated November 28, 2007, a copy of which is attached to ensure we have a complete record of your request. Again, I want to express the appreciation of the Ethics Board (the "Board") for your interest in using the advisory opinion mechanism.

The Board met on Wednesday, December 12, 2007. The Board understood your question, essentially, to be whether you voting or taking other official action with respect to a customer of Cedar Rapids Bank & Trust (your employer) would constitute a conflict of interest action under the Rules of this Board. As it began its discussion, the Board discussed the fact that the focus of the applicable provisions of the City Code and the Board's Rules is on the actions of the City official and whether he or she should vote on a particular issue or take other official action and is not directed toward the business practices of the City official's employer or those who have business relationships with the City official's employer.

The following will summarize the Board's response to your inquiry:

1. The Board cannot provide a blanket ruling or opinion which would categorically define whether you could or could not vote on all matters coming before the Cedar Rapids City Council (the "Council") in which the Council action pertained to a customer of your employer.
2. Each Council member will have to determine, on the basis of his or her individual knowledge of all of the facts and circumstances, whether the vote or other official action of the Council member will result in a direct or indirect economic benefit or other consideration to the Council member or a member of his or her immediate family or his or her employer.

3. There could be instances in which the effect of the Council vote or other official action on your employer's customer will result in a direct or indirect economic benefit or other consideration to the Council member's employer. For example, the City of Cedar Rapids (the "City") might agree to purchase a significant amount of goods and services from a customer of your employer who was going to finance its performance under the contract through a loan from your employer. Or there could be situations in which the procurement of the contract with the City would eliminate a default in the customer's obligations to your employer. In those instances, there would, in the opinion of the Board, be a direct or indirect economic benefit or other consideration to your employer.
4. There could easily be other instances in which the relationship between your employer and its customer would not be affected simply because the City awarded a contract to that customer. For example, if a customer of your employer had only a depository relationship with your employer and would not need financing from your employer to perform its obligations under the proposed contract with the City there would not be a direct or indirect economic benefit or other consideration to your employer.
5. There is not a per se direct or indirect economic benefit or other consideration to your employer simply because a vote or other official action taken by you as a Council member results in the City entering into a contract with a customer of your employer. Conversely, there will clearly be situations in which, because of the specific facts and circumstances, a benefit that is conferred on a customer of your employer will benefit your employer in an indirect manner.

If you would like us to elaborate further on any of these issues, please contact us.

Very truly yours,



GARY J. STREIT
Cedar Rapids Board of Ethics
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GJS:jai

Enclosure

cc: Mayor Kay Halloran
City Council Members
City Manager James Prosser
City Attorney James Flitz
City Clerk, Ann Ollinger
Ethics Board Members

#338717

Ollinger, Ann

From: Shey, Pat S.
Sent: Wednesday, November 28, 2007 7:22 PM
To: Ollinger, Ann
Subject: Request for Ethics Advisory Opinion -- Direct or Indirect Economic Benefit

Ann;

I understand from Gary Streit that the proper procedure for requesting an Ethics Advisory Opinion is to address such questions to the City Clerk.

I understand from a recent ethics opinion, that I have a conflict of interest if my employer, Cedar Rapids Bank & Trust would "directly or indirectly" benefit economically by City Council action.

The "direct or indirect" economic benefit to my employer certainly makes sense in a loan transaction to which my bank is participating as set forth in the 11/26/07 Advisory Opinion relating to CRBT's Board Member Fred Timko, his purchase of Osada, and CRBT's possible financing of the project. However, please allow me to present a different set of facts:

My employer has many clients—deposit clients and those with outstanding loans—who are engaged in the construction industry. Some of our clients receive city contracts for certain jobs, some of which may be competitively bid, or awarded based on qualifications and/or past performance.

If a bank client is awarded a bid, the bid certainly benefits the client, but it is unclear to me whether CRBT would "directly or indirectly" benefit economically. To be sure, the client presumably earns revenue, which may or may not be deposited in CRBT and/or which may or may not be used to pay off outstanding loan balances.

For the last two years, I have recused myself from votes involving CRBT clients who were awarded city contracts, etc., but would formally request an advisory opinion on this matter to provide direction to the council on related matters.

Pat Shey
 Council Member - At Large
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11/29/2007