JOSEPH LAWRENCE (SBN 99039)
Interim City Attorney
Joseph.lawrence@santamonica.gov
KIRSTEN R. GALLER (SBN 227171)
Deputy City Attorney
kirsten.galler@santamonica.gov
BRANDON D. WARD (SBN 259375)
Deputy City Attorney
brandon.ward@santamonica.gov
1685 Main Street, Room 310
Santa Monica, California 90401
Telephone: (310) 458-8336
Facsimile: (310) 395-6727

CAROL M. SILBERBERG (SBN 217658)
ROBERT P. BERRY (SBN 220271)
BERRY SILBERBERG STOKES PC
csilberberg@berrysilberberg.com
155 North Lake Avenue, Suite 800
Pasadena, CA 91101
Telephone: (213) 986-2688
Facsimile: (213) 986-2677

Attorneys for Defendant
CITY OF SANTA MONICA

Exempt from filing fee pursuant to Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OSCAR DE LA TORRE and ELIAS SERNA,

Plaintiffs,

v.

CITY OF SANTA MONICA, and DOES 1 through 10, inclusive

Defendants.

CASE NO.: 21STCV08597

Assigned to Hon. Richard L. Fruin

SUPPLEMENTAL APPENDIX OF AUTHORITIES CITED IN SUPPORT OF DEFENDANT CITY OF SANTA MONICA'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

Date: May 6, 2022
Time: 9:15 a.m.
Dept.: 15

Action Filed: March 4, 2021
Trial Date: June 13, 2022

For the convenience of the Court, Defendant City of Santa Monica hereby files its Appendix of Supplemental Authorities Cited in Support of Its Opposition to Plaintiffs' Motion for Summary Judgment or, in the Alternative, for Summary Adjudication and attaches the following authorities:

1. 58 Op. Cal. Att'y Gen. 345 (1975), attached hereto as Exhibit 1.
2. LAC Op. No. 2005:3, attached hereto as Exhibit 2.

Dated: March 10, 2022

BERRY SILBERBERG STOKES PC
CAROL M. SILBERBERG

By *Is/ Carol M. Silberberg*
Carol M. Silberberg

Attorneys for Defendant
CITY OF SANTA MONICA

Exhibit 1

In summary, therefore, it is concluded that the responsibility to report cases of disorders characterized by lapses of consciousness is the individual responsibility of both the diagnosing and the treating physician.

Opinion No. CV 74-317—May 30, 1975

SUBJECT: SANTA MONICA AIRPORT—USES—COMMISSION—Considering its numerous contractual and lease obligations, Santa Monica may not cease using Municipal Airport for airport purposes. Conflict of interest arises when members of Airport Commission participate in proceedings to determine charges for tie-down spaces where they are lessees of such spaces.

Requested by: ASSEMBLYMAN, 44th DISTRICT

Opinion by: EVELLE J. YOUNGER, Attorney General

Daniel Weston, Deputy

The Honorable Alan Sieroty, Assemblyman from the Forty-Fourth District, has requested an opinion on the questions which may be stated as follows:

1. May the City of Santa Monica, at the present time, cease using the Santa Monica Municipal Airport for airport purposes?

2. Would a conflict of interest arise where members of the Santa Monica Airport Commission participate in Commission proceedings for the purpose of making recommendations to the Santa Monica City Council concerning charges to be levied for aircraft tie-down spaces at the Santa Monica Municipal Airport where such members are lessees of such tie-down spaces at such airport?

The conclusions are:

1. The City of Santa Monica, at the present time, may not cease using the Santa Monica Municipal Airport for airport purposes.

2. A conflict of interest does arise where members of the Santa Monica Airport Commission participate in Commission proceedings for the purpose of making recommendations to the Santa Monica City Council concerning charges to be levied for aircraft tie-down spaces at the Santa Monica Municipal Airport where such members are lessees of such tie-down spaces at such airport.

The conflict of interest may be avoided by the affected member by immediately disclosing the interest, withdrawing from participation in the matter, refraining from voting, refraining from attempting to influence other members, and having all of these matters reflected in the minutes.

ANALYSIS

1. May the City of Santa Monica, at the present time, cease using the Santa Monica Municipal Airport for airport purposes?

The Santa Monica Municipal Airport,[1] is owned by the City of Santa Monica.[2] The initial property was acquired pursuant to a bond measure approved on April 14, 1926, with the bond monies to be used for public park purposes.[3]

In 1927, the State Legislature enacted the following provision into law:[4]

> "Any lands previously acquired by . . . any municipal corporation . . . . for park purposes, may be used for any of the purposes in this section specified [airport operation]; it being hereby specifically declared that the purpose specified in this section shall constitute park purposes."[5]

The property initially acquired consisted of approximately 128 acres and included Clover Field, a then operating air field. The City, since the original acquisition, has purchased outright, additional lands and the Airport presently consists of approximately 215 acres.

Almost from the inception, and continuing to the present time, the City has entered into numerous contracts, leases and licenses affecting the use of the Airport. It is abundantly clear that the City had such authority to obligate itself. Section 50474 of the Government Code[6] subdivisions (c) and (h) provide that in connection with the erection or maintenance of an airport, a local agency may "Lease or assign for operation any space and any necessary or useful appurtenances, appliances, or other conveniences," and may "Enter into contracts or otherwise cooperate with the Federal Government or other public or private agencies."

Section 50475 provides:

> "A local agency operating or maintaining an airport may grant leases, licenses, concessions, and other privileges, regarding aviation facilities to the state or the United States, for the use or occupation of hangars, structures, works, or other aviation facilities by the Department of Defense, National Guard, or other state or federal departments or agencies in connection with aviation or air commerce."

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[1] Hereinafter referred to as the Airport.

[2] Hereinafter sometimes referred to as City.

[3] The people of Santa Monica, on April 14, 1926, adopted the following proposition:

> "Shall the City of Santa Monica incur a bonded indebtedness of $860,000 for the acquisition, construction and completion of a certain municipal improvement, to wit: the acquisition of lands in the City of Santa Monica, California, being a part of that certain tract of land commonly known as Cloverfield for public park purposes, and the improvement thereof by the acquisition or construction therein of all such buildings, structures and improvements as may be necessary or convenient for purpose of a public park?"

[4] Stats. 1927, Chap. 267, effective July 29, 1927.

[5] Cases in other jurisdictions have held that airport use is a type of park use, irrespective of statutory definitions. One such case was *Schmoldt* v. *Oklahoma City*, 144 Okla. 208 (1930). In the *Schmoldt* case, the court considered "whether or not an aviation airport, with all necessary and proper equipment . . . may be paid for out of funds derived from the sale of bonds issued and sold for the purpose of public park improvement." The court decided: "If a city may use a portion of such funds (derived from the sale of bonds voted to purchase or maintain a park) for building sidewalks around, walks and driveways through a park for the amusement of the public, we see no good reason for holding the city cannot expend a part of its funds in maintaining an airport. . . ."

