

RESOLUTION 96-9
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING THE ADVISORY OPINION AND RECOMMENDATION
NO. 96-2 OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board ("the Board") consisting of three members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and

WHEREAS, the Board met on January 16, 1996, to consider whether Councilmember Chris Kneeland has a conflict of interest in participating in the City Council's discussions and decisions regarding a proposed use tax rebate program for to manufacturing companies in the City; and

WHEREAS, the Board has issued Opinion No. 96-2 with regard to the foregoing issue; and

WHEREAS, Section 2-569(e) of the City Code provides that all advisory opinions and recommendations of the Board be placed on the agenda for the next special or regular City Council meeting, at which time the City Council shall determine whether to adopt such opinions and recommendations; and

WHEREAS, the City Council has reviewed the opinion and recommendation of the Board and wishes to adopt the same.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 96-2 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion and recommendation contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins held this 23rd day of January, A.D. 1996.

Mayor

ATTEST:

City Clerk

No Action

96-2
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

January 16, 1996

The Ethics Review Board ("the Board") met on the above-referenced date to address a question presented by Councilmember Chris Kneeland. In attendance were Ethics Review Board members Mayor Ann Azari, Mayor Pro Tem Gina Janett and Councilmember Will Smith; Councilmember Kneeland; and Councilmember McCluskey, who had presented a separate inquiry to the Board. The question presented is whether Councilmember Kneeland would have a conflict of interest in participating in discussions of the City Council pertaining to a proposed use tax relief program, because of the fact that Councilmember Kneeland has done consulting work for some of the companies that would be affected by the program.

The Proposed Use Tax Relief Program

The City Manager has proposed an interim policy, pending further study of the matter, through which manufacturers that have been in operation in Fort Collins for three years or more may be relieved of some measure of the use tax burden upon their purchases of manufacturing equipment from outside of the city. The recommended approach would provide an effective use tax reduction for affected manufacturers from 3% to 1% on the first \$5 million of the manufacturing equipment purchased, and from 3% to 2% on the next \$10 million of the manufacturing equipment. Equipment purchases of beyond \$15 million would be subject to the current rate of 3% up to a maximum total of \$50 million worth of manufacturing equipment purchases that would be subject to the use tax. Thus, the emphasis of the program would be the reduction of the tax burden on smaller purchases of manufacturing equipment, with a cap on total use tax that would benefit manufacturers making extremely large purchases of manufacturing equipment.

Legal Standards

The Charter recognizes two kinds of interests which can give rise to a conflict of interest for a Councilmember: a financial interest and a personal interest. A financial interest is defined as "any interest equated with money or its equivalent." A financial interest is specifically not to include:

The interest of an employee of a business, or a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business *but entails no foreseeable measurable financial benefit to the employee or interest holder.* . . .(City Charter, Article IV, Section 9., emphasis added.)

The Charter defines a personal interest as:

Any interest (other than a financial interest) arising from blood or marriage relationships or from close business, political or personal associations or concerns which would, in the judgment of a reasonably prudent person, tend to impair independence of judgment or action in the performance of official discretionary duties. (City Charter, Article IV, Section 9.)

Analysis of the Kneeland Inquiry

Councilmember Kneeland has a consulting business and, in that capacity, she has occasionally rendered services to three or four of the companies that would be affected by the proposed use tax relief program. She also does consulting work for numerous other companies across the country. Those companies range in size from relatively few employees to several thousand employees. As a consultant, Councilmember Kneeland provides, either directly or through her employees, various kinds of training for company employees, including training related to stress management, career management, conflict resolution, basic skills programs and assessments, performance appraisals, etc. Her services are provided on an "as needed" basis, sometimes pursuant to a written contract but more often through an informal, verbal agreement. It has been several months, or even years, since Councilmember Kneeland has done consulting work for some of the companies. However, with at least one of the companies, she is presently rendering services under an ongoing contractual relationship. Depending upon the nature of the services and the phase of the particular training program, Councilmember Kneeland may have contacts with company employees two or three times per week or two or three times per month. The manner in which Councilmember Kneeland is compensated is not tied to the profitability of the companies but is determined instead on either a project or an hourly basis.

First, there appears to be no question of a *financial* conflict of interest in this situation because a proposed use tax relief program would not result in any "foreseeable, measurable financial benefit" to Councilmember Kneeland. The question to be examined more closely is whether she has a *personal* interest in the decision. This, in turn, presents the question of whether Councilmember Kneeland's working relationship with any of the manufacturing companies is sufficiently "close" to warrant concern that her independence of judgment in participating in Council's decision would be impaired by that working relationship.

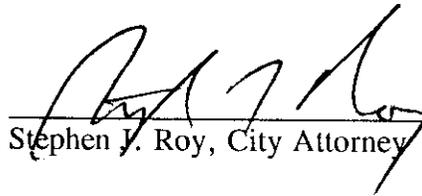
The Board believes that if the business dealings of a Councilmember do not create a financial conflict of interest within the meaning of the Charter, those same factual circumstances should not be found to create a personal conflict of interest unless there is a clear indication that the relationship in question would likely interfere with the Councilmember's independence of judgment. No such clear indication exists in this case. The nature of the work that Councilmember Kneeland performs for various companies (including manufacturing companies) is entirely unrelated to the financial operations and purchasing decisions of those companies.

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Admittedly, a use tax rebate program could affect the purchasing practices of the manufacturers, or even contribute to their decisions to remain or expand in Fort Collins. However, there is no indication that these kinds of corporate decisions would affect a company's need for the kind of consulting work that Councilmember Kneeland provides or its ability or willingness to maintain an ongoing working relationship with her. Nor is there any indication that Councilmember Kneeland's overall consulting business would be significantly affected by any such decisions of local companies, since her consulting services can be (and presently are) made available to companies located outside the Fort Collins area. Absent any such indication, a finding of a personal conflict of interest would be based upon mere speculation. Under these circumstances, therefore, the Board does not believe that Councilmember Kneeland has a conflict of interest which would interfere with her independence of judgment in participating in Council's deliberations regarding a proposed use tax relief program.

This advisory opinion was reviewed and approved by Mayor Azari and Mayor Pro Tem Janett, regular members of the Ethics Review Board, with Councilmember Smith dissenting from the majority opinion of the Board. 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 meeting on January 23, 1996.

Dated this 16th day of January, 1996.



Stephen J. Roy, City Attorney

SJR:meg