

Posted on Facebook, 11/15/2019

To Whom it May Concern,

There have been several demands for Ms. States to recuse herself or step down from office because of the alleged "conflict of interest/appearance of fairness" issue because the Jamestown S'Klallam Tribe happens to sell wine from her business at one of its locations. Appearance of fairness issues only arise when there are quasi-judicial matters at hand where the hearing body, i.e., City Council, makes a decision on a permit issue – and this can only happen if there is an application. To date, we have not received an application. Therefore, appearance of fairness does not yet apply. As I have stated publicly many times, once we receive an application and if the Council would hear the matter or an appeal of the matter, I would recommend that the Council delegate the matter to a hearing examiner because none of the Councilors could survive an appearance of fairness challenge.

Regarding conflicts of interest, RCW 42.23 governs city officials' code of ethics. Under this RCW, officials are prohibited from giving special benefits or exemptions to others. An excerpt below summarizes this prohibition.

AGO 2010 No. 3 – For the purposes of RCW 42.23.070(1), a special privilege involves being allowed to do something that would otherwise be prohibited, and a special exemption involves being relieved from doing something that would otherwise be required. As an example, a presumed violation occurred when a mayor directed the town building inspector not to enforce the building code, and removed the permit file regarding the mayor's own property, and directed town employees not to report the missing file.

City officials are also prohibited from directly or indirectly getting gifts for matters related to their official duties. Based on the information I have, there is nothing to suggest the councilor was getting a "kickback" or other form of gift for voting a particular way on a particular matter. Other prohibitions involve government contracts, disclosing confidential information, and quasi-judicial matters, none of which are at issue here.

RCW 42.23 also prohibits a conflict of interest as it relates to government contracts. If a councilor had a financial interest in a contract with the City, then that Councilor would be required to recuse him/herself and not vote on the matter. There have been some decisions on this, such as the one below from MRSC. See also the overview on conflicts of interest from MRSC. <http://mrsc.org/.../Ethics-Fairnes.../Conflicts-of-Interest.aspx>

Citizens for Des Moines, Inc. v. Peterson, 125 Wn. App. 760 (2005), review denied, 157 Wn.2d 1014 (2006) – Division One of the Washington Court of Appeals held that a city councilmember who was the president and majority shareholder in a local towing company that city police and other city staff preferred to use when vehicles needed to be towed from city property did not violate the conflict of interest prohibition in RCW 42.23.030. The court held that the city had no express or implied contract with the councilmember's towing firm and had no written policies regarding towing requests, and thus there was no contractual interest to implicate the statutory prohibition.

On the other hand, appearance of fairness issues apply to quasi-judicial matters. Councilors must recuse themselves if they cannot be objective or if someone successfully challenges their appearance of fairness. Policy issues, however, are wholly discretionary with the council member. There is nothing to suggest that merely doing business with the Tribe and voting on a legislative matter would be a conflict of interest. If this were true, business owners across Washington State would be prohibited from becoming city councilors because of their conflicts of interests. Councilors are expected to bring their personal opinions, beliefs, and experiences into discussion on policy issues.

Kristina Nelson-Gross

City Attorney

<https://www.facebook.com/groups/saveoursequim/permalink/560452161189303/>