

Beier Howlett

ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER
tcurrier@bhlaw.us.com
Telephone (248) 645-9400
Fax (248) 645-9344

December 13, 2013

Mr. Bryan Amann
1777 Stonebridge Way Court
Canton, MI 48188

Re: Advisory Opinion of Wayne County Airport Authority's Ethics Committee No. 2013-1

Dear Mr. Amann:

On December 10, 2013 the Ethics Committee undertook the consideration of your request for an advisory opinion. At the hearing of December 10, 2013, your request was considered by the Ethics Committee. The Committee directed the undersigned, Independent Ethics Counsel, to issue the following opinion on their behalf.

The General Counsel of the Wayne County Airport Authority received your Request for Advisory Opinion. That request was forwarded to this office as Independent Ethics Counsel for an analysis to assist the Ethics Committee in preparing its opinion with respect to this matter.

In connection with this report, the Independent Ethics Counsel and the entire Ethics Committee has reviewed, and you will find attached, the following documents:

1. The Request for Advisory Opinion from you.
2. The Disclosure Statement by Mr. Daniel Amann.
3. The Amended Disclosure Statement by Mr. Daniel Amann.
4. Mr. Daniel Amann's job description as the Assistant Deputy Director of Infrastructure Engineering which was applicable when his initial Disclosure Statement was filed.
5. The job description of the Assistant Deputy Director for Planning which is in draft form as of November 26, 2013, which would be Mr. Daniel Amann's new position.
6. The Request for Proposals for the McNamara Terminal Multi-Food & Beverage Concession Opportunities Control No. 130079.
7. The Evaluation Committee Members for RFP #130079 for Committee A and Committee B.

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 2

Factual Background

Mr. Bryan Amann is not an employee of the Wayne County Airport Authority, but has requested an advisory opinion pursuant to the Airport Authority's Ethics Ordinance. His brother, Mr. Daniel Amann was an Assistant Deputy Director for Infrastructure Engineering at the Airport Authority, and is currently the Assistant Deputy Director for Planning. Mr. Bryan Amann will provide legal representation to the Paradies Shops in its effort to bid on the Food & Beverage Concession Opportunities with Wayne County Airport which is RFP #130079. Mr. Bryan Amann describes the services that he will be rendering to Paradies as follows:

- A. Identification of and preliminary negotiation with potential local and DBE Partners.
- B. Identification of and preliminary negotiation with potential local brand and restaurants for inclusion in the RFP Response as a brand or licensee.
- C. Review of and counsel on the actual written terms of the RFP and related documents, in compliance with the applicable regulations, codes and rules.

Mr. Bryan Amann represents that he has represented Paradies Shops in previous matters, but has never appeared at, or participated in, any meetings with the Airport Authority or its agents or representatives, and he does not expect that to change with respect to the proposed engagement.

Mr. Bryan Amann's brother is Mr. Daniel Amann. Mr. Daniel Amann is an employee of the Wayne County Airport Authority. Prior to his engagement with Paradies Shops as described above, Mr. Bryan Amann was seeking an advisory opinion to determine whether the sibling relationship creates a conflict of interest in relationship to his representation of the Paradies Shops. In this regard, Mr. Bryan Amann states in his request as follows:

"3. My Brother Daniel Amann is employed by the Airport Authority in a role that as best as I can determine has no involvement in or relationships to the concession operations or bidding process. Nonetheless, in that there is concern about our relationship creating any appearances of favoritism or an advantage, it is important to consider:

- A. At no point should any party, including any competition to Paradies, encounter or in any way engage my Brother in the bid process. Of course, it would be important to ensure that he does not participate in any review or selections committees formed to assess bids. In short, just as occurs in many large law firms, a firewall should be constructed between my Brother and the process to avoid the appearance and possibility of any conflict.
- B. In that my representation of Paradies will not require or involve appearing in any public meetings at the airport as part of my representation, nor to undertake any action within the walls or on the grounds of the airport itself, there should not be any impetus or opportunity for any concern about a conflict since my involvement will not be visible.

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 3

C. To the extent that there is any concern about any appearance of any conflict, I believe that my ability to earn a living in my professional capacity as an attorney, and Paradies (or any other entity's ability to select its legal counsel) should be given consideration with every effort made to ensure that the respective airport process or matter is insulated from my Brother's involvement if the matter is outside his scope of employment. I'm not exactly sure of his current title and role but I do realize that he were managing or were otherwise involved in a bid or other process within the scope of his employment, the airport's interest in having him be able to perform his job and to maintain integrity in the process would prevent my representation of a party in that bid or process. In short, in that case, the Airport's objectives would prevail over mine or my prospective clients. I respectfully submit that I do not believe that is the case here. My reputation and professional integrity are critically important to me. There is no single client or matter worth putting either at risk. I honestly think this situation does not present any real, possible or perceived conflict or threat to the ethics and integrity of the airport, myself or my prospective client."

