

BOISE CITY ETHICS COMMISSION

Advisory Opinion

16-01

FACTS: Gowen Field at the Boise Airport is home to the Idaho Air National Guard and the 124th Fighter Wing as well as the Idaho Army National Guard and several other branches of the military. Gowen Field employs thousands of guardsmen, and supports a wide range of Treasure Valley businesses. Gowen Strong is a consortium of local businesses and governmental entities, which have come together to support the mission of Gowen Field and highlight its importance to the community. Members include the City of Boise, Boise Airport, the Idaho Department of Commerce, Boise Chamber of Commerce, and the Boise Valley Economic Partnership (BVEP).

This consortium of organizations would like to formalize as a 501(3)(c) to continue to support the mission of Gowen Field. However, the Idaho Constitution prohibits the City from directly forming or being a member of a non-profit corporation. Due to the City's inability to directly form a non-profit, the Airport Director desires to create this non-profit on her own time. She has retained private counsel, and all time spent on the new non-profit will be off-the-clock.

The Mayor is supportive of the idea and initially wanted to create the non-profit in-house. He understands, however, why this is not possible.

The Airport director wants to know if she can form the non-profit and serve on its board. All of the other organizations have also expressed interest in serving on the board. The mission of the non-profit will be to support Gowen Field by promoting and raising awareness of Gowen Field, its mission, and its benefit to the community. The Airport Director's husband works at Gowen Field.

Implicated code sections may include: BCC 1-21-03A, 1-21-03D, and 1-21-04.

QUESTION: May the Airport director form a non-profit and sit on its Board of Directors?

OPINION: The Airport director may form the non-profit and sit on its board of directors so long as City Council waives any apparent conflict of interest.

ANALYSIS: The Commission considered the following City Code of Ethics provisions in reaching its decision:

1. Boise City Code 1-21-03(A)

Boise City Code 1-21-03(A) provides that no City official shall use her position with the City to obtain financial gain for herself, any member of her household, or any business for which he/she is associated. Although this section may appear to be implicated, the Airport Director's husband is at such a position in his career where the Airport Director's involvement with this non-profit will not provide a financial gain for herself or her husband.

2. Boise City Code 1-21-03(d)

Boise City Code 1-21-03(D) provides that no City official shall knowingly violate the fiduciary duty owed to the City. The fiduciary duty is defined as the duty to act for the benefit of the citizens of the whole of Boise, while subordinating one's personal interest to those of the City as a whole. Because the interests of Gowen Strong and the City of Boise are currently similar, and because the Mayor has publicly expressed his support for Gowen Strong numerous times over the past four years, the Airport Director will not violate her fiduciary duty owed to the City by forming Gowen Strong as a non-profit or by sitting on its board of directors. However, in the event that the Mayor's position on Gowen Strong changes, the Airport Director should be aware that she may have to subordinate her own personal interest in Gowen Strong to that of the City as a whole.

3. Boise City Code 1-21-04

Under Boise City Code 1-21-04, an actual conflict of interest arises when a City official is required to take an action or make a decision that affects his/her personal financial or pecuniary interests, or those of a member of his/her household, or a business with which he/she is associated. An apparent conflict of interest is one that does not affect an official's personal financial or pecuniary interests, but calls into question his/her objectivity and independence when making decisions on behalf of the City.

Although historically the Mayor and City Council have expressed great support for Gowen Field, there is nonetheless an apparent conflict of interest for the Director to create Gowen Strong and sit on its board of directors. At some point in the future it is possible that the City may no longer support Gowen Field, or that the Director's spouse could receive a pecuniary benefit from the Director's involvement in Gowen Strong.

Pursuant to Boise City Code 1-21-04, the Mayor may waive any apparent conflict of interest. In this instance, the Ethics Commission is requesting that City Council waive any apparent conflict of interest.