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November 30, 2007

Ed Harrington, Controller
City and County of San Francisco
City Hall
San Francisco, CA 94102

Dear Mr. Harrington:

You have requested advice regarding whether your appointment to and service on the Board of Trustees ("Trustees") of the Financial Accounting Foundation ("FAF") would violate with the City and County of San Francisco's ("the City") conflict of interest laws.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *See* S.F. Charter Section C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.*

Because you seek advice regarding actions that you may take in the future, the Commission is treating your question as a request for a formal opinion.

Background

The Office of the Controller is responsible for the accounting, disbursement or other disposition of monies of the City and County of San Francisco in accordance with sound financial practices applicable to municipalities and counties. S.F. Charter § 3.105. The mission of the Controller's Office is to ensure the City's financial integrity and promote efficient, effective and accountable government, as prescribed in the Charter, Administrative Code, other City ordinances and applicable State laws.

In your November 15, 2007 email, you indicate that the FAF Board of Trustees is responsible for the oversight, administration, and finances of both the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB), as well as selecting the members of both Boards and their respective advisory bodies. According to its website, the FAF is an independent, private sector entity that operates for charitable, educational, scientific, and literary purposes within

the meaning of section 501(c)(3) of the Internal Revenue Code. Among other things, the FAF is responsible for establishing and improving financial accounting and reporting standards, educating constituents about those standards, and protecting the independence and integrity of the standard-setting process. *See* www.fasb.org/faf/faf_info.shtml. You state that the FAF does not do any business directly or indirectly with the City. You add that typically, the Trustees meet once a month for a day in New York. You believe that FAF pays all travel expenses for the Trustees, plus \$1,000 per meeting and a quarterly stipend. You believe that the total amount you may receive for your services is between \$20,000 and \$30,000 annually.

You also state that service on the Board of Trustees may benefit the City because you would have more knowledge about governmental accounting issues, and that FAF may pay for some of the governmental finance meetings that you currently attend at the City's expense. You add that like the current governmental member on the Board of Trustees, you will take a vacation day to attend the Trustee meetings and would prepare for the meetings on your own time. You asked the Commission to provide advice and guidance to ensure that you would comply with applicable conflict of interest laws governing City officers and employees.

Discussion

In determining whether a conflict of interest exists, we begin by looking at section 3.206 of the San Francisco Campaign and Governmental Conduct Code. Section 3.206(a), which incorporates the California Political Reform Act ("PRA"), provides that no officer or employee may make, participate in making, or seek to influence a decision of the City in which the officer or employee has a financial interest within the meaning of the PRA. Were you to become a Trustee of the FAF and thereby be deemed to have a financial interest in the FAF, unless certain exceptions apply, you would not be able to make, participate in making, or seek to influence any decision of the City that concerns the FAF or the bodies it oversees. However, since you have indicated that FAF does not currently do any business directly or indirectly with the City, the prohibitions of the PRA probably will not be implicated by reason of your appointment to the FAF Board of Trustees.

We next turn to section 3.206(b) of the Campaign and Governmental Conduct Code, which incorporates California Government Code section 1090, et seq. ("section 1090"). This section prohibits any officer or employee of the City from making a contract in which he or she has a financial interest. Because you have indicated that FAF and the bodies it oversees do not contract with the City, the ban in section 1090 is not implicated by reason of your appointment to the FAF Board of Trustees.

Because service on the Board of Trustees is an outside activity, we next must determine whether such activity will be barred under the Statement of Incompatible Activities (SIA) for the Office of the Controller, once that SIA becomes effective next year. There is no express prohibition in the SIA that would bar your service on the FAF Board of Trustees. However, even though there is not an express prohibition, we must determine whether such an outside activity conflicts with your duties as the Controller. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired,

such as activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Because you indicate that the FAF meets only once a month, that you plan to take a vacation day to attend the meetings, and that you will prepare for the meeting on your own time, it does not appear that service on the FAF Board of Trustees conflicts with your duties as a City officer.

Conclusion

Based on the information you provided, it does not appear that a conflict of interest exists should you be appointed to serve and serve on as a Trustee for the FAF. As a reminder, however, if the FAF would be a source of financial interests to you, you would be required to report such interests on your Statement of Economic Interests.

I hope you find this information helpful. Please do not hesitate to contact me if you have questions.

Sincerely,

John St. Croix
Executive Director

By: Mabel Ng
Deputy Executive Director