



MEMO

Legal Department

To: Mayor Haila, Ames City Council

From: Mark O. Lambert, City Attorney

Date: January 18, 2019

Subject: Ahlers & Cooney law firm request for a conflict of interest waiver

The Ahlers & Cooney, P.C. law firm has requested from the City a conflict of interest waiver.

Ahlers represents the City of Ames on certain matters, including labor law issues. Ahlers also represents the Ames Community School District on certain types of matters, including real estate transactions.

The City will soon be acquiring the Edwards Elementary site from the school district. Ahlers would like to represent the Ames Community School District for this real estate transaction (and the Ames City Attorney's Office will represent the City).

Lawyer ethics rules generally prohibit an attorney from taking a case adverse to one of the law firms' clients. So the attorneys don't get in trouble ethically for being "adverse" to the City on one matter, while representing the City on other matters, the Ahlers law firm is asking for this waiver from the City. When I use the word "adverse" I simply mean the law firm would be representing the other party -- the land transaction at issue is not a contentious type of situation. Ahlers is asking the school district to grant a similar waiver.

Granting the waiver is essentially the City saying, "It's okay with us if you represent the school district in this matter, even though the City is also your client."

The recommendation of the Legal Department is that the Council approve Ahlers' request for the waiver.

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Ahlers & Cooney, P.C.
Attorneys at Law

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January 4, 2019

Amy L. Colwell, Deputy City Clerk
City of Ames, IA
515 Clark Avenue
Ames, Iowa 50010

Dear Ms. Colwell:

Our firm concurrently represents the City of Ames ("City") and the Ames Community School District ("District"). Recently, we were asked to represent the District with regard to the Edwards Elementary land transaction with the City.

We do not believe such representation presents a direct conflict of interest, but it is our duty to inform you of the nature of the concurrent representation. For the District we provide legal services regarding employment, construction, education, labor relations, litigation, real estate, and finance. Our firm is currently representing the City in labor matters, but we have represented the City in certain other matters in the past. This firm is not representing the City related to the land transaction, described above.

While this transaction does not fall within the scope of our representation of the City, such representation could be perceived as a concurrent conflict of interest under the ethical standards governing the practice of law in Iowa. We do not believe this is an actual conflict of interest, but from a legal perspective, a concurrent conflict of interest exists under Iowa rules if (1) *the representation of one client will be directly adverse to another client*; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. We know that the second condition stated above does not apply to this situation, as noted above, but our firm's representation of the District related to the real estate transaction will technically be directly adverse to the City because they are concurrent representations.

The state's ethical rules allow a law firm to concurrently represent two adverse parties if (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another

January 4, 2019

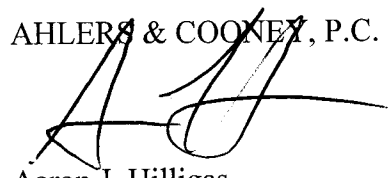
Page 2

represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. We believe confidently that our attorneys will be able to provide competent and diligent representation to each of their affected clients as the matters being addressed are totally unrelated, the representation is not prohibited by law, and there will not be an assertion of a claim as described. The purpose of this letter is to seek the written consent of the City in order to proceed. We are requesting the same from the District.

Please feel free to contact me with any questions or concerns. If you consent to the concurrent representation, please so indicate below and return a copy of this fully executed letter to my attention. Thank you.

Very truly yours,

AHLERS & COONEY, P.C.

A handwritten signature in black ink, appearing to read 'A Hilligas', is written over the firm name.

Aaron J. Hilligas

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January 4, 2019

Page 3

The City Council of the City of Ames hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of the City of Ames and the Ames Community School District with respect to the above referenced transactions.

Dated this ___ day of _____, 2019.

CITY OF AMES:

By: _____
Mayor

By: _____
City Clerk