

RIO NUEVO MULTIPURPOSE)
FACILITIES DISTRICT,)
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BOARD MEETING
August 30, 2016
Tucson, Arizona

Reported by: ANTHONY C. GARCIA, RDR, CR
Certified Reporter No. 50218

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1 APPEARANCES:

2 BOARD MEMBERS:

3 Fletcher McCusker, Chairman

4 Chris Sheafe

5 Mark Irvin

6 Jannie Cox

7 Edmund Marquez

8 ALSO PRESENT:

9 Mark Collins, Board Counsel

10 Michele Bettini, Operations Administrator

11

12 * * * *

13

14 BE IT REMEMBERED that the Meeting of the

15 Board of Directors of the Rio Nuevo Multipurpose

16 Facilities District was held at the Arizona State

17 Building, 400 West Congress Street, Suite 222, in the

18 City of Tucson, State of Arizona, before ANTHONY C.

19 GARCIA, RDR, CR, Certified Reporter No. 50218, on the

20 30th day of August 2016, commencing at the hour of 1:00

21 o'clock p.m.

22

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25

P R O C E E D I N G S

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CHAIRMAN McCUSKER: Call to order.

4

The state time is wrong. It's exactly 1:00

5

o'clock.

6

MR. MARQUEZ: Agree.

7

CHAIRMAN McCUSKER: Okay. Jannie, you want

8

to lead the pledge?

9

MS. COX: Sure.

10

(Pledge of Allegiance lead by Jannie Cox.)

11

CHAIRMAN McCUSKER: Michelle, call the roll.

12

MS. BETTINI: Edmund Marquez.

13

MR. MARQUEZ: Here.

14

MS. BETTINI: Jannie Cox?

15

MS. COX: Here.

16

MS. BETTINI: Mark Irvin.

17

MR. IRVIN: Here.

18

MS. BETTINI: Fletcher McCusker.

19

CHAIRMAN McCUSKER: Here.

20

MS. BETTINI: Chris Sheafe.

21

MR. SHEAFE: Here.

22

MS. BETTINI: Jeff Hill.

23

MR. HILL: Here.

24

CHAIRMAN McCUSKER: You have transcripts from

25

the July meeting in your packet. They are verbatim.

1 Any questions, concerns or comments?

2 MS. COX: Move they be accepted.

3 CHAIRMAN McCUSKER: Second.

4 MR. IRVIN: Second.

5 CHAIRMAN McCUSKER: All in favor say aye.

6 (Board responds aye.)

7 (Motion moved, seconded and passed

8 unanimately.)

9 CHAIRMAN McCUSKER: This is the time set for
10 the Executive Session.

11 For those people in the audience, we
12 typically go into Exec first. Hopefully, today
13 wouldn't take 30, 35 minutes.

14 I would need a motion to --

15 MR. IRVIN: So moved.

16 MR. MARQUEZ: Second.

17 CHAIRMAN McCUSKER: All in favor say aye.

18 (Board responds aye.)

19 (Motion moved, seconded and passed

20 unanimately.)

21 CHAIRMAN McCUSKER: See you back here in a
22 few minutes.

23 (Recess.)

24 CHAIRMAN McCUSKER: Motion to reconvene.

25 MS. COX: So moved.

1 CHAIRMAN McCUSKER: Second, please.

2 MR. MARQUEZ: Second.

3 CHAIRMAN McCUSKER: All in favor say aye.

4 (Board responds aye.)

5 (Motion moved, seconded and passed
6 unanimately.)

7 CHAIRMAN McCUSKER: Thank you, everyone. A
8 little longer than we thought.

9 Just couple of brief updates from me since
10 we're late, and you're all probably stuck in the
11 traffic going eastbound on Broadway.

12 Mark, what's the latest on the AC?

13 MR. IRVIN: Walking Broadway, everything's on
14 time and on budget. We are hopeful that, you know, no
15 later than July 1st, we'll get a certificate of
16 occupancy next year.

17 The hotel will probably spend at least a
18 month going through soft openings and getting ready,
19 probably September 1, probably open. That looks like
20 the latest.