[6] All references are to the Government Code unless otherwise stated.

Section 50478 provides:

"A local agency may lease or sublease property owned, leased, or otherwise controlled by it for not to exceed 50 years for airport purposes or purposes incidental to aircraft, including:

"(a) Manufacture of aircraft, airplane engines, and aircraft equipment, parts, and accessories.

"(b) Construction and maintenance of hangars, mooring masts, flying fields, signal lights, radio equipment, service shops, conveniences, appliances, works, structures, and other air navigation, aircraft, and airplane engine manufacturing plants and facilities."

It is clear that a municipality may enforce its airport contracts, *City and County of San Francisco* v. *Western Air Lines, Inc.*, 204 Cal. App. 2d 105 (1962); and that contracts are enforceable against the municipality. *Trans World Airlines* v. *City and County of San Francisco*, 228 F.2d 473 (1955), *cert. den.* 351 U.S. 919 (1956). In this case, the City and County of San Francisco, in 1942, entered into a long term contract for 20 years with TWA with the payment charges fixed by the agreement. In 1950, the Board of Supervisors attempted by resolution to raise the fees to be paid by TWA. The Court held that the City and County of San Francisco had bound itself as to its rates and charges by entering into a valid contract expressly authorized by state law, and that during the term of such contract, it could not unilaterally change the terms thereof. (See *Berkeley Lawn Bowling Club* v. *City of Berkeley*, 42 Cal. App. 3d 280 (1974).)

Note is further made of the legislative intent that these municipal airport contracts are to be observed. Sections 37440 through 37444 provide generally that a municipally owned airport, which is restricted to use for airport purposes, may, under certain conditions, be sold. Section 37443 expressly provides that such sale "shall be made subject to any duty or obligation imposed by law or contract upon the city with respect to such property."[7]

We now turn to a consideration of the numerous contracts which have been entered into by the City respecting the use of the Airport and its property. No useful purpose would be served by considering in detail each of these agreements since a consideration of some of them will amply demonstrate the degree to which the City has contracted away its rights to deal freely with the Airport property and its uses as an airport. These agreements may be subsumed under 5 general classifications; Federal Grant Agreements, Federal Lease Agreements, Federal Transfer Agreement, State Grant Agreements, and Private Lease Agreements.[8]

[7] In the event of a sale of an airport pursuant to these sections, the airport must continue to be used for airport purposes for not less than 10 years from the date of sale. § 37443.

[8] The Office of the City Attorney of Santa Monica has provided us with copies of many of the outstanding private leases as well as a comprehensive chronological history of events affecting the Airport. The Federal Aviation Administration has provided us with copies of 27 documents involving agreements with the Federal Government. The State Department of Aeronautics has provided us with copies of 12 grant agreements made pursuant to the California Airport Assistance Funds. (§§ 21680-21688, Public Utilities Code.)

In 1941, the City of Santa Monica and the Federal Government entered into Lease No. W-04-193-ENG.4894, modified by supplemental agreements number 1, dated July 23, 1945, and number 2, dated July 15, 1946. The City and the Federal Government also entered into Lease No. W3460-ENG.549, dated December 1, 1941, and modified by supplemental agreements number 1, dated December 20, 1944, and number 2, dated July 25, 1946. These leases cover approximately one hundred seventy acres of the property located at the Airport. The Federal Government expended approximately $800,000.00 in improving the land leased to it, and the City, in return, agreed pursuant to the above mentioned leases, to maintain the airport for the benefit of the public during the life of these improvements.

The nature of such improvements were the construction of two hangars, the construction of a control tower, fencing, construction of a service road and utilities and improvement of a concrete runway and taxiway.[9]

In addition, six grant agreements were entered into between the City and the Federal Government. In essence, these grant agreements provided the City with Federal funds for the improvement of the Airport property. In return for such funds, the City has agreed to maintain the Airport for the use and benefit of the public during the life of the improvement made with the Federal funds. In no event is the life of the particular improvement deemed to be more than twenty years, under any grant agreement. Therefore, the maximum duration of the obligations of the City under these grant agreements is twenty years from the date of execution of the grant agreement.

The first such grant agreement is number 9-04-044-801, Contract No. CA6A2985. It was entered into on May 11, 1944. Two amendments dated 6-24-48 and 10-18-48 were also executed. This agreement, by its terms, expired in twenty years from the date of the last amendment to it, or in 1968 and thus is not material to our inquiry.

The second grant agreement, number 9-04-044-5702, Contract No. C4A-4161A, was entered into on June 25, 1957. Under this grant agreement, the United States agreed to incur maximum obligations of $20,056.00 for the construction of an entry road, fence relocation, installation of obstruction lights, and installment of taxiway entrance signs. As with the previous grant agreement, Section 8 of the June 25, 1957 agreement required that the agreement remain in full force and effect throughout the useful life of the facilities developed under the project, not to exceed twenty years from the date of acceptance of the agreement. Therefore, the City of Santa Monica ceases to be bound by the provisions thereof on June 25, 1977. The actual cost incurred by the Federal Government under this grant agreement was $20,266.26.

The third grant agreement, number 9-04-044-083, Contract No. C4CA4906-A, was entered into on April 23, 1958, and provided for Federal funding for construc-

[9] Most of the agreements with the Federal Government provide that the term of the obligation shall continue during the useful life of the improvements. No information has been provided us, nor suggestion made to us, that the useful life of all such improvements have now expired.

tion of a taxiway crossing, construction of an aircraft apron, and construction of extensions to existing aircraft aprons, including storm drains. The Federal Government expended $19,574.00. Again, this agreement was limited in duration to the useful life of the improvements provided for thereunder, but in no event to exceed twenty years, or 1978.

The fourth grant agreement, number 9-04-044-5904, Contract No. FA-4-188, was executed on April 29, 1959. The improvements to be made by the Federal Government under this grant agreement were the construction of an additional apron including a drainage and a retaining wall. The amount expended was $13,952.00. As with the other agreements, this one was limited to the useful life of the improvements constructed thereunder, not to exceed twenty years, or 1979.

