

MEMORANDUM

TO: Mayor and Councilmembers

RE: Disclosure of Legal Representation

DATE: January 9, 2006

FILE NO: 12367-00000

Some of you and Mr. Jeff Britz, City Manager, know that our firm has represented newly-elected Councilmember Hornsby on private matters external and totally unrelated to matters within the City's jurisdiction. This memorandum serves to advise you formally of the nature of our firm's pre-existing representation of Councilmember Mary Hornsby.

As you know, I was appointed City Attorney effective November 1, 2006. Ms. Hornsby was elected to the City Council on November 7, 2006, and took office on December 5, 2006. At the time I submitted a proposal for legal services to the City of Lemoore, and at the time the action on my appointment was taken, I had no knowledge that my firm's Probate Department had represented Ms. Hornsby on a probate matter. We do not typically run conflict checks for un-elected candidates.

The nature of the firm's representation of Ms. Hornsby related solely to a probate matter concerning her deceased father's estate. The firm represented Ms. Hornsby in Ms. Hornsby's fiduciary capacity as administrator of her father's estate. At this time, the substantive work has been completed and housekeeping paperwork is necessary including an "Order to Discharge as Administrator."

On July 18, 2006, Ms. Hornsby appeared as a private citizen before the City Council regarding a request for water and sewer services to private property owned by her. The subject property is not within the city limits, but is bounded on two sides by the City. The subject property is also property that was the subject of the probate proceedings referenced above. However, our firm did not represent Ms. Hornsby with regard to this particular appearance. At the July 18, 2006 Council meeting, a unanimous motion was passed that City Staff include the property in the General Plan Update for annexation and work with the owner on proposed upgrades including any needed conditions for the frontage. Since that time, Ms. Hornsby and the City Manager have communicated concerning the details of implementing Council direction.

In our opinion, the foregoing facts do not constitute a conflict of interest. The firm's representation has related solely to a probate matter. At no time has this firm represented Ms. Hornsby concerning the connection of sewer, water, or other utilities to City service or concerning potential annexation of the subject property. No confidential information regarding

January 12, 2007

Page 2

any annexation or utility services has been exchanged between Ms. Hornsby and members of the firm's Probate Department.

The firm's probate representation of Ms. Hornsby is not related in any way to any subject matter under the City's jurisdiction. Finally, we see no reasonably foreseeable consequences to either Ms. Hornsby or the City based on the simultaneous representation described above.

We recognize that this type of matter is not one that arises often before the Council. It has never arisen for our firm either. I have reviewed this matter very carefully and conclude that there is no conflict of interest in our representation of the City. However, the City is in the midst of an updated General Plan and Ms. Hornsby's property will be part of those deliberations and actions by Council. Legal advice will be sought by the City during the General Plan process and regarding the types of conditions and agreement that may be necessary to be able to connect Ms. Hornsby's county property to certain City services such as water and sewer. That situation could create a conflict for Ms. Hornsby in her position as a Councilmember.

Based on the foregoing and in an abundance of caution, I request that this matter be placed on the agenda for a formal determination of the Council waiving a conflict with respect to any matters concerning the subject property and with respect to the General Plan. As a precaution, the firm will maintain a strict ethical wall between the Probate and Public Departments. The ethical wall will ensure that the firm's probate attorneys will be screened out of all communications regarding the firm's representation of the City of Lemoore. Finally, we must note that the Council may wish to seek independent legal counsel concerning this matter and our request for a waiver.

Respectfully submitted,

Hilda Cantú Montoy
Dowling, Aaron & Keeler
8080 N. Palm Avenue, Third Floor
Fresno, CA 93711
Ph: (559) 432-4500
Fax: (559) 432-4590

cc: Jeff Briltz, City Manager