21 CHAIRMAN McCUSKER: Some other projects we're
22 working on, we have made a commitment to the Foundation
23 For Senior Living for the space in and around the
24 Marist College and the former Diocese headquarters.
25 That's moving forward.

1 We should finalize the documents with
2 Gadsden, hopefully, soon, so they can break ground on
3 the west side. That's 15,000 square feet of retail
4 that they hope they could open, they tell me, by
5 January. So things are moving along.

6 We have awarded the Greyhound construction
7 contract. We're going to talk about that under item
8 seven. So pretty much everything we are working on is
9 moving along.

10 Elaine couldn't be here today, but the hockey
11 renovation schedule is intact. We expect to be out of
12 that venue on September 26th, and the ice will be down
13 on that date for the season. If you've looked at the
14 Roadrunner schedule, which is out now, their first game
15 is October 9th, which is a scrimmage with the Coyotes
16 coming down. And the Roadrunners, their schedule is
17 out now, 34 home games. We understand tickets sales
18 have been brisk. So we're, obviously, looking forward
19 to that. But on our end, we should be done with the
20 renovations and out of their way by the time they want
21 to skate.

22 Dan, do you want to give us the financial
23 report?

24 MR. MEYERS: Dan Meyers, Chief Operating --
25 I've changed my title. Chief Financial Officer.

1 CHAIRMAN McCUSKER: Gave yourself a demotion.

2 MR. MEYERS: It's been a couple exciting
3 months. Michele and I have pretty much gotten through
4 our annual audits, Beach and Company. There's a few
5 more loose ends to tie up we're waiting for some
6 numbers on. Our performance audit is moving along
7 nicely. That's due the end of September. I think they
8 have to submit some kind of draft tomorrow. Still a
9 couple of things hanging out there as well, but I think
10 we've got through it pretty well.

11 Our new database is completely installed and
12 very functional. I think it's going to be a really big
13 help to Michelle and I as we try to track down
14 merchants that aren't properly complying with the
15 voluntary TIF revenue. And now they are also coming
16 back to do some little IT tweeks involving some
17 networking and some security things they've suggested.
18 So that's been some stuff that really is outside of our
19 financial information.

20 Cash standpoint. At the end of July we had
21 approximately \$17 million in the bank. A variety of
22 sources, still moving money around trying to get these
23 things consolidated to some extent. But I think we
24 pretty much decided to keep money in some of these
25 community banks and be loyal customers.

1 We've got about \$67 million of commitments,
2 one of which is the Caterpillar building. Again,
3 finishing up TCC and the garage at the AC hotel, so --

4 CHAIRMAN McCUSKER: If you back Cat out,
5 that's \$52 million, if you back that out of your 67,
6 it's 50 million and change, versus the 17 million in
7 the bank.

8 MR. MEYERS: Right. For example, the May
9 increment for TIF was almost \$1.6 million. We budgeted
10 one million per month fiscal year.

11 CHAIRMAN McCUSKER: I think that's a record.

12 MR. MEYERS: There were a couple things in
13 there that jumped that number up a bit, but our numbers
14 are coming in consistently higher, and I think good
15 things are happening from that respect.

16 MR. COLLINS: What did increase that number?
17 I'm just curious.

18 MR. MEYERS: One person, company, hadn't
19 filed for a while -- not really able to disclose all
20 that information, but just a couple of things that
21 kicked that number up. But every month there's
22 something in there that jacks that number up a bit.
23 You know -- it's.

24 MR. COLLINS: Great job.

25 MR. MEYERS: The City of Tucson helps us

1 track these people down as well, so -- and Michele and
2 I try to watch what we can so.

3 CHAIRMAN McCUSKER: Questions from Lee of
4 Dan?

5 MR. SHEAFE: With the new system up, Dan, any
6 lookback?

7 MR. MEYERS: I beg your pardon?

8 MR. SHEAFE: Any lookback opportunities?

9 MR. MEYERS: We've got a couple in process
10 right now I think could be very significant. I think
11 now with this -- again, we've only got two years of
12 information. Unfortunately, we don't have 10. But you
13 can really see some trends and you can see people, for
14 some reason, aren't paying. Who knows what that can
15 be, and then they caught and comply. I think we're
16 just going to keep finding those kinds of merchants.

