

MEMO

Legal Department

Item No. 15

To: Mayor Haila, Ames City Council

From: Mark O. Lambert, City Attorney

Date: April 18, 2019

Subject: Waiver request from Ahlers & Cooney

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

Ahlers & Cooney represents the City of Ames on certain matters, including labor law issues. Ahlers also represents the Ames Community School District on certain matters. In this case, the school district has asked Ahlers & Cooney to represent it in a review of a Memorandum of Understanding between the school district and the City of Ames regarding the Ames Police Department providing a School Resource Officer to be present at the schools.

Lawyer ethics rules generally prohibit an attorney from representing a party adverse to one of the law firms' clients. In order to assure that the attorneys don't get in trouble ethically for being "adverse" to the City in one matter, while representing the City on other matters, Ahlers & Cooney is asking for this waiver from the City. When I use the word "adverse," I simply mean the law firm would be representing the school district in reviewing the Memorandum of Understanding. This is not a contentious type of situation. Ahlers & Cooney is asking the school district to grant a similar waiver.

Granting the waiver is essentially saying, "It's okay with the City if you represent the school district in this agreement matter with the City, even though the City is also your client on other matters." You might recall the Council granted a similar waiver to Ahlers & Cooney at the January 22, 2019 Council meeting, regarding the law firm representing the school district in a real estate transaction with the City.

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



Ahlers & Cooney, P.C.

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April 15, 2019

Mark Lambert, City Attorney
City of Ames, IA
515 Clark Avenue
Ames, Iowa 50010

Dear Mr. Lambert:

Our firm concurrently represents the City of Ames ("City") and the Ames Community School District ("District"). Recently, we were asked to represent the District in reviewing a Memorandum of Understanding for a School Resource Officer between the District and the City (the "MOU").

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 matter 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 MOU 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 represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4)

April 15, 2019

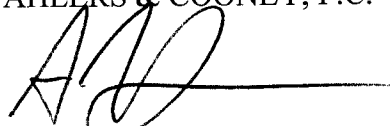
Page 2

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', with a long horizontal line extending to the right.

Aaron J. Hilligas

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April 15, 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

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