

July 1, 2014

Ms. Guillermina Fuentes
Member, Planning and Zoning Commission

Sonia Cornelio, City Clerk

Re: Opinion Regarding Conflict of Interest

Dear Ms. Fuentes and Ms. Cornelio:

This letter is written in response to Ms. Fuentes request for an opinion regarding a possible conflict of interest due to her ownership of a home and property on 9th Ave. in Las Quintas subdivision as it abuts property for which a rezoning application has been filed. Rezoning is sought in multiple applications, but in particular rezoning case no. 2014-0112 involves property within 300 feet of the home and property of Ms. Fuentes.¹ This opinion is written, in part, pursuant to the provisions of A.R.S. §§38-446² and 38-507. This opinion is to constitute an opinion of the Office of City Attorney of the City of San Luis. This is a public record and is to be placed in the records maintained by the City Clerk³.

LAW

A.R.S. §38-503 is known as the Arizona Conflict of Interest statute. This statute was passed to protect public from self-dealing by public employees. *Maucher v. City of Eloy* (App. Div.2 1985) 145 Ariz. 335, 701 P.2d 593.

A.R.S. §38-502 is the definitional section. It sets up definitions of who is a “public officer”, who is a “relative”, what is a “substantial interest,” and what is a “remote interest.” The general regulatory scheme of A.R.S. §§38-502 and 38-503 includes the concept that if one is a “public officer” or a “relative” of that officer, and that officer or his

¹ Undersigned also lives on 9th Ave. and has a home and property which is similarly situated. The law cited in this opinion covers that interest as well. So that any appearance of impropriety is avoided, undersigned is having this opinion reviewed by outside counsel. When that review is completed, said review will be made a public record.

² ARS §38-446 is a two edged sword. It will protect from personal liability any public officer who relies in good faith upon such an opinion. However, acting contrary to the opinion creates the opposite effect, namely a potential exposure to liability.

³ ARS §38-503.A requires that a covered public officer make known any substantial interest in the public records of the public body. This opinion, written at the request of Commission Member Fuentes, makes known that interest.

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or her relative has a “substantial interest” in a transaction, i.e. a direct or indirect pecuniary or proprietary interest that is not speculative in nature and not a “remote interest”, then there must be compliance with the conflict of interest statute.

For one to have a conflict of interest one must have a “substantial interest” in the matter. For one to have a “substantial interest” one must have a direct or indirect pecuniary or proprietary interest. “Pecuniary” means money and “proprietary” means property. *Hughes v. Jorgenson*, 203 Ariz. 71, 74, 50 P.3d 821(2003). To be a “substantial interest” one must “gain something or lose something.” *Yetman v. Naumann*, 16 Ariz.App. 314, 317, 492 P.2d 1252 (Div.2 1972). A “substantial interest” is defined at A.R.S. §38-502.11 as; “... any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.”

If the matter involves a defined “remote interest” then this is not a “substantial Interest”, there is no conflict of interest, and the public officer may participate in the matter. A.R.S. §38-502.10.J as one of the definitions of “remote interest” states:

(j) ***That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.*** [Emphasis added.]

CONCLUSION

Here there are more than ten likewise situated homes and property owners on 9th Ave. in Las Quintas subdivision. The impacts on the property of Ms. Fuentes are not appreciably any different than any other home or property located on that street. As a result, the interest of Ms. Fuentes is a statutorily defined “remote interest” and as such is not a “substantial interest” as that term is known in state law.

Sincerely,

Glenn Gimbut
City Attorney