17 MS. COX: Dan, when you identify a merchant,
18 you aren't allowed to approach them?

19 MR. MEYERS: I am allowed.

20 MS. COX: You weren't for a file?

21 MR. MEYERS: I can call and reason with them
22 and suggest; I can't make them.

23 CHAIRMAN McCUSKER: We're not tax collectors.
24 We have no real authority. But we can educate them.

25 MR. MEYERS: Michele and I were on a campaign

1 where we go out, we visit people, we hand out a thing
2 explaining to them why it benefits them to comply. I
3 mean, it brings money back into downtown.

4 CHAIRMAN McCUSKER: This has to be
5 self-coded, so a lot of the out-of-state providers know
6 nothing about it.

7 MR. MEYERS: For the most part, the merchants
8 are really good and willing to comply with very little
9 pushback.

10 MR. SHEAFE: It's important to mention it
11 isn't an avoidance situation. It's just where we
12 participate in our part.

13 For anybody's who's ever filled out a TPD
14 form, they just changed them over, it really is quite
15 arduous. I don't know how I would make it more simple,
16 but I can tell you looking at it, it's a difficult form
17 to try and figure out. For a lot of merchants it's
18 real a headache.

19 MR. MEYERS: Especially in our case, you've
20 got stored within and without of the District. You've
21 got to account for that separately. You know, it's a
22 challenge to do that, keep plugging away.

23 CHAIRMAN McCUSKER: Thank you, sir.

24 Item number seven, item number eight, I think
25 have been separated, but in terms of introduction, I'll

1 combine them.

2 I think at the last meeting we talked about
3 financing some of the cash commitments that we've made.
4 You just saw Dan go through the report. You know,
5 we've committed all but a couple of million bucks of
6 the cash that we have at hand. The TIF income will
7 pick up, but how do you keep this momentum going. You
8 know, we are averaging seven, eight, nine times our
9 investment dollars, so, you know, five million bucks
10 could theoretically produce 40, 50 million dollars of
11 activity downtown.

12 So we asked counsel to explore the
13 opportunities to finance both the AC Marriott parking
14 garage and the Greyhound. The Greyhound's agendized
15 first.

16 Mr. Collins, Tim, I don't know if you guys
17 want to come forward. We do have a resolution that's
18 been prepared by counsel that would authorize Rio Nuevo
19 to pursue these sorts of financing.

20 Go ahead, Mr. Collins.

21 MR. COLLINS: Mr. Chairman, Members of the
22 Board, this is my partner, Tim Stratton. Tim
23 specializes in municipal financing. I'll let him
24 address the many questions you may have about both
25 agenda items. I have separated them because I think

1 you need to vote on them separately. You can ask Tim
2 whatever questions you like. I'm sure he can respond
3 to it.

4 CHAIRMAN McCUSKER: Tim, thank you.

5 MR. STRATTON: Thanks, Mr. Chairman.

6 Before you are, as Mark indicated, two
7 resolutions which authorize the Board to move forward
8 with exploring financing options for both the Greyhound
9 project and the AC Marriott parking garage project.
10 Both ordinances are similar in as much as the mechanics
11 of them go. The financing would be secured by the
12 lease payments that the District is to receive on each
13 of those projects.

14 The resolutions authorized a maximum amount
15 to be borrowed to finance those projects, and it
16 delegates the authority to the Chairman and to the
17 Executive Officers to sign and execute any agreements
18 that ultimately be reached with a bank or financial
19 institution to borrow the money. It does not commit
20 the Board or the District to financing the projects.
21 It merely authorizes the financing team to move forward
22 and to solicit bids or proposals, if you will, from
23 interested financial institutions and banks, and those
24 proposals then would be brought back before the
25 Chairman and would have to fit within the parameters so

1 authorized by the resolution. And this is a very
2 similar setup to what we did with the refinancing,
3 which was closed earlier this year under terms of the
4 resolution structure authorizing the Officers to go out
5 under certain parameters to accomplish the financing.

