

June 24, 2015

Marsha Jones Moutrie
Santa Monica City Attorney
1685 Main Street, Room 310
Santa Monica, Ca. 90401

Re: Your 6/16/15 Letter on Transparency Project Complaints Against Rod Gould

Dear Ms. Moutrie,

This responds to your June 16, 2015 letter concerning the Transparency Project Complaints against former City Manager Rod Gould alleging violations of the Oaks Initiative for accepting employment with Management Partners, Inc. after he had approved a series of contracts with them while City Manager.

We are dismayed by your assertion that you and your office have a conflict of interest enforcing the law against the former City Manager. This lack of enforcement of Santa Monica laws involving senior public officials continues a pattern, including our recent Complaints against the then Mayor. You have rejected advice from both the LA District Attorney and the Attorney General that you can readily enforce the law. At a minimum there is clearly no will to do so and given this it is doubtful that your office would be vigorous or independent.

It is extraordinary then that despite declaring a conflict of interest, instead of recusing yourself, as one would expect, you provide detailed legal advice on the matter, not only to us but also to the City Council who you copy on your letter. You believe that your former representation of Mr. Gould gives rise to an ethical duty to him which precludes your being able to investigate or bring an action against him. **Given your asserted conflict of interest in this matter, we do not understand how you can make substantive decisions or provide *any* legal advice to anyone, including to the Council, on this same matter relating to Mr. Gould, let alone independent advice.**

This compels us to respond to both the content and basis of your analysis that suffers from fatal errors, including:

1. **For 9 years it has been the City Attorney's Advice that Oaks covers the City Manager.** Your letter asserts, erroneously, that *the City Clerk* prepared the official Santa Monica advice entitled "Implementation of the Oaks Initiative," which explicitly advises that the City Manager is covered by Oaks. Instead, contrary to this assertion in your letter, this document states that *the City Attorney* (you) prepared it. This advice prominently appears on the City website and is the first result found when entering "Oaks" or "Oaks City Manager" into the search engine at the top right of the City's home page. www.smgov.net It is also the first exhibit to our Complaints.

Your continuous advice that the City Manager is covered by Oaks is not surprising given the plain meaning of the words used in Oaks that it covers “**any** elected or **appointed public official.**” If you ask “who is the top appointed public official in the city,” the answer will be “the city manager.”

2. **You ignore civil enforcement of Oaks and irrelevantly only deal with criminal prosecution.** Much of your letter irrelevantly deals with criminal prosecution, your office’s Criminal Division and the Santa Monica Police Department (which you then claim would not need to investigate anyway as there is “no dispute what had happened.”)

Your letter **completely ignores civil enforcement which is the remedy sought in the Complaints.** The Complaints **only** seek civil remedies—Mr. Gould paying into the City’s General Fund moneys he has received from Management Partners and that he refrain from future employment with them during the prohibited period. See Complaints at p. 8 and Section 2206(b) of Oaks. Civil enforcement, of course, does not require a knowing and willful violation of the law. The prohibition is absolute.

3. **Your unsupported assertion that Santa Monica cannot enforce its law if the contract with Management Partners was entered into outside Santa Monica is wrong.** Your letter claims without any reference to law or setting forth a legal standard, that Santa Monica cannot enforce its laws unless every act related to a violation occurs within its borders. Evidently you believe that Mr. Gould’s employment agreement with Management Partners was made outside of Santa Monica and that ends the analysis. We strongly disagree.
4. **You misstate the factual basis of the Complaints.** Your letter recasts the Complaints by stating that the allegation is that Mr. Gould violated Oaks by accepting employment “after the firm was hired on six occasions while Mr. Gould was City Manager.” Rather, the allegation in the Complaints is that his employment with Management Partners was illegal under Oaks because he “approved” the contracts, not because they were entered into “while” he was City Manager. Mr. Gould was an active—not passive—participant, which is what triggered the alleged Oaks violations.

For these and other reasons we respectfully disagree with your letter and do not think it can be relied upon.

Sincerely yours,

/s/ Mary Marlow

Mary Marlow
Chair, Santa Monica Transparency Project

Cc: Mayor and City Council

Rick Cole, Appointed City Manager

Elaine Polachek, Interim City Manager

Jacqueline Seabrooks, Chief of Police

Joseph Lawrence, Assistant City Attorney

Terry White, Chief Deputy City Attorney, Criminal Division

Community and Neighborhood Leaders