Review of Daniel Amann's job duties and the Request for Proposal #130079

At the time of Mr. Daniel Amann's initial filing of the Disclosure Affidavit, he served as the Assistant Deputy Director for Infrastructure and Engineering. (Tab 4) We have reviewed that job description, and in particular, the essential duties and responsibilities. Those duties and responsibilities do not include any management oversight, consultation or relation to concessions at the Wayne County Airport Authority. We have also reviewed the draft of the essential duties and responsibilities of Mr. Daniel Amann's new position as Assistant Deputy Director for Planning. Those duties do not include any management oversight, consultation or relation to concessions at the Wayne County Airport Authority.

We next reviewed the Request for Proposal for the McNamara Terminal Multi-Food & Beverage Concession Opportunities Control No. 130079. In particular, we reviewed Section 8, (Page 49 of the RFP) regarding the evaluation criteria and submittal requirements. The RFP provides with respect to the evaluation process the following:

"1) Evaluation: All proposals timely received will be evaluated by an Evaluation Committee comprised, at a minimum, of Airport Authority representatives from three (3) different operating divisions/departments and other Airport Authority representatives. All Proposals will first be evaluated for responsiveness, then responsibility. All responsive and responsible proposals will be evaluated on weighted criteria totaling 100 points (per evaluator) as listed below in descending order of importance:"

The RFP describes an Evaluation Committee which makes the initial evaluation of the RFP's before they are submitted to the Authority for consideration.

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 4

We have reviewed the Committee members that are sitting on the Evaluation Committee with respect to RFP 130079. There are two Committees – Committee A and Committee B. There are voting members to the Committees and advisory members to these Committees, Mr. Daniel Amann is not a voting member of Committee A or Committee B, nor is he an advisory member of Committee A or Committee B. Further, we looked into which departments are involved in the review of RFP 130079. Mr. Daniel Amann's prior department is not involved in the review of RFP 130079 as a voting member, nor does it involve an advisory member. Also, Mr. Daniel Amann's current department of planning and strategy management is not a voting member on Committee A or B, nor is it an advisory member on Committees A or B.

Based on the foregoing and documents, Mr. Daniel Amann, nor his former or current departments have had any involvement in the creation or review of the McNamara Terminal Multi-Food & Beverage Concession Opportunities RFP No. 130079.

Review of Pertinent Sections of the Ethics Ordinance

Section 1. Definitions, As Used in this Ordinance:

- “n. *Employee(s)* means Authority employees who are:
 - (1) The Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, or an Executive Vice President, Senior Vice President, Vice President, Director, Deputy Director, Assistant Director, Controller, Assistant Controller, Assistant General Counsel, or an at-will Manager, or
 - (2) Otherwise in a position that is equivalent to an Assistant Director or above.”

Mr. Daniel Amann fits the definition of an Employee under the Ethics Ordinance.

- “r. *Immediate Family* means a person who is related to a Board Member or Employee as a spouse, child (whether by marriage, blood or adoption), parent or sibling.”

Mr. Bryan Amann is an Immediate Family Member within the definition of “Immediate Family”.

- Section II. A Code of Ethics is Hereby Promulgated as Follows:

“A. General Prohibitions Specific to Board Members and Certain Employees.”

Mr. Daniel Amann does not fall within Section II. A. except for subparagraph 5 that requires his compliance with the Act and the Ordinance.

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 5

- “B. Conflict of Interest – General.”

No factual information has been presented that requires a review of Sections 1-6 of Section B of Conflict of Interest.

- Section B. 7 provides as follows:

“7. No Board Member or Employee shall participate, as an agent or representative of the Authority, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.”

With respect to paragraph 7 as cited above, Mr. Daniel Amann is an Employee as used within that section. In addition, personal interest is defined as follows:

“w. *Personal Interest* means an interest arising from blood or marriage relationships or any business association.”

In this regard, Mr. Daniel Amann would have a personal interest in Mr. Bryan Amann’s representation of Paradies, but he is not participating in any manner in the RFP. However, there is no evidence presented that Mr. Amann or his department has prepared, or is evaluating RFP No. 130079. Therefore, Section 7 does not apply based on the facts presented.

- “8. No Board Member or Employee shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.”

In this regard, there is no evidence that Mr. Daniel Amann has used or attempted to use his position to secure any consideration for his brother with respect to RFP No. 130079. Therefore, Section 8 does not apply based on the facts presented.

- “9. All Board Members and Employees shall avoid even the appearance of any impropriety or Conflict of Interest.”

Mr. Bryan Amann was concerned in his request for an advisory opinion that the relationship that he has with his brother, Mr. Daniel Amann, may create the appearance of a conflict of interest. An examination of the facts show that Mr. Daniel Amann had no involvement with RFP 130079 at any level, nor has any prior department that he worked with or is currently working for had any involvement with RFP No. 130079. Further, Mr. Daniel Amann disclosed by his Amended Disclosure Statement the relationship that his brother had with Paradies, and Mr. Bryan Amann has further disclosed his relationship with Paradies in his request for this advisory opinion. Neither the Amended Disclosure Statement, nor the request for advisory opinion show any conflict of interest,

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 6

but instead show a procedural substantive separation of Mr. Daniel's Amann's current and former job duties and responsibilities from RFP No. 130079 and Mr. Bryan Amann's representation of Paradies.