The fifth grant agreement, number 9-04-044-D205, Contract No. FA-WE-2313, was entered into on June 22, 1962. The improvements made under this 1962 grant agreement were the construction of an extension of the aircraft apron, including a retaining wall, hazard lights, and the relocation of utilities. The obligation of the Federal Government under this agreement was $72,804.00. The duration of this agreement was the useful life of the improvements made but in any event the agreement term was not to exceed twenty years, or 1982. As a part of this agreement, a sponsor's assurance agreement was executed by the City. A similar sponsor's agreement had previously been incorporated in the amendment to the first grant agreement, executed in 1948, and reincorporated in the grant agreement of June 25, 1957. Paragraph 6 of the project application dated April 30, 1962, states as follows:

> "The sponsor will operate and maintain in a safe and serviceable condition the airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the airport . . . and will not permit any activity thereon which would interfere with its use for airport purposes."

The following language is contained in Part 3 of the same sponsor's assurance agreement:

> "2. The sponsor will operate the airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the sponsor specifically agrees that it will keep the airport open to all types, kinds, and classes of aeronautical uses . . .
>
> * * *
>
> "4. The sponsor agrees that it will operate the airport for the use and benefit of the public on fair and reasonable terms . . ."

These provisions were incorporated in the later grant agreement.

The sixth grant agreement, number 9-04-044-906, Contract No. DOT-FA69WE-1535, was executed on July 24, 1968. The improvements to be constructed thereunder included the removal of an abandoned control tower, the

modernization of field lighting, the relocating of field lighting controls and circuits, and a new control tower. Also, a new control tower panel was to be built. The actual amount spent by the Federal Government under this grant agreement was $12,406.00.

In addition the City has entered into numerous lease agreements with the Federal Government. Some of these are noted below.

Lease No. FA4-1718, was executed on July 26, 1961, and expires June 30, 1981. The Federal Government installed a navigational aid facility on the property which is the subject of this lease, which is known as a Vassy Visual Slope Indicator. The cost for this visual slope indicator was $26,560.00, and this cost was borne by the Federal Government.

Lease No. WE-17024, was executed on April 12, 1963, and expires June 30, 1983. The land was acquired by the Federal Government for installation of a very high frequency omni range facility. The cost for the construction of this facility was $226,000.00 which was borne by the Federal Government.

Lease No. FA64-WE1054, was executed on July 2, 1964, and expires June 30, 1984. The land leased to the Federal Government is used for runway and identifier lights. The amount of money expended by the Federal Government for this facility was $5,420.00.

Lease No. FA65-WE1153, was executed on April 6, 1965 and expires June 30, 2015. This lease is for property upon which a control tower was constructed. The cost for the construction of the control tower facility by the Federal Government was $386,931.00.

Lease No. FA65-WE1194, was executed on August 25, 1965, and expires June 30, 2015. The land leased is used for a remote transmitter receiver. The cost to the Federal Government for this facility was $46,600.00.

Lease No. DOT-FA72-WE-1830 was executed June 30, 1972, and expires June 30, 1982. The cost to the Federal Government for this lease is $11,000.00 per year. The land is used for general aviation district offices and the amount spent by the Federal Government to date for improvements is $22,540.00.

In addition to the above, various other leases with the Federal Government have, from time to time, been entered into.

These leases include the lease signed on January 15, 1953, two signed on May 29, 1968, and three on March 29, 1971. The expiration dates of these leases are, respectively, 1978, 1981, 1983, 1984, 2015 and 2015.

On August 10, 1948, the City and the Federal Government executed a document entitled *Instrument of Transfer*. By this document the Federal Government acting pursuant to the War Assets Administration Act, returned control of the Airport property to the City. The Instrument of Transfer provided that the surrender to the City was subject to certain reservations, restrictions, conditions and covenants as thereafter set forth, and that the same shall run with the land. Only a few of the conditions, etc., will be alluded to.

The City agreed that the propery transferred "shall be used for public airport purposes for the use and benefit of the public," that "the United States of America . . . through any of its employees or agents shall at all times have the right to make non-exclusive use of the landing area," and finally that "no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by . . . [the City of Santa Monica] for other than airport purposes without the written consent of the Civil Aeronautics Administrator, which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located."[10]

From 1962 through and including 1973, the City has received 11 payments in excess of $37,000 from the Airport Assistance Revolving Fund administered by the State Department of Aeronautics. In each case the City obligated itself to expend such funds for airport and aviation purposes as the same is set forth in section 21681 Public Utilities Code. Unlike the receipt of Federal grants, the receipts of these State grants, did not expressly obligate the City for specific time periods. However section 21687 Public Utilities Code does provide that in the event a beneficiary airport ceases to be used as an airport within 20 years of a grant, that repayment of the monies must be made to the Airport Assistance Revolving Fund as therein more specifically set forth.

We consider finally the contract obligations which the City has incurred with private parties relative to the use of the Airport. There are numerous master lease agreements and subsidiary sub-leases executed by the master lessees. Extensive consideration of these leases regarding the use of the Airport is not necessary. Some of the master leases include leases with Clover Leaf Aviation, Lear Siegler, Bel Air Service, Douglas Aircraft Corporation, Pacific Aeromotive, Inc., Gunnell Aviation, Kettler Aviation, Jon Daudy, Earl Beacon Lease a Plane, and Briles Helicopter. These leases expire respectively in 1996, 1979, 1979, 1986, 1979, 1979, 1979, 1982, 1981, and 1979.

In summary, it is apparent that the City has entered into numerous contracts and leases wherein it has contracted away its rights to deal freely with the Airport property and its uses as an airport. These contractual agreements when considered as a whole and in light of the overall pattern of extensive and extending obligation,

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[10] The former City Attorney of Santa Monica, Robert G. Cackins, on January 23, 1962, issued an opinion which concluded, "Deed No. 4 (CCS) ("Instrument of Transfer") and the terms of the project application above alluded to compel the conclusion that the City must operate the airport as an airport, and that the City cannot legally unilaterally, on its own motion, abandon the use of the Santa Monica Municipal Airport as an airport."

The present City Attorney, Richard L. Knickerbocker, has suggested that several of the agreements entered into with the Federal Government (including said Instrument of Transfer) may be voidable under general contract law. For the purposes of this opinion we assume without deciding that all the agreements considered herein are valid, since the avoidance of several of the agreements would not significantly affect the remaining overall pattern of obligation.

leads to the conclusion that the City may not at the present time cease using the Airport for airport purposes.[11]

2. Would a conflict of interest arise where members of the Santa Monica Airport Commission participate in Commission proceedings for the purpose of making recommendations to the Santa Monica City Council concerning charges to be levied for aircraft tie-down spaces at the Santa Monica Municipal Airport where such members are lessees of such tie-down spaces at such airport?

The Santa Monica Airport Commission[12] is created by the City charter. Section 1015 of the Santa Monica Municipal Code provides:

> "There shall be an Airport Commission, consisting of five members, which shall be appointed by the City Council. They shall be qualified electors of the City, none of whom shall hold any paid office or employment in the City government."

