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October 22, 2012

VIA EMAIL

Mr. David A. Bricklin
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154

Re: Potential Conflict of Interest

Dear Mr. Bricklin:

As counsel to the Fort Worden Lifelong Learning Center Public Development Authority (“FWPDA”), we have been asked to respond to your letter of September 13, 2012. Your letter raises a number of concerns about potential conflicts of interest that may arise with respect to service on the board of the directors of the FWPDA by several individuals who also are either staff to or members of the boards of nonprofit organizations that lease facilities at Fort Worden. In your letter, you cite the Code of Ethics for Municipal Officers, chapter 42.23 RCW, as the statutory foundation for your concerns.

That statute also provides that a conflict of interest does not arise with respect to any contract with a government entity if the interest of an affected member of the governing body of that entity is a “remote interest” (chapter RCW 42.23.040). Under that provision, a “remote interest” includes:

- (1) That of a nonsalaried officer of a nonprofit corporation;
[FWPDA board members Gee Heckscher and Cindy Hill Finnie also serve on the boards of directors of two tenant organizations—the Port Townsend School of Woodworking and Centrum, respectively. Both of these entities are Washington nonprofit corporations.]
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists of fixed wages or salary;
[FWPDA board member Anne Murphy is the salaried Executive Director of another tenant—the Port Townsend Marine Science Center. The Center also is a nonprofit corporation.]

The provision also includes procedures to be followed by the entity and affected board members when the entity deals with contracts with the entities of which the board members also are employees or directors. As counsel to the FWPDA, we will work with the FWPDA and its board to ensure that the appropriate procedures are understood and observed.

In your letter, you also noted that chapter RCW 42.23.070(3) and (4) prohibits a municipal officer from disclosing confidential information, using such information for personal gain, and engaging in business or professional activity that would require or induce the officer "by reason of his or her official position to disclose confidential information acquired by reason of his or her official position." Although what constitutes "confidential information" is not specifically defined in chapter 42.23 RCW, companion legislation, the Ethics in Public Service Act that is applicable to state officers, helps us understand the term. RCW 42.52.010(5) defines "confidential information" as "(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law." Particularly with this helpful narrowing of the type of information about which we should be concerned, we believe that, with appropriate procedures to avoid the statutorily "prohibited acts" you cite, the affected board members may continue to serve.

One section of chapter RCW 42.23 that you did not cite that lends additional support for the premise that the service of these board members remains appropriate is the very "declaration of (the) purpose" of the entire statute. RCW 42.23.010 specifically states that it works to sanction:

under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve.

You also may be interested to know that, in addition to state law, the FWPDA board members also are subject to the City of Port Townsend's code of ethics which includes the prohibitions in chapter 42.23 RCW, in addition to other ethical guidelines. As a result, the Port Townsend City Attorney also has been active in briefing FWPDA board members on their responsibilities in this regard.

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Together with the City Attorney, we will remain attentive to the issues you raise and certainly appreciate you reminding us of the importance of these matters.

Sincerely yours,

PACIFICA LAW GROUP LLP

A handwritten signature in black ink, appearing to read 'B. Gerald Johnson', with a long horizontal flourish extending to the right.

B. Gerald Johnson

cc: Don Hoch, Washington State Parks Director (don.hoch@parks.wa.gov)
Pauli Sayres, WA State Parks and Recreation Commission (pauli.sayres@parks.wa.gov)
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