6 CHAIRMAN McCUSKER: No rating agency
7 involved?

8 MR. STRATTON: No, Mr. Chairman, no rating
9 agency involved. We're anticipating with these that
10 these would be negotiated with financial institutions
11 and what we call a direct placement, which would avoid
12 the need to go before the rating agencies and would
13 also avoid the need to have an official statement
14 generated, because these bonds would not be sold to the
15 investing public. They would be placed with either an
16 institutional investor or a financial institution
17 directly.

18 CHAIRMAN McCUSKER: Any questions for Tim?
19 Conversation?

20 Okay. The first resolution, Mr. Hill.

21 MR. HILL: I move resolution number 2016-01
22 be adopted.

23 MS. COX: Second.

24 CHAIRMAN McCUSKER: That is a motion to adopt
25 the resolution, which is a two million dollar cap to

1 finance the construction of the Greyhound terminal.

2 We have a motion and a second. All in favor
3 say aye.

4 (Board responds aye.)

5 CHAIRMAN McCUSKER: Any opposed? Nay.

6 (Motion moved, seconded and passed
7 unanimously.)

8 CHAIRMAN McCUSKER: Okay. We'll move on to
9 the Caterpillar.

10 Is there any difference between these, other
11 than the dollar amount?

12 MR. STRATTON: It would be the AC Marriott.

13 CHAIRMAN McCUSKER: What did I say, Cat?

14 MR. STRATTON: No, Mr. Chairman, they are
15 identical except for the dollar amounts.

16 CHAIRMAN McCUSKER: This is a five million
17 dollar bond resolution, 2016-02, to finance the
18 Marriott Hotel parking garage project.

19 MR. HILL: Mr. Chairman, I move the adoption
20 of resolution number 2016-02.

21 MR. COLLINS: Second.

22 CHAIRMAN McCUSKER: Any further discussion?
23 All in favor a say aye.

24 (Board responds aye.)

25 CHAIRMAN McCUSKER: Nay?

1 (Motion moved, seconded and passed
2 unanimously.)

3 CHAIRMAN McCUSKER: Thanks for all your help.
4 We'll be back to the Board on the response to those
5 offers.

6 My brain was faster -- my mouth was faster
7 than my brain. Item number nine, Caterpillar. We are
8 moving forward.

9 If you have driven down Congress lately, you
10 will see the Caterpillar sign on the temporary
11 headquarters, 97 East Congress. I had to stop for a
12 moment when I went by. It's really quite remarkable.
13 They are moving people into town and doing everything
14 we hope they would do, buying houses, enrolling their
15 kids in school, et cetera, et cetera.

16 So our obligations here -- and, Mark, you
17 have to remind us about the two million dollar -- I was
18 going to ask Dan that. Is there a time on the
19 two million dollar commitment we made to Caterpillar?

20 MR. COLLINS: Yes, Mr. Chairman, Members of
21 the Board. The commitment has been that you will do it
22 concurrently with the four million dollars coming from
23 the State.

24 CHAIRMAN McCUSKER: We have agreed to -- it's
25 not in writing, but we've agreed to develop the

1 documents so that we can acquire from the City about an
2 eight-acre parcel the right over the Gutierrez Bridge
3 along the banks of the Santa Cruz. We would build a
4 Caterpillar headquarters for their mining -- surface
5 mining technology building, not to exceed a 50 million
6 dollar budget. We would then lease that back to
7 Caterpillar.

8 This is a very complicated project that will
9 require us to retain a very sophisticated design and
10 architectural team and, obviously, contractor that can
11 handle that of scale. We've asked Phil Swaim and
12 Associates if they would be interested in helping us
13 with this project. It would prohibit them from being a
14 bidder for the design award, but they would consult
15 with us pre-award, work with the Board on selecting the
16 architect and designers. And we have a proposal in
17 your packet to do that.

18 Mr. Collins, I believe this is a professional
19 service, so it's not something we're obliged to
20 competitively procure?

21 MR. COLLINS: Mr. Chairman, Members of the
22 Board, it is a professional service. You can direct
23 select as you may choose to do here.

24 Couple things that I want to emphasize based
25 on what the Chairman just said. This is, obviously, a

1 large project, and you're going to have to procure a
2 project architect and a project contractor. There's
3 several procurement methods that you can utilize;
4 design, bid, build; construction manager at risk;
5 design, build or job order contracting.