The duties of the Commission are set forth in section 1016 of the Santa Monica Municipal Code as follows:

> "The Airport Commission shall have power and be required to:
>
> "(a) Act in an advisory capacity to the City Council in all matters pertaining to the Municipal Airport and to aviation matters generally to the extent that they affect the City;
>
> "(b) Approve or disapprove the appointment of a Municipal Airport Director by the City Manager, as and when the City Council provides for the filling of such position; and
>
> "(c) Consider and recommend to the City Council rules and regulations for the management and operation of the Municipal Airport."

We are informed by the City Attorney that the Commission acting under subdivision (a) above, advises the City Council as to what rates should be charged for tie-down spaces; and acting under subdivision (b) above, the Commission exercises an absolute veto power over the appointment of the Airport Director. The Airport Director's duties and powers are extensive.[13] It is thus apparent that

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[11] In concluding that contractual commitments prevent the present cessation of airport usage, we do not reach the question as to what extent the partial acquisition of airport property pursuant to the 1926 bond election was tantamount to public dedication of such property thereby exercising further restraints on the City as to its options in dealing with the property.

[12] Hereafter referred to as Commission.

[13] Section 2217 of the Santa Monica Municipal Code provides:

"The duties and functions of the Airport Director shall be as follows:

"(a) Be responsible for all activities of the Santa Monica Airport;

"(b) Act as department head for the Santa Monica Airport Department;

"(c) Supervise all personnel, protect facilities and property of the City at such Airport;

"(d) Maintain all records of flight operations as required;

"(e) Supervise the operation of the Control Tower;

"(f) Attend all meetings of the Airport Commission; and

"(g) Perform such other duties in connection with the maintenance and operation of such Airport as may be prescribed by the City Manager."

the Commission functions not only in an advisory capacity, but also exercises some of the governmental powers of the city. The members, therefore, appear to be "officers." Consequently, we need not meet any potential issue as to whether the members are "officers" or "officials" within the meaning of the various conflict of interest statutes. *See*, generally, 42 Ops. Cal. Atty. Gen. 93, 95 (1963).

Conflict of interest laws fall under two broad classifications, statutory law and the common law of conflicts of interest. We shall examine them both.

The Political Reform Act of 1974 (known as Proposition 9 in the June 4, 1974 primary election), is codified in sections 81000 through 91014. Section 82048 provides that, "'Public official' means every member, officer, employee or consultant of a state or local government agency." Section 87100 provides that, "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." However it appears that Commission members do not fall within section 87100 in that they do not have a financial interest as such as defined in section 87103 which provides in relevant part:

> "An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:
>
> * * *
>
> "(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars ($1,000);"

We have been informed that the cost of tie-down spaces range from $40 per month to $130 per month and that the rentals are from month to month. From the facts as we understand them, it would appear that a one month license interest costing $130 would not be an interest in property having a fair market value in excess of $1,000.[14]

Similarly, it would appear that the conflict of interests provision of the "Moscone Act," (§§ 3600-3760), would not apply since section 3625(b)(2) excludes therefrom property interests of less than $1,000 value.[15] Furthermore, sections 1090-1097 do not apply since these sections prohibit certain financial interests "in any contract" made by a member in his official capacity. § 1090.[16]

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[14] There are approximately 600 tie-down spaces available, not all of which are filled. An applicant fills out a document entitled "Rental of Space License." This agreement provides that the "license may be renewed monthly by payment of the monthly charge on or before the first of each month. Failure to pay monthly in advance shall automatically revoke this license . . . ."

[15] This Act has been substantially amended by 1974 Stats. Chapts. 48 and 1249.

[16] We are advised that the Commission members do not participate directly in the making and letting of the tie-down license contracts. Thus, literally, sections 1090, *et seq.* have no application to the questions presented herein. However, this proscription of the Code has been held to be applicable not only to the actual governmental contracting body, but also to *advisors* thereof as to the contract, or others who may participate in the making

Also, sections 8920-8926 do not apply since by its terms it does not extend to city officials.

We turn to a consideration of the common law of conflict of interest which we find applicable. It was stated in 42 Ops. Cal. Atty. Gen. 151 at 155 (1963):

> "The courts have made clear that even though 'a specific conflict of interest situation does not come within the statutory proscription—such a conflict may still be condemned by the courts as violative of public policy which is always susceptible to broader interpretation than the express statutory provisions.' Kaufmann & Widiss, *The California Conflict of Interest Laws*, 36 So. Calif. L. Rev. 186, 187 (1963). The fundamental policy is that 'A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated . . . to discharge their responsibilities with integrity and fidelity. . . . [T]hey may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. . . .' *Terry* v. *Bender*, 143 Cal. App. 2d 198, 206 (1956)."

And further in 40 Ops. Cal. Atty. Gen. 210, 212 (1962):

> "It is also important to note that the California courts have traditionally predicated conflict of interest decisions on the dual basis of: (a) the statutory restriction; and (b) the prohibition of sound public policy evolved from common law principles. See *City of Oakland* v. *California Const. Co.*, 15 Cal. 2d 573, 576 (1940); *Schaefer* v. *Berinstein*, 140 Cal. App. 2d 278, 290 (1956). Thus, in *Noble* v. *City of Palo Alto*, 89 Cal. App. 47, 51 (1928), the court concluded that, 'A public officer is impliedly bound to exercise the powers conferred on him with *disinterested* skill, zeal, and diligence . . . .' (Emphasis added.) Fidelity in the public officer must be maintained, and the law does not permit a public officer to place himself in a position in which he might be tempted by his own private interest to disregard the interests of the public. See *Stigall* v. *City of Taft*, Cal. Sup. Ct. Dkt. No. S.F. 20906 (Oct. 23, 1962); *People* v. *Darby*, 114 Cal. App. 2d 412, 425 (1952)."

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of the contract. See *Schaefer* v. *Berinstein*, 140 Cal. App. 2d 278, 291-292 (1956); 46 Ops. Cal. Atty. Gen. 74 (1965) re advisors. See *Stigall* v. *City of Taft*, 58 Cal. 2d 565 (1962); *Millbrae Assn. For Residential Survival* v. *City of Millbrae*, 262 Cal. App. 2d 222, 236-237 (1968), re other participants.

However, we believe that under the *unique* circumstances of this case a court would probably not so apply section 1090 if the Commission members complied with the subsequently discussed common law rules regarding full disclosure and nonparticipation. The unique circumstances herein are (1) that there is a *multiple* member Commission instead of a single "advisor" or other participant, as was the case in the authorities above cited, and (2) the advisory or participation status is one step removed from the actual contract itself. The public should be sufficiently protected by disclosure and abstention as hereafter set forth. Under similar circumstances we have similarly concluded. Letter to Hon. Sig Hansen, Director, Department of Human Resources Development, August 16, 1972, I.L. 72-143.