D. Determination of Conflict of Interest.

A Conflict of Interest exists if:

- “1. A Board Member or Employee, including members of his or her Immediate Family or Extended Family, has any financial or personal interest, in the outcome of a matter currently before the Board Member or Employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or maybe adverse to the public interest in the proper performance of said Board Member's or Employee's governmental duties, or;”

With respect to this Section, Mr. Daniel Amann is an Employee as defined in the Ordinance. Mr. Daniel Amann does have a personal interest in that Mr. Bryan Amann is his brother, however, there are no facts presented that Mr. Daniel Amann or Mr. Bryan Amann will be affected by the outcome of the award of RFP No. 130079, nor is there any facts that have been presented that Mr. Daniel Amann's Personal Interest as defined by the Ordinance would be adverse to the public interest in the proper performance of his governmental duties. Therefore, there is nothing applicable in Section 1 in determining whether there is a conflict of interest.

- “2. A Board Member or Employee has reason to believe or expect that he or she, or any member of his or her Immediate Family or Extended Family, or any Business with respect to such Board Member or Employee, will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her Official Duties or Official Action, or;”

Mr. Daniel Amann has no Official Duties or Official Action with respect to RFP No. 130079, and, therefore, there are no facts that have indicated that Mr. Daniel Amann's Official Duties or Official Action will result in Mr. Bryan Amann or Mr. Daniel Amann deriving any direct monetary gain or direct monetary loss with respect to the award of RFP No. 130079. Section 2, therefore, is not applicable in determining whether there is a conflict of interest.

- “3. A Board Member or Employee has any other prohibited interest as defined by Michigan statutes relating to Conflicts of Interest.”

Mr. Daniel Amann, as an employee, does not have any prohibited interest pursuant to Michigan statutes relating to conflict of interest because of his relationship as a brother to Mr. Bryan Amann, and Mr. Bryan Amann's representation of Paradies.

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 7

Conclusion

The facts disclosed in this matter do not indicate that there has been any actual conflict of interest with respect to Mr. Daniel Amann's relationship to Mr. Bryan Amann, nor Mr. Bryan Amann and his representation of Paradies with respect to RFP No. 130079. Mr. Daniel Amann, in his prior and current positions had no involvement with RFP No. 130079. Further, neither Mr. Daniel Amann, nor any members of his prior or current departments are on Evaluation Committees with respect to RFP No. 130079.

Mr. Bryan Amann, in his request for an advisory opinion, discloses that his services are for the identification and preliminary negotiations with potential local and DBE Partners and potential local brand and restaurants for inclusion in the RFP as a brand or licensee. These are services rendered directly to Paradies.

With respect to his review and counsel on the actual terms of the RFP and related documents and its compliance with applicable regulations, codes and rules, it should be noted that the deadline for submission of a proposal for RFP No. 130079 is December 11, 2013, which is the day after the Ethics Committee meeting. Further, Mr. Bryan Amann has indicated that he has not appeared before the Wayne County Airport Authority on such matters in the past, and does not anticipate doing so in the future.

I further note that in Mr. Bryan Amann's request for an advisory opinion, he suggests the following:

"A firewall should be constructed between my Brother and the process to avoid the appearance and possibility of any conflict of interest."

The suggestion is well taken, and the Ethics Committee directs the staff of the Wayne County Airport Authority to take reasonable steps to construct such a firewall including, but not limited to avoiding any and all communication of any kind with respect to RFP No. 130079, its evaluation award to Mr. Daniel Amann or his department and also directing Mr. Daniel Amann to make no inquiries with respect to the same. In addition, the Ethics Committee also directs all departments and employees that if there is a suspected breach of firewall to inform General Counsel immediately upon discovery.

The Ethics Committee further directs that if the Paradies Shops or any entity where Paradies enters into a joint venture or is awarded the contract pursuant to RFP 130079 that a continuing firewall be maintained to insulate Mr. Daniel Amann from any communications or contact with such employees or other individuals in connection with; the administration of the contract; compliance issues with respect to the contractor; or compliance or administration issues with respect to any subcontractors.

On behalf of the Ethics Committee of the Wayne County Airport Authority, we would like to

Beier Howlett

Mr. Bryan Amann
December 13, 2013
Page 8

thank you for bringing this matter to them for their consideration.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Independent Ethics Counsel For
The Wayne County Airport Authority
Ethics Committee

TJC/jc

cc: Wayne County Airport Authority Ethics Committee
Attention: Mr. Tom Naughton, CEO
Ms. Emily Neuberger, General Counsel
Mr. Daniel Amann, Assistant Deputy Director for Planning