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OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

November 18, 2014

The City Council Ethics Review Board (“the Board”) met on November 18, 2014, to render an advisory opinion on a question submitted to the Board by Councilmember Wade Troxell. The question presented is whether Councilmember Troxell (“Troxell”) would have a conflict of interest in continuing to participate in Council discussions and, ultimately, Council's vote, regarding the proposed new Colorado State University (“CSU” or the “University”) football stadium. The question arises because Troxell is employed by CSU as a tenured faculty member in the University’s Department of Mechanical Engineering.

Factual Summary.

University officials have been considering development of a possible new football stadium, and the Board of Governors of the CSU System is expected to consider four options for moving forward at its meeting in early December. In light of potential impacts to the City and its citizens of a new stadium, City Council has directed staff to analyze the expected impacts and to present a resolution expressing the Council’s position related to the stadium for Council consideration at the December 2, 2014, Council meeting.

Councilmember Troxell is a tenured member of the academic faculty at CSU, and as a result he enjoys a high degree of protection from adverse employment decisions. He is currently the Associate Dean for Research and Economic Development in CSU’s College of Engineering and has served in that capacity for ten years. His responsibilities in that position relate to the research, graduate education, distance education and economic development initiatives of the College of Engineering, which is an academic unit of the University, and not to the administration of the greater University or University facilities or auxiliary enterprises of the University, such as athletic programs. Councilmember Troxell has indicated that as a tenured faculty member he will not be subject to dismissal and his employment with the University will not be advantaged or disadvantaged in any way, as a result of his actions on Council related to the proposed football stadium.

The question presented for the Board, is whether, under these facts, Troxell's employment with CSU creates a conflict of interest under the City Charter that would prevent Troxell from participating in Council's discussion and vote related to the proposed CSU football stadium. The Board is of the opinion that Troxell does not have a conflict of interest in this matter under the relevant provisions of the City Charter, as explained below.

Application of City Charter Provisions.

The determination of this question is governed by the City’s local conflict of interest provisions, as contained in Art. IV, Sec. 9 of the City Charter (the “Charter”). These provisions require that any Councilmember who has a financial or personal interest in a decision of the Council disclose such

interest and refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as a Councilmember. Under the Charter, the following definitions apply:

a. “Financial Interest”

A “financial interest” is defined under the Charter as “any interest equated with money or its equivalent.” The Charter expressly excludes from the definition of “financial interest” the interest that a Councilmember has as an employee of a business where the Council decision may financially benefit or otherwise affect the business but entails no “foreseeable, measurable financial benefit” to the Councilmember.

In reviewing the facts of this situation, it is likely that the Council's deliberations and actions with regard to the CSU football stadium will “affect” the University, since, at a minimum, the University will have difficulty moving forward with any stadium project without some degree of cooperation and coordination with the City. There is no indication, however, that Troxell, as an individual, will receive any “foreseeable, measurable financial benefit” as a result of the Council decision(s), as no evidence has been presented to the effect that Troxell's salary or other compensation will be changed or discontinued as a result of the Council's decision related to the CSU football stadium. Therefore, the Board believes that Troxell does not have a financial interest in the Council's actions related to the CSU football stadium.

b. “Personal Interest”

The next inquiry is whether Troxell has a “personal interest” under the Charter. The Charter defines a personal interest in relevant part as an interest by reason of which a Councilmember would, in the judgment of a reasonably prudent person, realize or experience some “direct and substantial benefit or detriment different in kind from that experienced by the general public.” This benefit or detriment need not be financial in nature, but it must be “direct and substantial.” As recently established by the City Council in Ordinance No. 145, 2014, “direct” means “resulting immediately and proximately from the circumstances and not from an intervening cause,” and “substantial” means “more than nominal in value, degree, amount or extent.”

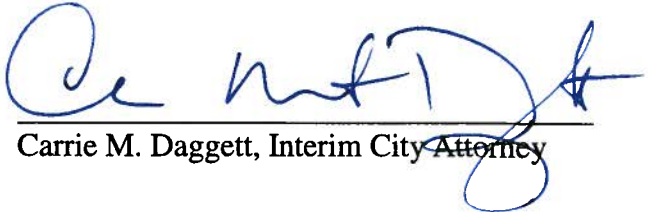
Clearly, Troxell is differently situated with regard to this matter than are the members of the general public because of his employment with the University. The question is whether, because of his status as an employee, he might realize any “*direct and substantial benefit or detriment*” by reason of Council's decision related to the CSU football stadium. Again, there is no indication that Troxell's position of employment or the amount of his compensation would be affected by his vote or Council's decision or actions with regard to the proposed football stadium. In fact, Troxell's status as a tenured member of the academic faculty indicates to the contrary, that is, that there could be no job related ramifications based upon the manner in which Troxell votes with regard to these upcoming Council decisions. Moreover, the Charter standard requires that the potential benefit or detriment to Troxell be “direct and substantial” and not merely indirect or

speculative. The Board believes that any possibility of Council's decision affecting Troxell's employment is entirely speculative.

In summary, the Board believes that Councilmember Troxell does not have a conflict of interest in participating in the City Council's deliberations and vote with regard to the proposed CSU football stadium. The Board recognizes that the perception of a conflict of interest may exist whenever a councilmember is employed by, or closely associated with, an organization that is strongly interested in proposed legislation. However, the City Charter rules of ethical conduct have been established to distinguish situations where councilmembers and their employers may be affected and concerned about proposed legislation from those situations in which councilmembers themselves may somehow experience some personal gain or loss as result of the Council decision. Under the Charter standards, a conflict of interest would exist in this situation only if the potential personal gain or loss to Troxell was either "foreseeable and measurable" (in the case of a financial interest) or "direct and substantial" (in the case of a personal interest). After analyzing the situation presented by Councilmember Troxell, the Board does not believe that that kind of clear and direct benefit or detriment exists in this case. To recommend that Troxell declare a conflict of interest in this situation would, in the Board's view, establish a very difficult precedent that would require councilmembers to regularly refrain from representing the views of their constituents with regard to proposed legislation even when the potential benefits or repercussions to councilmembers are merely hypothetical or speculative.

This advisory opinion was reviewed and approved by Mayor Karen Weitkunat, and Councilmembers Gino Campana regular members of the Ethics Review Board, and Councilmember Ross Cunniff, the alternate member of the Board. Councilmember Cunniff participated in the deliberations and decision of the Board because Councilmember and Ethics Review Board member Lisa Poppaw was not available to participate. Pursuant to Section 2-569(e) of the City Code, this opinion and recommendation is to be immediately filed with the City Clerk and made available for public inspection. Additionally, this opinion shall be considered by the City Council at its adjourned meeting on November 25, 2014.

Dated this 18th day of November, 2014.



Carrie M. Daggett, Interim City Attorney