This office has further pointed out that, "The general common law-conflict of interest rule is not restricted to contractual relationships. . . . It strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." 46 Ops. Cal. Atty. Gen. 74, 86 (1965).

The gist of the common law of conflict of interest is to prevent the doing of an official act where the official may have a direct or indirect interest in the outcome. The courts of this state have held that an interest may be so remote and speculative as not to create any conflict of interest. *Hotchkiss* v. *Moran*, 109 Cal. App. 321, 323 (1930). What constitutes a remote and speculative interest is not clearly defined. For example, in *People* v. *Darby*, 114 Cal. App. 2d 412 (1952), the court used language that might suggest that any interest that might affect an official's conduct creates a conflict. In *Darby*, the Court, approving the instructions of the trial court, stated (at page 435):

> ". . . Whether the interest was *direct or indirect, remote or contingent*, the sum and substance of the three instructions read as a whole is that if the interest of the member is sufficient to cause him *to be swayed in the slightest degree* from his duty to the public, it is a violation of section 1097 as well as 1011." (Emphasis added.)

In light of the language in *Darby*, extreme caution should be exercised in concluding that an interest is too remote. It would appear not to be too remote an interest where the interest of the member of the Commission was that the member's spouse leased tie-down space from the City (*e.g.*, see the last paragraph of section 87103 where the interest of the spouse is deemed that of the official). Further it would appear that an interest would not be too remote where a member of the Commission leases tie-down from a private party at the Airport. This is so because a member could hypothetically keep the City rates low and thereby through the forces of competition keep the private rates low. We have been informed that two of the Commission members fall within these two examples.

We turn finally to the question of the remedy that is to be applied when it is determined that a conflict exists. Several opinions of this office have dealt with situations wherein matters have come before boards or commissions wherein a member of the board had an interest in the matter. In 26 Ops. Cal. Atty. Gen. 5 (1955) we were required to rule upon the question whether a supervisor could participate in the deliberations and decision regarding the relocation of a county road where the supervisor owned property traversed by one of the two routes under consideration. We held that he could not, stating at pages 6-7:

> "The question which arises at this point is whether the supervisor who owns the affected land may participate in the prior deliberations and decision concerning the route the relocated road is to take. It is obvious that this decision will directly affect a private interest of the supervisor; that is, whether or not his land will be condemned by the county. While Government Code section 1090 does not forbid his participation, since

the section is restricted to activities of a contractual nature, the common law rule on which it is based is not so limited."

Likewise, in 39 Ops. Cal. Atty. Gen. 165, 168 (1962) we held that a municipal ordinance was invalid which granted an exception to a zoning ordinance in which a city councilman, having a direct financial interest, cast the deciding vote. In so holding, we noted:

". . . this opinion should not be construed as holding that a member of a city council cannot have an interest, regardless of his lack of participation in the vote, in property subject to a zoning regulation of the city. As regards non-contractual matters coming before a governing body, if the interested officer refrains from voting, it would appear that the demands of public policy have been met; '. . . otherwise, only citizens who live and work in a complete vacuum could be qualified to sit on public bodies'. . . ."

Thus, it is seen that the common law doctrine prohibits *participation* by a Commission member in matters in which the member has an interest. This includes not only participation in the vote, but also prior deliberations. The latter is of course to prevent the member from *influencing* unduly the outcome of the vote.

In numerous opinions this office has, in articulating this common law remedy in conflict of interest situations, specified the approach of abstention:

"(1) he should immediately disclose the interest, (2) he should withdraw from any participation in the matter, (3) he should refrain from attempting to influence another member of the board and should refrain from voting, and (4) all of this should be reflected in the minutes."[17]

It is concluded that a conflict of interest does arise where members of the Santa Monica Airport Commission participate in Commission proceedings for the purpose of making recommendations to the Santa Monica City Council concerning charges to be levied for aircraft tie-down spaces at the Santa Monica Municipal Airport where such members are lessees of such tie-down spaces at such airport.

The conflict of interest may be avoided by the affected member by immediately disclosing the interest, withdrawing from participation in the matter, refraining from voting, refraining from attempting to influence other members, and having all of these matters reflected in the minutes.

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[17] Letter to Hon. Sig Hansen, Director, Department of Human Resources Development, August 16, 1972, I.L. 72-143. *Accord*: Letter to Mr. T. P. Stivers, District Securities Officer, District Securities Division of Office of State Treasurer, October 6, 1970, I.L. 70-177; Letter to Special Assistant Attorney General, February 17, 1972, I.L. 72-53; Letter to Dr. Malcolm H. Merrill, M.D., Director of Public Health, October 16, 1964, I.L. 64-163.

Exhibit 2

OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

OPINION NO. 2005:3
SEP 0 2 2005

OPINION RE:

POTENTIAL CONFLICTS OF INTERESTS OF BOARD OF AIRPORT COMMISSION NOMINEE VALERIA VELASCO

Honorable Tony Cardenas
Member of the City Council for the Sixth District
City of Los Angeles
200 North Spring Street, Room 455
Los Angeles, California 90012

Dear Councilmember Cardenas:

This letter is the response to your request for formal advice dated July 26, 2005, concerning potential conflicts of interests affecting Valeria Velasco, nominee to the Board of Airport Commissioners ("BOAC") resulting from Ms. Velasco's role as President of the Alliance for a Regional Solution to Airport Congestion ("ARSAC"), an entity currently suing the City, the City Council, the Los Angeles World Airports ("LAWA") and BOAC, challenging the Los Angeles International Airport ("LAX") Master Plan ("ARSAC Lawsuit"). City Charter Sections 271(b) and 222 require the City Attorney to provide advice where requested to do so by a City officer. The opinions expressed in this letter reflect publicly available information and written information provided to our office by Ms. Velasco. This opinion solely addresses whether Ms. Velasco or BOAC would be disqualified from acting on certain matters based on potential conflicts of interests.

QUESTIONS PRESENTED:

1. Is Ms. Velasco prohibited by the Political Reform Act from participating in or influencing matters within BOAC's jurisdiction?

2. Is Ms. Velasco or BOAC prohibited by Government Code Section 1090 from involvement in contracts entered into by BOAC?

3. Is Ms. Velasco or BOAC disqualified from acting on matters concerning the ARSAC Lawsuit by virtue of Los Angeles Charter Section 222?

SUMMARY OF ADVICE:

Based upon the information we have reviewed, we are currently not aware of any material financial interest that would restrict Ms. Velasco's ability to participate in or influence actions within BOAC's jurisdiction. Similarly, we are currently not aware of any financial interest that would preclude either Ms. Velasco or, by extension the entire BOAC, from making contracts.

