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ARIZONA ATTORNEY GENERAL

April 16, 1985

Mrs. Gwen Robinson  
Chairman  
Arizona State Parks Board  
1688 West Adams  
Phoenix, Arizona 85007

.RE: I85-052 (R85-017)

Dear Mrs. Robinson:

You have asked whether you have a conflict of interest (1) in serving simultaneously as a member and chairman of Arizona State Parks Board (Board) and as a member of the City of Yuma Parks and Recreation Commission (Commission) and the Yuma Crossing Park Council, Inc. (Council) or (2) in being employed as a coordinator for the Yuma Crossing Park by the City of Yuma (City) while you are a member of the Board. You have advised us in your letter that the Board, the City and the Council are currently negotiating a contract for the development of Yuma Crossing Park. You further advise that the City plans to fund the position of a coordinator for the Yuma Crossing Park and that you are contemplating employment in that capacity.

Arizona's conflict of interest law, A.R.S. § 38-501 et seq., applies to all public officers and employees of incorporated cities or towns, political subdivisions and of the state and any of its departments, commissions, agencies, bodies or board, but not to members of the legislature. "Public officer" is defined as "all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution, or statute, but excluding members of the legislature. A.R.S. § 38-502.8. "Public agency" is defined by A.R.S. § 38-502.6 as:

Mrs. Gwen Robinson  
April 16, 1985  
Page 2

(a) All courts.

(b) Any department, agency, board, commission, institution, instrumentality, legislative or administrative body of the state, county, incorporated town or city and any other political subdivision.

(c) The state, county and incorporated cities or towns and any other political subdivisions.

As a member of the Board and of the Commission you are a "public officer." Further, you would be a public officer if you are subsequently employed by the City, which is an incorporated city or town.

A.R.S. § 38-503 provides, in relevant part, as follows:

A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

"Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.<sup>1</sup> A.R.S. § 38-502.11. As we noted in Ariz. Atty. Gen. Op. 183-111, the Arizona Court of Appeals has

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1. "Remote interest" is defined, in pertinent part, as:

(a) That of a nonsalaried officer of a nonprofit corporation.

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defined substantial interest as one by which a person will gain or lose something as contrasted to general sympathy, feeling or bias. Yetman v. Naumann, 16 Ariz.App. 314, 492 P.2d 1252 (1972).

We do not think that your service on either the Commission or the Council while acting as a member of the Board in and of itself constitutes a "substantial interest." It is

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1. (continued)

(c) That of an attorney of a contracting party.

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(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

(g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.

\* \* \*

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

(iii) A public agency except if it is the same governmental entity.

Mrs. Gwen Robinson  
April 16, 1985  
Page 4

our understanding that these positions are uncompensated and that your participation is on an entirely voluntary basis. Therefore, we do not think that there is any "pecuniary or proprietary interest, either direct or indirect" in your service on this Commission or on the Council while simultaneously serving as a member or chairman of the Board.

However, we reach a different conclusion with respect to your employment as a coordinator for the development of the Yuma Crossing Park while serving as a member of the Board. The coordinator's position is compensated by the City. Since your interest does not come within any of the specified remote interests, the only question is whether it is a direct or indirect "pecuniary or proprietary interest." As we have discussed in previous opinions, employment by an organization which is an interested party in a contract with the public body constitutes such a pecuniary and proprietary interest since the contract will confer an economic benefit or detriment upon the organization and therefore will have at least an indirect pecuniary benefit on the employee. Id.; see also Ariz. Atty. Gen. Ops. 179-263 and 177-146. Therefore, we conclude that you, as a coordinator for the Yuma Crossing Park, compensated by the City, would have a substantial interest in any decision or matter relating to the Yuma Crossing Park. Accordingly, as a member of the Board, A.R.S. § 38-503 requires you to do the following:

1. Disclose the interest in the Board's official records. See A.R.S. §§ 38-503; 38-509.
2. Refrain from participating in any manner in any decision or contract relating to the Yuma Crossing Park. A.R.S. § 38-503.A.

As we noted above, A.R.S. § 38-501 et seq. would apply to you as an employee of the City since the City is an "incorporated city or town." However, your position on the Board is only that of a remote interest. A.R.S. § 38-502.10. Therefore, in your capacity as an employee of the City, you are not prohibited from participating in a decision or in the contracts which pertain to the Board.

Finally, we must also address whether the common law doctrine of incompatibility of offices precludes you from serving simultaneously in these three positions. We have previously stated that there are two situations under this

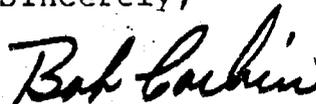
Mrs. Gwen Robinson  
April 16, 1985  
Page 5

doctrine which would preclude a person from holding public office:

(1) When the duties of two positions are in conflict and (2) when it is physically impossible that two positions be held simultaneously by one person. Perkins v. Manning, 59 Ariz. 60, 122 P.2d 60 (1942); Colman v. Lee, 58 Ariz. 506, 121 P.2d 433 (1943).

Ariz. Atty. Gen. Op. 180-061. The determination of whether two positions are incompatible rests upon the individual duties required of each position. We do not have sufficient information at this time to determine whether the duties of the positions at issue in your inquiry would, in fact, pose such a conflict that the two offices would be incompatible or whether it would be physically impossible for the two positions to be held simultaneously by one person.<sup>2/</sup> As we noted in Ariz. Atty. Gen. Op. 185-029, to determine whether two positions are incompatible, each situation must be examined individually.

Sincerely,



BOB CORBIN  
Attorney General

BC:SMS:gm

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2. The physical impossibility aspect of the incompatibility can involve several factors such as time, location, physical and mental capacity.