
Subject: FW: Board of Ethics Hearing Panel for Code of Ethics and Conduct Complaint by Keen - Wednesday, June 8, 2022 @ 7 p.m.

From: Conder, Chuck <CConder@riversideca.gov>

Sent: Tuesday, May 10, 2022 2:30 PM

To: Arseo, Eva <EArseo@riversideca.gov>

Cc: Gause, Donesia <DGause@riversideca.gov>

Subject: Re: Board of Ethics Hearing Panel for Code of Ethics and Conduct Complaint by Keen - Wednesday, June 8, 2022 @ 7 p.m.

My reply was the letter sent to you from the JPA's Legal Attorney, Mr Thomas Rice.

MARCH JOINT POWERS AUTHORITY



Filed by Councilmember Conder as Reply to Complaint

April 28, 2022

SENT BY MAIL AND EMAIL (city_clerk@riversideca.gov)

Chair Foreman
Board of Ethics
c/o Donesia Gause, MMC, City Clerk
3900 Main Street, 7th Floor
Riverside, CA 92522

RECEIVED

MAY 05 2022

City of Riverside
City Clerk's Office

**RE: Code of Ethics and Conduct Complaints filed by Dustin Keen against
Council Member Chuck Conder and Council Member Jim Perry**

Honorable Chair Foreman,

Please accept this letter as part of the record for the hearings on the Code of Ethics and Conduct Complaints ("Complaints") filed by Dustin Keen against Council Members Chuck Conder and Jim Perry. We submit this letter on behalf of the March Joint Powers Authority (the "Authority") because the Complaints are entirely premised on the Council Members' role as Commissioners for the Authority and upon a flawed understanding of the State's ethical laws. The Authority has a strong interest in our member agencies feeling comfortable appointing elected officials to the Authority's Commission without fear of baseless ethics complaints being filed against them. We respectfully request the Board of Ethics dismiss both complaints because, as a matter of law, neither Council Member Conder nor Council Member Perry have any personal financial interest in the Authority's business.

The Authority is a joint powers authority established through a joint powers agreement between the County of Riverside, City of Moreno Valley, City of Perris, and City of Riverside. The Authority covers approximately 3,500 acres within the vicinity of the March Air Reserve Base. When the March Air Force Base was converted into the March Air Reserve Base in 1996 as part of the realignment, there were significant impacts on the local economy and large tracks of land were deemed surplus and made available for reuse. The Authority was established by its member agencies for the purpose of base reuse, planning and development, and the establishment of a joint-use aviation facility. To date, the Authority has facilitated more than 1,300-acres worth of commercial, industrial, hospitality, logistics and aviation related businesses that resulted in more than 12,000 jobs within western Riverside county. Moreover, the Authority consistently delivers infrastructure projects that ensure the long-term protection of military missions at the March Air Reserve Base. Under the joint powers agreement, each member agency appoints two officials to serve as Commissioners at the Authority. These Commissioners serve at the pleasure of the member agency's governing board. Council Members Conder and Perry are the City of Riverside's Commissioners, and were appointed to serve on the Authority's Commission by the City Council. The Commissioners have no economic interest in the Authority and they may be removed and replaced by the City Council at any time.

While the Complaints fail to state with specificity how the Council Members' role as Commissioners for the Authority establish a violation of any ethical standard, we have carefully considered which ethical laws might conceivably be implicated by the Council Members role as Commissioners at the Authority in order to address them. We address each below and firmly believe the Complaints to be meritless,

First, under the Political Reform Act, there is only a conflict of interest if an official has an economic interest in the decision. A public agency is specifically not considered a "source of income" to a public official (see the definition of "income" in Government Code section 82030). The Authority is a public agency, organized as a joint powers authority. Because the Authority is a public agency, the Authority is not a source of income to either Council Member, and there is no economic interest in decisions affecting the Authority. The Authority is also not a source of income (e.g., a business entity, real property interest, or personal financial interest) under any other provision of the Political Reform Act. There is simply no economic interest under law. For the sake of clarity, the Council Members received no financial gain from the Authority as a result of the City Council approval on January 25, 2022 – they received no commissions, no benefits, no discounts, and no payments of any kind.

Second, to the extent the complainant is alleging that the roles of Council Member and Commissioner are incompatible offices under Government Code section 1099, that would be false. The role of a Commissioner at the Authority cannot be an incompatible office when the role as a Commissioner is based upon appointment by the City Council to function as the City's representative with the Authority. Joint powers agreements and the creation of joint powers authorities, like the Authority, are expressly authorized by state law.

Third, to the extent the complainant is alleging a violation of Government Code section 1090, no contract appears to have been approved by the Council on January 25, 2022. Regardless, neither Council Member has any financial interest in the matter. Even if a stipend received from the Authority counted as a financial interest (which it doesn't, as noted above), there are both non-interest and remote interest exceptions that would likely apply.

Fourth, there is no common law conflict here. As noted above, the Council Members have no economic interest in the Authority and no interest in the transaction at issue here. There is absolutely no precedent in the common law for the notion that an elected official appointed to a joint powers authority cannot vote on matters affecting that authority when they arise before the legislative body to which the official was elected. The Council appointed the Council Members to the Authority's Commission. That action cannot and does not preclude the Council Members from voting as any other member of the Council on matters affecting the Authority. To enforce such a rule would be madness – depriving the Council of likely its most knowledgeable members on the subject matter and depriving the City's voters of the right to have their elected representatives weigh in on a matter of import to the City.

Finally, the approval does not violate a single standard set forth in Section 2.78.060 (Prohibited Conduct) of the Riverside Municipal Code. For example, the action did not result in personal gain, did not involve the divulgence of confidential or privileged information, did not involve the use of City resources for non-City purposes, and (as outlined above) did not involve a violation of any law.

With the foregoing in mind, we respectfully request that the Board dismiss the meritless Complaints. As noted above, the Authority has a strong interest in the legislative bodies of its member agencies feeling comfortable appointing members as Commissioners without distracting and meritless ethics complaints against them. Such complaints are a distraction from the Authority's important work bringing good jobs to Riverside County.

Sincerely,

A handwritten signature in black ink, appearing to read "Grace", with a long horizontal flourish extending to the right.

Dr. Grace Martin
Executive Director

A handwritten signature in black ink, appearing to read "Tom", with a large, sweeping loop at the end.

Thomas A. Rice
Partner, Best Best & Krieger LLP
General Counsel