However, Ms. Velasco will be disqualified by virtue of Charter Section 222 from participating in or influencing BOAC's decisions regarding the ARSAC Lawsuit while the litigation is pending. Any disqualification of Ms. Velasco under Charter Section 222 will not disqualify other members of BOAC. Additionally, during the pendency of the ARSAC Lawsuit Ms. Velasco may be disqualified on other LAWA matters depending on the matter's relationship to the ARSAC Lawsuit. However, a case-by-case determination of whether disqualification is required on this basis must be done considering the facts of the particular decision pending before BOAC at the time.

BACKGROUND:

I. BOAC's Charter Responsibility And Authority

The City of Los Angeles, through LAWA, manages and controls LAX and the airports in Van Nuys, Ontario and Palmdale. Charter § 600. LAWA, in turn, is managed and governed by BOAC. Charter §§ 600(b); 631. BOAC has broad authority, including the power to make rules and regulations for the design, maintenance, use, condition and operation of every machine, building structure or improvement at all of the airports within its jurisdiction. Charter § 632(b)(2). In addition, BOAC has the power and responsibility for the acquisition, design, maintenance, improvement, repair and operation of those airports. Charter § 632(c). The airports within BOAC's jurisdiction annually service over 68 million annual passengers and carry over 2.6 million tons of cargo.

II. Brief History of the LAX Master Plan

In 1994, with Council approval, LAWA began the process of developing a Master Plan to replace the LAX Interim Plan and to accommodate aviation advancements and increase capacity. Development of a Master Plan necessitated the preparation of an Environmental Impact Report (EIR), required by the California Environmental Quality Act ("CEQA"). By 1999, LAWA had developed a range of modernization alternatives. After the tragedy of 9/11, LAWA developed a modified alternative designed to accommodate the same level of activity the airport would be expected to serve in 2015 without any major improvements, while addressing heightened security concerns.

In December 2004, the City Council certified an EIR and adopted the LAX Master Plan, which included the LAX Plan, other general plan amendments, code changes, zone changes, the LAX Specific Plan, tract maps, the Mitigation Monitoring and Reporting Plan, several other entitlements and required findings (collectively, "LAX Master Plan"). The Council also approved three Community Benefits Agreements.

The LAX Master Plan has various components, including: ground access improvements, such as the Ground Transportation Center, the Intermodal Transportation Center, new airport roadways, the Consolidated Rental Car Facility, the Automated People Mover, and the FlyAway Program; improvements to the South and North Airfields for safety and to accommodate the new large aircraft; and renovations and modifications of the terminals, particularly necessary to accommodate the security baggage and passenger screening needs of the Transportation Security Administration (TSA) and to accommodate the larger aircraft now in use.

III. ARSAC's Lawsuit

In early January 2005, ARSAC filed a lawsuit in state court challenging the LAX Master Plan and related actions. The ARSAC Lawsuit challenges the Master Plan in its entirety, arguing, among other things, that it will permit increases in airport capacity that were not studied or mitigated. Additionally, the ARSAC Lawsuit challenges the EIR supporting the Master Plan, including impacts from noise, traffic, air quality, public health, environmental justice, safety and security. The ARSAC Lawsuit further challenges the EIR's baseline, horizon year, project description, and range of alternatives; the LAX Master Plan as inconsistent with a variety of regional plans; and the City Council's overruling of the determination of the County's Airport Land Use Commission. ARSAC claims the City should have revised and re-circulated the EIR instead of using addenda. The ARSAC Lawsuit also asserts a violation of due process arising from its claim that the City Council did not pay attention during the hearing when the tract map and appeal of the Final EIR certification were heard.

The ARSAC Lawsuit seeks an injunction precluding the City from taking any action on any Master Plan project. ARSAC's Lawsuit also seeks a writ of mandate ordering the City to vacate and set aside the EIR certification and project approval, comply with CEQA, and pay attorney fees and costs of suit.

IV. Nominee Valeria Velasco, Esq.

Mayor Antonio Villaraigosa nominated Valeria Velasco, Esq., to serve as a commissioner on BOAC, specifically to fill the BOAC seat reserved for a resident of the area surrounding LAX. *See* Charter § 630; *See also* LAAC § 23.1(b).

According to ARSAC's website, it was founded in 1995. The ARSAC Petition for Writ of Mandate in the Lawsuit, Paragraph 16, states that ARSAC is a registered 501(c)(4) non-profit entity. Ms. Velasco states that ARSAC is a political action

committee and has more than 2,000 members who have paid their dues at one time or another. Ms. Velasco has further stated that ARSAC has a President, Vice President, Secretary and Treasurer and various other Board members.

Ms. Velasco indicated that she has been involved with ARSAC for about nine years and was not one the founders of ARSAC. Ms. Velasco also stated that she was first a member of ARSAC and later was elected President. Speaking on behalf of ARSAC, Ms. Velasco has taken a consistent stance publicly opposing the LAX Master Plan.

In addition to serving as ARSAC's President for several years, Ms. Velasco has devoted time and resources to ARSAC and ARSAC's Lawsuit. For some period of time after ARSAC was formed, Ms. Velasco's law offices and ARSAC shared an office suite in Playa Del Rey. Ms. Velasco stated that she solicited funds from others for the ARSAC Lawsuit. We do not know whether Ms. Velasco personally contributed funds as well.

After Ms. Velasco was nominated to serve on BOAC, in an undated letter from Ms. Velasco to ARSAC (a copy of which was provided to our office and is attached to this Opinion), Ms. Velasco resigned as President and member of ARSAC as of July 29, 2005. The letter states that Ms. Velasco renounces all financial interests in the ARSAC Lawsuit.

DISCUSSION:

I. The Political Reform Act Does Not Require Ms. Velasco's Disqualification

A. General Discussion

The Political Reform Act (the "Act") prohibits public officials from participating in governmental decisions in which they have a financial interest. Specifically, no Commissioner may make, participate in making or attempt to use his or her official position to influence a governmental decision if the decision will have a reasonably foreseeable material effect, distinguishable from the effect on the public generally, on a financial interest of the official. Government Code § 87100.

Under the Act, an official has a "financial interest" in a decision if it is reasonably foreseeable that the decision will have a material financial effect on, *inter alia*, real property in which the official owns an interest of $2,000 or more, a business entity in which the official holds a position of management or owns an investment of $2,000 or more, a source of income of $500 or more received or promised to the official within the 12 months prior to the decision, and the personal expenses, income, assets, or liabilities of the official or his or her immediate family. See Government Code § 87103; 2 Cal. Code Regs. §§ 18703.1 - 18703.5.

