

RESOLUTION 2003-083
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING THE ADVISORY OPINION AND RECOMMENDATION NO. 2003-1
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 of board and commission members of the City; and

WHEREAS, the Ethics Review Board met on June 23, 2003, to consider whether Councilmember Kurt Kastein has a conflict of interest in participating in City Council's consideration of (1) a possible amendment to the City's Harmony Corridor Plan (the "Plan") to allow for a life style center; and (2) the possible review of a decision of the City's Planning and Zoning Board regarding a particular life style center on the site of the Plan amendment; and

WHEREAS, the Board has issued an advisory opinion that Councilmember Kastein would not have a conflict of interest in participating in Council's deliberations with regard to these matters; 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 has reviewed the opinion and recommendations of the Board and wishes to adopt the same.

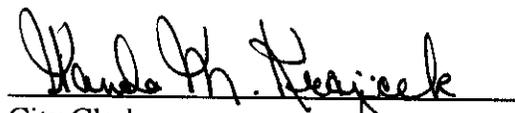
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2003-1 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion and recommendation contained therein.

Passed and adopted at a regular meeting of the City Council held this 1st day of July, A.D. 2000.



Mayor

ATTEST:



City Clerk

**2003-1
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS**

June 23, 2003

The City Council Ethics Review Board ("the Board") met on June 23, 2003, to render an advisory opinion on a conflict of interest question submitted to the Board by Councilmember Kurt Kastein. The question presented is whether Councilmember Kastein would have a conflict of interest in participating in the following upcoming decisions of the City Council:

- (1) A possible amendment to the City's Harmony Corridor Plan (the "Plan") to allow for a life style center; and
- (2) The possible review of a decision of the City's Planning and Zoning Board regarding a particular life style center on the site of the Plan amendment.

The question arises because Councilmember Kastein ("Kastein") is employed by LSI Logic, and LSI Logic has entered into a contract to sell the site of the proposed life style center (the "Site") to the developer of the center. The Board is of the opinion that Kastein does not have a conflict of interest in this matter under the relevant provisions of the City Charter, as explained below.

THE FACTS.

The evidence presented to the Board indicates that Kastein is employed as a "project leader" at LSI Logic. He is compensated on a salary basis and, in addition, holds shares of stock in LSI Logic. Kastein's job entails serving as a design engineer who is responsible for directing a team of engineers in designing particular projects. The division in which Kastein works at LSI Logic is not involved in the sale of the Site. The contract for sale between LSI Logic and the developer of the Site is not expressly contingent upon City approval of any development application. However, the developer reportedly has the option to forfeit its earnest money and terminate the contract if City approval is not forthcoming.

APPLICATION OF THE 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 might fairly be said that the Council's decision with regard to the Plan amendment and/or the development application would “affect” LSI Logic since an adverse decision by the City Council would likely result in the loss of the sale of the Site to the developer. There is no indication, however, that Kastein, as an individual, will receive any “foreseeable, measurable financial benefit” as a result of the Council decision(s), either through some form of compensation, or through any appreciation in the shares of common stock that he holds as a shareholder in LSI Logic. Therefore, Kastein does not have a financial interest under the Charter.

b. “Personal Interest”

The next inquiry is whether Kastein 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.” (Charter, Art. IV, Sec. 9(u)). This benefit or detriment need not be financial in nature, but it must be “direct and substantial.”

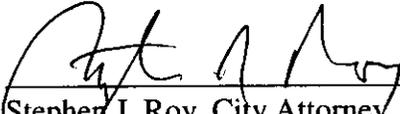
Clearly, Kastein is differently situated with regard to this matter than are the members of the general public because of his position of employment with LSI Logic. The question is whether, because of his status as an employee, he might realize any “*direct and substantial benefit or detriment*” by reason of Council's decision on either the Plan or a future application for development of the Site. There is no evidence that Kastein's position of employment or the amount of his compensation would be affected by his vote or Council's decision in that regard. In fact, Kastein's report of his conversations with LSI officials and employees indicate to the contrary, that is, that there would be no job related ramifications based upon the manner in which Kastein votes with regard to these upcoming Council decisions. One can speculate that Kastein's vote might have some effect on his employment or position of employment if the sale of the Site is lost because of Council's decision. However, the Charter standard is that the potential benefit or detriment be “*direct and substantial*” and not merely indirect or speculative.

As previously indicated in Opinion 2000-1 of the Board, 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 will be affected by a Council decision. This is especially true when the Councilmember is employed by that organization. However, the Charter rules of ethical conduct have been established to distinguish situations where Councilmembers and their employers may be affected by or concerned about an upcoming Council decision, 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 Kastein 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 Kastein, the Board does not believe that kind of clear and direct benefit or detriment exists in this case. To recommend that Kastein 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 performing their duties as elected officials even when the potential benefits or repercussions to them are merely hypothetical or speculative.

This advisory opinion was reviewed and approved by Mayor Ray Martinez, Mayor Pro Tem Bill Bertschy and Councilmember Marty Tharp, members of the Ethics Review Board of the City Council. 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 July 1, 2003.

Dated this 23rd day of June, 2003.



Stephen J. Roy, City Attorney

SJR:med