6 I'm going to guess that you are going to go
7 contractor at risk. But before you can do that, before
8 you can hire an architect for the project, you need
9 professional assistance to prepare those procurement
10 documents. And I believe that's the concept that you
11 would be considering Swaim and Associates.

12 As the Chairman indicated, if, in fact, you
13 engage Swaim and Associates to assist you in that
14 process, to essentially be the owner's representative,
15 if you will, then Swaim is precluded by statute from
16 bidding on any of that. So, in other words, Phil may
17 be on one side, on your side of this, but he could not
18 respond to the procurement request. In fact, as I read
19 the statutes, he will have a member of his office on
20 the evaluation committee, so, obviously, there are
21 things that preclude him from being on the other side.
22 But you do, without question, need professional help
23 beyond anything lawyers can provide for this.

24 CHAIRMAN McCUSKER: Phil's here if we need to
25 ask anything of him. We have a proposal from them.

1 It's basically an hourly rate. Principal architect at
2 \$130 an hour; architect at \$94 an hour; CAD, 68; admin,
3 \$58 an hour.

4 This would all be pre-bid consultation. And
5 then post-bid project management, as Mr. Collins
6 suggested, we would designate them as our owner's
7 representative.

8 So anyone want to discuss this with
9 Mr. Swaim?

10 MR. IRVIN: First off, I support this. I've
11 had the chance to work with Phil and his team on both
12 the Tucson Convention Center remodel, it also includes
13 the hockey piece; and, obviously, the Greyhound; and
14 then he was selected by the developer of the AC
15 Marriott as well. I've had a chance to work with him.
16 We're not staffed. We don't have an architect on our
17 staff. We really need to have somebody with that
18 understanding. As, you know, the Rio Nuevo
19 representative, I think it's a very smart move on our
20 part.

21 MR. SHEAFE: Phil, could you --

22 CHAIRMAN McCUSKER: Get signed in.

23 MR. SWAIM: Phil Swaim, Swaim Associates
24 Architect, 7350 East Speedway.

25 MR. SHEAFE: When you added into your list of

1 duties construction administration, could you define
2 really what you're talking about there.

3 MR. SWAIM: A lot of that is really the
4 coordination between your needs and responsibilities.
5 The architect and the contractor would be managing the
6 construction directly themselves, but throughout
7 construction you still need to be able to have somebody
8 representing your interests just to make sure you're
9 getting what you're after and keep you informed.
10 Obviously, a lot of moving parts with this project,
11 with different government entities, utilities, et
12 cetera, that --

13 MR. SHEAFE: The role really will continue
14 long after the bids are let and the design is complete
15 and all of that.

16 MR. SWAIM: That's certainly what we would
17 anticipate.

18 MR. SHEAFE: All the way through the project.

19 MR. SWAIM: Absolutely.

20 MR. SHEAFE: I strongly support this. I was
21 thinking we might want to break it into some boxes, say
22 you ought to be able to get through the bidding process
23 and have your architect on board for X number of
24 dollars, within a range, then so much to get the
25 contractor on board. From here on out the

1 administration ought to be about this general process.

2 MR. SWAIM: We can certainly do that.

3 MR. SHEAFE: We don't need that today.

4 MR. SWAIM: I think in the proposal we
5 included that we should actually be reviewing this
6 monthly to be able to determine the services, if we're
7 on task of what you're expecting or not, to make sure
8 that we're being responsible both financially and
9 services wise.

10 CHAIRMAN McCUSKER: These are standard rates,
11 discounted rates?

12 MR. SWAIM: Those are the standard rates that
13 we have through our opening contract through the City
14 of Tucson and Pima County and others, and I think what
15 we've been under contract with before. I think that's
16 in some way how, I think, you've been able utilize that
17 contract through the City in the past.

18 CHAIRMAN McCUSKER: Anything else for Phil?

19 Okay. We have a proposal from Swaim and
20 Associates to be retained as owner rep at our
21 discretion at the rates we talked about.

22 All in favor say aye.

23 (Boards responds aye.)

24 CHAIRMAN McCUSKER: Any opposed? Nay.

25 (Motion moved, seconded and passed

1 unanimously.)