B. Real Property Interests

We understand that Ms. Velasco's personal residence (and perhaps leased office space) is located in the vicinity of LAX. This property qualifies as a financial interest under the Political Reform Act if the fair market value of Ms. Velasco's interest in the property is $2,000 or more. See Government Code § 82033; 2 Cal. Code Regs. § 18703.2. Under the Act, this property will be considered directly involved in a BOAC decision if it is the subject of the decision (*e.g.*, concerning zoning, permitting, new or improved services, taxes) or if it is located within 500 feet of the boundaries of the property that is the subject of the BOAC decision. See 2 Cal. Code Regs. § 18704.2. If Ms. Velasco's residence or business lease is directly involved in a BOAC decision, the decision's financial effect on the property is presumed to be material. On the other hand, if Ms. Velasco's property or lease is indirectly involved, the financial effect is presumed not to be material. These presumptions are rebuttable. 2 Cal. Code Regs. § 18705.2.

Provided that Ms. Velasco's property interests (business and personal) are not located within 500 feet of LAX property and are not the subject of a BOAC decision within the meaning of the Act, it is unlikely that a BOAC decision will have a material financial effect on the property requiring disqualification. We caution, however, that determinations under the Political Reform Act must be made on a case by case basis analyzing the specific matter before BOAC as it relates to Ms. Velasco's property and other financial interests.

The possibility that Ms. Velasco's interest in her residence will trigger disqualification under the Act is reduced by the "public generally" exception set forth in 2 Cal. Code Regs. § 18707.4. This exception applies to officials who specifically are appointed to a commission to represent a particular economic interest. Such members are not disqualified from acting on matters that financially affect the economic interest they were appointed to represent, provided that a significant segment of those he or she was appointed to represent are affected similarly by the decision.

Ms. Velasco's nomination to fill the LAX Residency Area seat pursuant to Charter Section 630 manifests an implicit finding that Ms. Velasco is to represent and further the specific residential economic interests of her fellow LAX area residents. See *Cline Advice Letter*, No. A-03-110 (Aug. 22, 2003) (applying this "public generally" exception where the statute creating a historic district planning commission required that one representative be a resident of the historic district). Therefore, Ms. Velasco will not be disqualified on BOAC matters that financially affect her residence so long as the decision also affects the residences of a significant segment (*i.e.*, 50% or more) of LAX area residents in substantially the same or proportionately the same manner.[1]

[1] Disqualification would be required, however, if the decision has a material financial affect on an economic interest of Ms. Velasco other than the residence interest she was appointed to represent. 2 Cal. Code Regs. § 18707.4(a)(3).

C. Investment Interests and Sources Of Income

Ms. Velasco's mandatory pre-confirmation filing with the City Ethics Commission indicates that she also has a financial interest in at least two business entities. These entities and their clients may become sources of conflict to her as a BOAC commissioner. In order to protect the City's interest and avoid liability, Ms. Velasco should consult the City Attorney's Office to analyze specific conflicts regarding these entities on a case-by-case basis if they arise.[2]

D. Personal Finances

The Act also provides for a "catch all," such that a public official may be deemed to be financially interested in decisions that increase or decrease the personal expenses, income, assets or liabilities of the official or his or her immediate family by $250 or more in any 12-month period. 2 Cal. Code Regs. §§ 18703.5, 18704.5, 18705.5. This disqualification standard would be met, for example, if Ms. Velasco received or owed attorney's fees in connection with the ARSAC Lawsuit or otherwise receives or incurs payments related to the litigation, including reimbursement for previously-incurred costs, in the amount of $250 or more in any 12-month period. *See Battersby Advice Letter*, No. I-02-141 (Aug. 12, 2002) (analyzing a situation in which two councilmembers sued in their private capacities to set aside a city contract, the FPPC observed that "a public official always has an economic interest in his or her personal finances" and therefore would be disqualified from participating in any decisions that would foreseeably increase or decrease his or her litigation costs or expenses by the requisite amount); *see also Battersby Advice Letter*, No. I-03-227 (Oct. 23, 2003) (public officials who are members of an organization that has been sued by their board may not participate in board decisions that foreseeably will result in attorney's fees assessments for organization members or have other material effects on the officials' personal finances); *Aladjem Advice Letter*, No. A-99-111 (May 27, 1999) (public officials have a material financial interest in a litigation decision "if they incur any personal expenses or liabilities as a result of the litigation, such as attorney fees or litigation costs" of $250 or more in a 12-month period). Accordingly, Ms. Velasco would be disqualified from acting as an Airport Commissioner on any decision affecting the ARSAC Lawsuit that would increase or decrease her personal expenses by $250 or more in a 12-month period.[3]

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[2] The public generally exception of Section 18707.4, discussed above, would not be applicable to these types of financial interests. The interest Ms. Velasco was appointed to represent under Charter Section 630 is the specific residential interests of LAX area residents. Sections 18707 and 18707.1 contain a different public generally exception which might apply in limited circumstances if Ms. Velasco's interests in business entities or sources of income meet the specific criteria such that a significant segment of the public in the jurisdiction are affected in substantially the same manner. The public generally exception in Section 18707 and 18707.1 is narrowly construed by the Fair Political Practices Commission.

[3] Again, the public generally exception of Section 18707.4, discussed above, would not be applicable as financial interests in the litigation are not shared by her fellow LAX area residents. Having unique financial

Ms. Velasco has stated, however, that she has renounced any financial interest in the ARSAC Lawsuit and that she could never be required to contribute to litigation costs or attorneys' fees. Based on these representations, Ms. Velasco's former affiliation with ARSAC and the ARSAC Lawsuit would not, in and of itself, render her financially interested in BOAC decisions affecting the LAX Master Plan litigation such that she would be disqualified under the Political Reform Act.

II. Government Code Section 1090 Does Not Require Ms. Velasco's Or BOAC's Disqualification

Government Code Section 1090 prohibits "city officers or employees" from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." Government Code § 1090. If a public official has a financial interest in a contract, and no relevant exception applies, both the public official and the entire body or board to which the official belongs are prohibited from acting on matters relating to the contract.[4]

This section has historically been interpreted broadly to accomplish its purposes and to avoid both apparent and actual improper influence in the conduct of the public's business. *Thompson v. Call* (1985) 38 Cal.3d 633, 652; *Millbrae Association for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237. The term "financial interest" is to be liberally construed. *Thompson v. Call* (1985) 38 Cal.3d at 645. Courts may find a financial interest even if the official involved is not a party to the contract or where there is a mere possibility that the official will actually benefit from it. See *People v. Honig* (1996) 48 Cal.App.4th 289, 322 ("financially interested" means "any money or proprietary benefits, or gain of any sort or the contingent possibility of monetary or proprietary benefits").

