



Office of the City Attorney
City Hall
1685 Main Street
Room 310
Santa Monica
CA 90401

June 25, 2015

VIA E-MAIL (M.MARLOW@VERIZON.NET) AND U.S. MAIL

Mary Marlow
Santa Monica Transparency Group
155 Ocean Park Blvd.
Santa Monica, CA 90405

Re: Transparency Project's Complaints Against Rod Gould

Dear Ms. Marlow:

This letter responds to yours of June 24th on behalf of the Transparency Project.

Your letter says that my response to the Project's complaint against Mr. Gould misstated the factual basis of the complaint. Specifically, the complaint states that Mr. Gould approved six contracts with Management Partners, while my response said that six contracts were approved. Let me explain. The City Manager signs, and thereby approves, all City contracts. The Manager only rarely participates, personally, in the formation of City contracts. My use of the passive voice reflected the fact that I do not know the exact nature of Mr. Gould's personal involvement, if any, in the making of each of the contracts. Nonetheless, if the Transparency Project's point is that all contracts with Management Partners had his approval, I agree.

The Project also states that my letter did not address civil enforcement. That's correct. In response to both of the Project's complaints, this office did the two things we could do. We made two criminal referrals and notified the Council of the complaints. As to civil enforcement, just as this office cannot prosecute a present or past Council member or City Manager (because they are or have been our clients), we cannot file civil suits against them. That does not mean that the City could not initiate civil litigation against a former client of this office. It simply means that the Council would need to hire outside counsel who would report to them and not to me. Also, as you know, civil enforcement of the Oaks Initiative could be initiated by a member of the public.

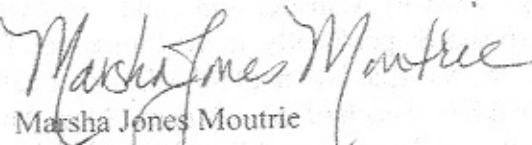
The Project also claims that I failed to support my assertion that the City cannot enforce its laws outside of Santa Monica. However, my point, which may not have been clear, was that a violation of our City Charter (which includes the Oaks Initiative) is not a misdemeanor if it occurs outside of Santa Monica. As to the facts, my understanding is that Mr. Gould accepted employment with Management Partners months after leaving the City and moving to Northern California. Nor am I aware of any evidence to the contrary.

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Finally, the Project asserts that it has been my advice for nine years that the Oaks Initiative covers the City Manager. That has not been my advice (though the source of the advice may not matter). Its attribution to me is based on the information sheet attached to your complaint. As previously explained, that information sheet was prepared by the City Clerk in 2006 as shown on its last page; not by me. She evidently prepared it to convey information to applicants for seats on Boards and Commissions. Those applicants do not receive advice from this office, and we usually do not even know who has applied until the applications go to Council. Nor do I recall reviewing or editing the information sheet for the Clerk. Had I done so, I would have suggested several changes, including targeting applicants for the few boards and commissions which serve in a quasi-judicial capacity, since the purely advisory bodies seldom, if ever, confer public benefits. Most important, instead of agreeing with the Clerk's statement in the information sheet about the application of the Oaks Initiative to City staff, I agree with the contrary statement she made in her 2001 staff report: the application of the Oaks prohibition to City staff is uncertain. Admittedly, this may be mostly a point of personal privilege since the advice has apparently been given. In any event, I appreciate the Project's highlighting the information sheet and will work with the Clerk to ensure that it more accurately reflects our collective understanding of the law.

Thank you for considering this information.

Very truly yours,


Marsha Jones Moutrie
City Attorney

MJM/EK

cc: Mayor and City Council
Elaine Polachek, Interim City Manager
Joseph Lawrence, Assistant City Attorney
Rick Cole