2 CHAIRMAN McCUSKER: Sorry. Our lawyer's up
3 there. Did we stumble into some trouble?

4 MR. COLLINS: No. Going to ask you to
5 consider making another motion that you direct the
6 preparation of an appropriate contract for this. There
7 needs to be more than Phil's proposal. You need --
8 statutes require it. I've actually drafted it. I
9 should be able to get it to Phil and his folks to look
10 at. You guys need to look at it.

11 So I would suggest a motion to authorize the
12 preparation of an appropriate agreement and to
13 authorize the Executive Officers to execute it when
14 they deem it a fit.

15 MS. COX: So moved.

16 MR. IRVIN: Second.

17 CHAIRMAN McCUSKER: All in favor say aye.

18 (Board responds aye.)

19 CHAIRMAN McCUSKER: Opposed? Nay.

20 (Motion moved, seconded and passed
21 unanimously.)

22 CHAIRMAN McCUSKER: There you go.

23 MR. COLLINS: Thank you.

24 CHAIRMAN McCUSKER: While you're up there,
25 Mr. Collins, you're going give us a little update on

1 the new conflict of the interest statutes?

2 MR. COLLINS: Yeah. Mr. Chairman, Members of
3 the Board, conflicts of interest are some of the most
4 important things that you need to know. They are also
5 the driest, most boring. I'll try to make it as
6 tolerable as I can, but it is not an easy topic. And
7 you have Jeff Hill to blame for that. He helped write
8 these statutes. So I've asked Jeff, if I misstep or
9 fail to mention something that he recalls from his days
10 in the Legislature, I told him to call me on it.

11 Conflict of interest statutes are all found
12 in 38-501 et seq. Et seq. is lawyer for the rest of
13 the stuff that follows that. The statutes apply to you
14 because the District is a public agency and you folks
15 are public officers.

16 This is a summary of what they say. When you
17 or your relative -- and relative in quotes, because
18 we're going to talk about that -- has a substantial
19 interest in a decision of the District. You shall make
20 that known in the official records and you shall
21 refrain from participating in any manner. That's, in a
22 nutshell, about five or six statutes, right.

23 Let's talk about who a relative is. We know
24 who you are. Who's a relative? The Legislature, in
25 its wisdom, has a sentence that you have to dig in to

1 to understand it, but this shows you pictorially who
2 the relatives are. We have you in the middle. We have
3 and your kids and your grandkids. Those are certainly
4 relatives of yours. Your sibs are relatives, their
5 spouses are relatives, your spouse, his or her
6 children, siblings, parents, those are all relatives.
7 When you go upstream, it's parents and maternal and
8 paternal grandparents. What you do not see in there
9 are aunts and uncles. But that is a pretty broad
10 spectrum. So when somebody comes before this Board
11 asking for money or to enter a contract, you need to
12 not just think about who, what relationship you have,
13 but what relationship all of those folks might have.
14 Next one, please. And if you've got any questions, bug
15 me.

16 A conflict of interest arises when there's a
17 pecuniary, which means money, or propriety, an
18 ownership interest, is deemed substantial. It's really
19 pretty easy, because it's substantial, unless it falls
20 within a remote category. And the Legislature has
21 defined those remote categories. Most of them we've
22 all talked about before. There's a couple of new ones
23 that were enacted in the last Legislature, which I
24 think is part of the reason why I'm doing this.

25 So the pivotal questions are whether your

1 interest is substantial and whether your relative's
2 interest is substantial. As I said, the analysis
3 almost begins and ends (static noise) -- obviously, I
4 talk too loud. Unless the interest falls within one of
5 these about 10 or 11 categories that we're going to
6 talk about, it is a substantial interest.

7 One of them is the interest of a nonsalaried
8 officer of a nonprofit corporation. Obviously, if you
9 are nonsalaried and nonprofit, there's no pecuniary
10 interest involved. Mr. McCusker appeared before this
11 Board when he was Chairman of Fox. He then became your
12 chairman. There was no conflict there because of that
13 particular exemption.

14 Interest of a landlord, tenant and a
15 contracting party. I think that's an interesting one.
16 It's come into play here. I don't know exactly what
17 the Legislature was thinking, but that's pretty easy to
18 understand.