As a preliminary matter, a settlement agreement in litigation has been considered a contract in Section 1090 analysis. *See, e.g.*, 86 Ops. Att'y Gen. Cal. 142 (2003); *see also* City Attorney Opinion 2004:1 (Feb. 19, 2004) (environmental mitigation plan considered a contract). Thus, Section 1090 would be triggered if settlement of the ARSAC Lawsuit were to have a financial impact on Ms. Velasco. In that circumstance, other BOAC contract matters affecting the litigation also would implicate Section 1090. A financial effect can be found even where an official makes an attempt to insulate his or her finances from the forbidden contract. See *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 210 (finding that a county official who was a partner in an insurance firm doing business with the county had a financial interest

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interests in Commission decisions, Ms. Velasco cannot invoke that public generally exception on matters affecting her personal interests. 2 Cal. Code Regs. § 18707.4(a)(3).

[4] A contract made in violation of the provisions of Government Code Section 1090 is void, and willful violations is potentially subject to a fine of not more than $1,000 or imprisonment in state prison for not more than 5 years and the individual is forever disqualified from holding any office in California. *Thomson v. Call* (1985) 38 Cal.3d 633 at 646, n. 15; Government Code § 1097.

despite a signed partnership agreement stating that the official "shall not participate, directly or indirectly, in any profits or losses arising out of business with the county").

Ms. Velasco stated that she will incur no financial detriment or obligation from the ARSAC Lawsuit, and that she has no obligation to contribute attorneys' fees or litigation costs in the matter. She also has stated that she, and her immediate family, have no economic interest or benefit in the Lawsuit, regardless of the final result.

Given these statements, Government Code Section 1090 does not disqualify Ms. Velasco or the BOAC based on her former relationship with ARSAC and its Lawsuit.

III. Charter Section 222 Requires Ms. Velasco's Disqualification on the ARSAC Lawsuit

Section 222 of the Los Angeles City Charter requires the City Attorney, at the request of an elected official, board member, or board, to provide a written opinion regarding any situation where it may not be in the public interest for a board member to act in a particular matter. Charter § 222. The City Attorney's opinion on such a matter has the effect of disqualifying the official or Board from acting on the particular matter. *Id.* The City Charter does not define the term "public interest" as it is used in Section 222. However, the City Attorney in an opinion dated May 4, 1967 (76 Ops. City Atty. 204), and in subsequent opinions, has consistently expressed the view that disqualification is required in any case where:

> ". . . the commissioner feels that his or her relationship to the matter is such that the commissioner could not act objectively or where the facts are such that the public might well reach the conclusion that the commissioner could not act objectively, it would not be in the public interest for the commission to act.[5]

Thus, the disqualification of officials from acting on certain matters is necessary not only to guard actual impartiality but also to insure public confidence. *Kimura v. Roberts* (1979) 89 Cal. App.3d 871, 975.

The City Attorney has previously concluded that where a commissioner has a certain relationship to relevant litigation, the public interest is served by the commissioner's disqualification. Specifically, disqualification has resulted in situations where the commissioner was the actual litigant, a member of an organization that was a litigant, has provided legal services to a party to a lawsuit, or where the commissioner funded a lawsuit. *City Attorney Opinion No.* 78:83 (December 15, 1978) (Board of Water and Power Commissioner member who was a member of a private golf club, which club was one of many members of the Toluca Lake Property Owners Association,

[5] At the time the quoted opinion was written, Section 28.1, now Charter Section 222, required disqualification of an entire commission when any of its members was disqualified. The section no longer requires disqualification of the entire commission, except as required by state law.

a nonprofit corporation, could not participate in the settlement of litigation in which the Association was one of the parties); *City Attorney Opinion Nos.* 89:27; 89:28 (May 17 and 18, 2005) (Board of Building and Safety Commissioner was disqualified from participating in appeals made by the Department of Airports concerning the LAX and Van Nuys Airports where he was a party to a lawsuit brought by the Department of Airports relating to work the commissioner performed at LAX in his private capacity as an engineer); *City Attorney Opinion No.* 78-68 (August 16, 1978) (City Planning Commissioner was disqualified from considering a zoning issues relating to the Director's Guild where both his law firm and he had personally provided legal services to the Guild and where the Guild contributed to a fund to pay for legal fees for the benefit of the Commissioner's law firm).

In contrast, the City Attorney previously advised that a commissioner was not disqualified from acting on an application for the establishment of oil drilling districts in Pacific Palisades, even though a commissioner had served on the board of a non-profit organization that previously had filed a lawsuit against the City relating to the failure of Occidental Petroleum Corporation to complete an EIR relating to a prior approval of those oil drilling districts. The commissioner had severed his ties with the organization nine years before the application relating to drilling came before his board. Further, the commissioner stated he had no recollection of any involvement with the nonprofit association's decision to file a lawsuit nor was he "active in any ongoing expression by the Association of opposition to the proposed creation of oil drilling districts in Pacific Palisades." *See City Attorney Opinion No.* 77:58 (August 18, 1978).

The City Attorney also previously concluded that resignation from a board of directors may not end the question of objectivity on a particular matter. *See City Attorney Opinion No. 88:33* (September 8, 1988) (concluding that although a commissioner had resigned his position with organization, because he had played a role advocating a position on a general plan amendment and zone change on behalf of the organization, members of the public may well question his ability to act objectively as a decision-maker in the same proceeding and therefore was disqualified).

The City Attorney concludes that, based upon Ms. Velasco's substantial involvement with ARSAC and the ARSAC Lawsuit, a reasonable member of the public could conclude that the nominee could not act objectively on decisions regarding the ARSAC Lawsuit and is therefore disqualified from acting on such matters.

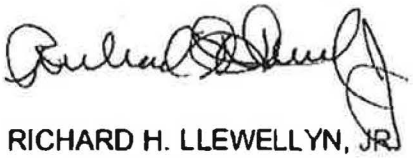
In addition to being disqualified from acting on the ARSAC Lawsuit, Ms. Velasco may also be disqualified from acting on other matters at issue in the pending litigation. Whether disqualification is also necessary on such matters will require a case-by-case determination based on the facts of the specific matter then pending before BOAC. Additionally, in the event a person appears before BOAC that Ms. Velasco has solicited for donations, she should seek further advice as to whether her disqualification is required.

CONCLUSION:

Based on the information available to us, Ms. Velasco does not currently have financial interests that would require her or the Board of Airport Commissioners to be disqualified from acting on matters relating to the ARSAC Lawsuit. However, under Charter Section 222, Ms. Velasco may not participate in matters concerning the ARSAC Lawsuit and potentially may not participate in other LAWA matters at issue in the ARSAC Lawsuit.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney



By

RICHARD H. LLEWELLYN, JR.
Chief Deputy City Attorney

cc: Honorable Mayor Villaraigosa