

Citizens' Oversight Projects (COPs)

771 Jamacha Rd #148
El Cajon, CA 92019
CitizensOversight.org
619-447-3246

04/29/11



California State Attorney General
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

Dear Representative:

Citizens' Oversight is attempting to provide oversight of our local governmental bodies.

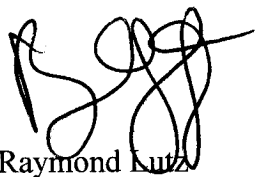
A matter of potential conflict of interest due to overlapping jurisdictions exists, according to our opinion. Although the attorneys who represent the entities claim there is no conflict, we are worried that with recent events in California resulted from lax oversight, rather than too much. It is our opinion that these conflict of interest cases be decided with a broad brush so as to eliminate even a hint of possible impropriety.

In this case, Ernest Ewin serves both as an elected City Councilmember of the La Mesa City Council and as the chair of the ICBOC committee of the Grossmont Healthcare District (GHD). ICBOC stands for "Independent Citizens Bond Oversight Cte" and it is intended to watch and potentially be a whistle blower for the \$247 million bond approved by voters under Prop. G.

The details are expressed in the letter submitted to the GHD and La Mesa City, which I have attached to this letter.

Such conflicts of interest are always disregarded by the attorneys that represent each side, and so that is why your office is being contacted to see if you can help us to render an opinion from an outside point of view. We appreciate your help.

Sincerely,



Raymond Lutz
National Coordinator, Citizens Oversight Projects

4/29/2011



Citizens' Oversight Projects (COPs)

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CitizensOversight.org
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April 25, 2011



Grossmont Healthcare District
c/o Barry Jantz, CEO
9001 Wakarusa Street
La Mesa, CA 91942-3300

REF: C00037

AND

City of La Mesa
c/o La Mesa City Clerk
8130 Allison Avenue
La Mesa, CA 91942-5502

Citizens' Oversight Projects (COPS) has been working to fulfill the obligation of oversight required by the citizenry in our democracy. One of the most important concerns is that our elected and appointed officials operate without conflicts of interest. Such conflicts not only occur when the official can benefit financially from decisions of that official, but also if officials have positions that have overlapping jurisdictions. If a single official simultaneously holds two offices which overlap in jurisdiction, the official's loyalty may be divided between the two offices. Holding the two offices may be incompatible and the first assumed office may have been forfeited by operation of law.

According to "Conflicts of Interest" a publication of the State Attorney General (2004 – see <http://www.copswiki.org/Common/M1100>, p188 & 119):

The *Rapsey* court, 16 Cal.2d, *supra*, at pp. 641-642, discussed the conflict between offices in the following passage:

Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both.

Then later it explains enforcement:

Where a public official is found to have accepted two public offices, the common law provides for an automatic vacating of the first office.

Recently, I read a compliant letter by a citizen regarding James Stieringer, who held two seats concurrently in overlapping districts, that of Treasurer of the City of La Mesa and also as Director of the

Grossmont Healthcare District (GHD). In 2006, he resigned from the office of Treasurer and kept his position as Director on the GHD Board, I believe as a direct result of this complaint. This illustrates that the two offices indeed are in conflict.

COPS has noted that Mr. Ernest Ewin serves as both a member of the La Mesa City Council and as the chair of the Independent Citizens Bond Oversight Committee (ICBOC) of the GHD. ICBOC was formed as part of Proposition G, and is required to be composed of "Independent Citizens," a fact that is even implied by the name of the committee. The Committee operates in compliance with the Brown Act, which governs the operations of official public bodies, illustrating that it is not an employee function.

COPS hereby asserts that Ernest Ewin is in violation of the Doctrine of Incompatible offices per Conflict of Interest law. Furthermore, COPS asserts that Mr. Ewin is not an "independent citizen" but is instead a representative of a stakeholder in a jurisdiction that also contains the hospital which is being constructed with Prop. G Bond funds.

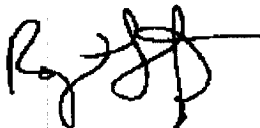
According to the reference above, an official who occupies two seats that are in conflict will automatically vacate the earliest seat and keep the most recent seat. Operation of that law would mean that Mr. Ewin would automatically forfeit his City Council seat and maintain his seat on the ICBOC committee.

According to the information on the ICBOC website (<http://icboc.gafcon.net>), Proposition G is a \$247 million general obligation bond placed on the ballot by the GHD Board of Directors and passed by more than 77% of the voters on June 6, 2006. In order to ensure that bond funds are spent in an efficient manner as outlined in Proposition G, the GHD Board of Directors desired that an effective and functional oversight committee be formed. The Independent Citizens' Oversight Committee (ICOC) shall represent the community and be responsible to the GHD Board of Directors. The ICOC is intended to provide accountability for expenditures made from Proposition G bond revenues. In addition, the ICOC shall function in an independent and open manner to ensure that the intent of the voters as set forth in the measure is effectively implemented. The role of the ICOC is to represent, advocate and promote the interests of the District residents.

Since Mr. Ewin represents a single city within the larger area of the GHD, he will be unable to represent all the members of the district, and therefore clearly suffers from this conflict of interest.

→ Please take action to address this conflict of interest and respond to this letter with evidence of that action. Response in electronic form is preferred.

Sincerely,



Raymond Lutz
National Coordinator, Citizens' Oversight Projects