19 Interest of an attorney and a contracting
20 party. We lawyers look out for ourselves. So that's
21 an exception or remote interest.

22 Nonprofit cooperative marketing association.
23 No problem there. Next one, please.

24 This one has been around for a long time.
25 Ownership of less than three percent of a corporation

1 for profit and you don't get a lot of money from that.
2 For example, if you are sitting on an Advisory Board of
3 a big bank and you get a little bit of ownership
4 interest in that big bank, and that big bank comes in
5 front of this Board, if your income falls within that
6 category, there's no conflict. So if you own stock in
7 a big company that comes here, that's probably the
8 remote interest. Next one, please.

9 Officer being reimbursed for actual necessary
10 expenses. If you park in the parking lot over here and
11 you get paid to come to these -- or you pay to come to
12 these meetings, the fact that you get reimbursed
13 doesn't make you have a conflict of interest.

14 This one is long. I tried to come up with a
15 good example. I haven't been able to do it. But trust
16 me, this is another safe harbor. All of these -- if
17 you look at remote interest, they are safe harbors.
18 And it's a public officer or relative of a public
19 officer unless certain things happen in there. If you
20 want questions about it, I'll try to come up with an
21 example. I haven't been able to do it yet. Next one,
22 please.

23 Member of a trade or business in which
24 there's at least 10 members, in which the interest is
25 not greater than the other members of that class. So,

1 if Chris was a member of an 11-man partnership and
2 everybody had the same voting rights, and that
3 partnership came in front of this Board, it's arguable
4 that you would fall within that interest and you
5 wouldn't be disqualified. Those are some -- that's
6 close. Your lawyer might talk to you a little bit
7 about that, but what's that says. Okay. So the next
8 one.

9 This a new one. This is the one that comes
10 into effect January 1 of '17. I originally thought
11 that all of these came into effect with all the rest of
12 the statutes that were enacted in the last session, but
13 I realized January 1 is the date. This is a new one.
14 This is where a relative who is an employee of a
15 business entity where there are at least 25 employees
16 in the State and does not assert control or decision
17 making authority. It carves out another safe harbor
18 from the substantial interest. That's new. That's one
19 of the reasons we're talking today. Next one, please.

20 This is also new. This, I think, covers a
21 lot of the same ground as the three percent that we
22 talked about before. Ownership of a publicly-traded
23 investment that's held in an account or fund, like your
24 mutual funds and so forth. If Caterpillar comes before
25 you and you own Cat through a mutual fund managed by a

1 professional, that's not going to disqualify you for
2 it. Next one, please.

3 Another change. Current is just any
4 pecuniary or proprietary interest. As of January 1
5 they've inserted the word nonspeculative, which I can't
6 find in the dictionary, but the courts have already
7 inserted that, case law did that. The Legislature has
8 adopted that. So to my way of thinking, that makes
9 it -- narrows the disqualification a little bit. Next
10 one, please.

11 Short version. I looked at this this
12 morning, I thought I did a lousy job of the short
13 version. If your relative or you have a pecuniary or
14 proprietary interest, talk to me about it. Don't do
15 anything. If you have one, we need to make full
16 disclosure of it in the official records, which should
17 be done right here, and then you can't communicate in
18 any way with any of the Board members about that topic.
19 Next one.

20 Again, this is a big deal to me. That's who
21 relatives are. And I will tell you, I thought about
22 putting the language up and I thought you'd shoot me,
23 but that's what the language says. Those are your
24 relatives. Next one.

25 The determination of what is a remote

1 interest is made by the courts on a case-to-case basis.
2 In other words, they have the benefit of hindsight; we
3 don't. If you ask me, is there a conflict of interest,
4 I'm going to be trying to predict it. I'm going to be
5 conservative about it, because we don't need to have
6 the problems that could arise if a court later looks
7 back and says, Collins, you were wrong. Okay.

8 Risk of assuming no conflict or you -- the
9 contract can be declared void. You'd have to defend a
10 lawsuit, criminal charges and forfeiture of your
11 office. You don't want to do that. So -- one more,
12 please.

