

March 30, 2020



Via Email and U.S. Mail
rziegler@rzieglerlaw.com

Law Office of Ruthann G. Ziegler
3308 El Camino Avenue
Suite 300, #427
Sacramento, CA 95821

Re: Response to March 23, 2020 letter – FPPC Regulation 18329.5

Dear Ms. Ziegler:

I am writing in response to your March 23, 2020 letter to Nora Pimentel regarding FPPC Regulation 18329.5. Specifically, you question the designation of Al Guido, Brent Schoeb, Jim Mercurio, Patricia Ernstrom, and Ryan Oppelt as Consultants under the Santa Clara Stadium Authority's Conflict of Interest Code (Code), based on the fact that the term "execution of contracts" was used in the letter informing them of that determination.

There is history to the Stadium Authority's effort to properly designate individual Management Company's officers and employees as subject to the Code, an effort that that has been met with apparent bad faith by Management Company at every turn.

When I became Interim City Attorney at the beginning of February 2017 I began to examine the various documents that constitute the agreements regarding the leasing and management of the Stadium by the 49ers. Not very far into my examination I began to realize that a less-than-adequate analysis of the various potential conflicts of interests had been performed. On May 26, 2017 I sent an email to the 49ers' General Counsel Hannah Gordon advising her of my concerns. On June 28, 2017, I followed up on my previous email as I had not heard back from Ms. Gordon. Copies of those emails are attached. (Attachment #1) In my June 28, 2017 email I advised Ms. Gordon of the California Supreme Court's then-recent ruling in *People v. Sahlolbei* concerning possible criminal liability for consultants who violate Government Code Section 1090.

I was appointed as the permanent City Attorney in December 2017.

I did not hear again from Ms. Gordon on my concerns about conflicts of interest until we began corresponding in March 5, 2018 when I advised her that I would be seeking an advice letter from the FPPC. On March 6, 2018 Ms. Gordon informed me that Mr. Jim Mercurio performs the procurement functions that had been delegated to the Management Company. Copies of the emails are attached as Attachment #2.

My request for advice resulted in Advice Letter A-18-039.

Following the receipt of the Advice Letter we informed Mr. Mercurio of his need to file a Form 700, and Mr. Mercurio has partially complied, but has not yet filed the required statements for prior years dating back to when he began his procurement duties.

In December 2019, the Stadium Manager provided the Stadium Authority with the attached Venue Use Agreement (Attachment #3) which included a Sponsorship Agreement with Red Box Bowl. (Attachment #4) Mr. Al Guido signed the Venue Use Agreement with the two conferences as well as the Sponsorship Agreement with Red Box. Mr. Guido as president of the Management Company signed on behalf of the Stadium Authority as this event is a non-NFL event under the Management Agreement. Under the Agreement the revenue and expenses of the events belong to the Stadium Authority, a JPA that is subject to the Political Reform Act and Government Code Section 1090.

Despite a demand by me for an unredacted copy of the Sponsorship Agreement, the 49ers supplied the Stadium Authority only with a redacted version. In a conversation with the 49ers Deputy General Counsel Jihad Beauchman, Mr. Beauchman told me that the Stadium Manager received \$900,000 for the first year of the agreement and \$927,000 for the second year. These were the numbers that have apparently been redacted from Section 8 of the Sponsorship Agreement. When I questioned Mr. Beauchman about why the Stadium Authority had only received less than \$500,000 in sponsorship revenue for each of those years, Mr. Beauchman told me that Stadium Manager had made the decision to transfer a little more than \$400,000 in sponsorship funding to Stadium Company for them to provide NFL signage for the event.

It is our belief that Mr. Guido has a financial interest in Stadium Company and that he participated in the decision to negotiate the receipt of the \$900,000 from Red Box and to assign \$400,000 to Stadium Company in which we believe he has an interest. Prior to receipt of this set of documents the Stadium Authority was unaware that Mr. Guido was executing contracts on the Stadium Authority's behalf. Because of the 49ers' refusal to provide us with our records, we do not know the extent of Mr. Guido's participation in the making of contracts or other decisions that would be subject to State conflict of interest law. The email in which Management Company's General Counsel informed me only that Mr. Jim Mercurio was procuring contracts is contained within Attachment #2.

Based upon the recently received documents we determined that Mr. Guido and the others also have contracting authority on behalf of the Stadium Manager. Consequently, the Stadium Authority Secretary advised Mr. Guido and the others of their need to file a Form 700. A copy of the letter to Mr. Guido is attached as Attachment #5.

We require your good faith assistance in determining whether Mr. Guido's execution of contracts has been merely ministerial, secretarial, or clerical. We assumed that because he is indeed President and that the contracts were significant that he was authorizing and approving the terms of the contracts that he was executing within the meaning of Regulation 18700.3.

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Indeed, on February 10, 2020, Management Company's General Counsel Hannah Gordon sent a letter to Stadium Authority Executive Director disclosing Mr. Guido's undoing of a financial interest in KORE Software Holdings, LLC in apparent acknowledgement of Mr. Guido's status as a Consultant under the Stadium Authority's Conflict of Interest Code.

Given your clients' history of noncooperation in determining the status of Management Company's officers and employees status as Consultants, I must look at your letter's phrasing ("Executing a contract can be ministerial...") with a jaundiced eye. Clearly, virtually all of the Stadium Authority's contracting and spending authority was delegated to Management Company, and several people have been making contracting decisions and authorizing the expenditure of public money which are decisions subject to state conflict of interest law.

If you are suggesting that our assumption that the individuals that Ms. Pimentel designated as consultants were authorizing and approving Stadium Authority contracts because they were executing them is incorrect, then please provide us with the names of the Management Company's officers and employees who have been exercising the authority to make these decisions and we will formally designate them.

This is not a game of darts. Liability under Government Code Section 1090 and the Political Reform Act can have serious liability for the individuals who are found to violated the law. I don't see how you are doing these folks any favors by playing these word games. Of course, I would be happy to discuss the facts and my assumptions about those with both you and Ms. Gordon so that we can make sure that everyone understands their responsibilities, but it will require your forthright cooperation. Sadly, that is something that has been lacking since I first raised these issues with Ms. Gordon three years ago.

Very truly yours,



Brian Doyle
Stadium Authority Counsel

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cc: Deanna J. Santana, Executive Director
Hannah Gordon, CAO and General Counsel