13 So if it has a possible -- so four points.
14 One, if there's a possible personal or relative
15 interest, pause, think about it. It's your decision,
16 not mine. It's your decision, but talk to me. Because
17 I don't expect you to navigate these, because they are
18 not that easy keep your radar up. And if it exists,
19 you can't participate in any manner.

20 That's it, huh?

21 Any questions. Have I put you all to sleep?

22 Okay. Jeff, okay with you?

23 MR. HILL: Yeah. Mr. Chairman, Mark, the one
24 that's used most certainly that I saw in the evolution
25 of this is that class. That is a biggie. And we were

1 always determining whether or not someone's in a class.
2 Because a lot of people think, well, I'm in that
3 situation, and I was in one where I lived within
4 three miles of Saguaro National Monument, therefore, I
5 had a conflict of interest. I did not, because there
6 was 200,000 other people in that class.

7 MR. COLLINS: Right.

8 MR. HILL: Which did not give me a pecuniary
9 interest.

10 MR. COLLINS: It was speculative to say that
11 you had a pecuniary or proprietary interest.

12 MR. SHEAFE: That's correct.

13 MR. COLLINS: You can stretch this stuff out.
14 And what the Legislature confirmed with the amendment
15 is that we can't speculate. We need to be -- it needs
16 to be real.

17 Anybody else?

18 CHAIRMAN McCUSKER: I think, in practice, we
19 ask you pretty much everything.

20 MR. COLLINS: You do.

21 CHAIRMAN McCUSKER: If we have a relative
22 that works for somebody who might be coming to the
23 Board, we send it to you.

24 MR. COLLINS: And I --

25 CHAIRMAN McCUSKER: In my mind, the safest is

1 sort of look to you to clear it. Even though we may
2 think we're fine, we're better off, I believe, is more
3 defensible if we ask you and you said, no, you're fine;
4 or no, you are conflicted. There have been some
5 situations, we just had one recently, but relative
6 under the employment of a developer, and we recused
7 him.

8 MR. COLLINS: Yes. Yes. Yes, Your Honor.
9 You're spending public money, you're dealing with other
10 people's money, you need to be very cautious about
11 this.

12 CHAIRMAN McCUSKER: Any questions for, Mark?

13 MR. HILL: I thought it was interesting this
14 last week -- I think I sent it to Mark -- the faux pas
15 committed by the Tucson Unified School District. I
16 thought they were nailed appropriately, and clearly was
17 not one of the seven exemptions. They tried to pass
18 off an action in their Executive Session where they, in
19 essence, took a vote by noncommittal of a nonlegal area
20 and then tried to say it was by their lawyers. They
21 actually ratified a proposal by the Superintendent for
22 going forward on some specific area. Nothing to do
23 with lawyers and what have you, and they are going to
24 catch that one in the nose.

25 MR. COLLINS: Yeah.

1 MR. HILL: And that was the group that caused
2 the original adjustment with the statute, was T.U.S.D.
3 I guess they haven't learned their lesson yet.

4 MR. COLLINS: Mr. Chairman, Members of the
5 Board, you are very good about talking to me, and it's
6 just something I want you to be very aware of. I think
7 you are. I keep track. I've got a little cheat sheet
8 that I keep with me and bring every Board meeting, so I
9 know what conflicts exist. My good-looking, trusty
10 sidekick over here reminds me about it a lot too. So
11 we're in good shape.

12 CHAIRMAN McCUSKER: Mark, thank you very
13 much.

14 Last item Michele, call to the audience. Do
15 you have any?

16 Entertain a motion to adjourn.

17 MS. COX: So moved.

18 MR. IRVIN: Second.

19 CHAIRMAN McCUSKER: So moved. All in favor
20 say aye.

21 (Board responds aye.)

22 (Motion moved, seconded and passed
23 unanimously.)

24 CHAIRMAN McCUSKER: Meeting adjourned. See
25 you next time.

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REPORTING FIRM CERTIFICATE

THIS FIRM CERTIFIES the ethical obligations
set forth in ACJA 7-206 (J)(1)(g)(1) through (6)
are in compliance and have been met.

WITNESS MY HAND this 31st day of August 2016.

KATHY FINK & ASSOCIATES, INC.
No. R1003