

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



Office of the Mayor 510-577-3356
FAX 510-577-3340

July 27, 2011

Via Facsimile – (415) 703-1016

Honorable Kamala Harris
California Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Request From City of San Leandro for Attorney General Amicus Curiae
participation in the matter of *Eden Township Healthcare District v. Sutter Health, et. al.*

Dear Attorney General Harris:

At its meeting on July 25, 2011, the San Leandro City Council authorized and directed me and Mayor Stephen H. Cassidy to request that the Office of the Attorney General participate by amicus curiae on behalf of Eden Township Healthcare District (“District”) in its appeal to the State Court of Appeal for the First Appellate District in the matter of *Eden Township Healthcare District v. Sutter Health, et. al.*, Civil No. A131616. The District filed its appeal following an erroneous ruling by the superior court seriously misconstruing Government Code Section 1090 as applied to two officials who participated on behalf of the District in the making of certain agreements in which they were financially interested regarding the future operations of San Leandro Hospital. The outcome of this litigation will have profound and significant consequences for the citizens of San Leandro.

Although the ultimate objective of the respondent, Sutter Health, is to force the closure of San Leandro Hospital, which would permanently deprive the residents of San Leandro of this long-standing full-service acute care and emergency facility, the focus of the issue before the Court of Appeal concerns the interpretation and application of a compelling public policy doctrine: the conflict of interest principles codified in Government Code Section 1090, *et. seq.* We do not overstate the concern of the residents of San Leandro in declaring that only the rigorous application of the spirit and body of Government Code 1090 will halt this imminent loss of a treasured and much-needed community medical facility. The Attorney General is uniquely situated through the amicus curiae vehicle to sharpen the focus on this important legal and public policy issue.



As a public law practitioner for over 30 years, I have deep and wide experience in the application of California conflict of interest jurisprudence, including and especially Government Code 1090, *et. seq.*, and as well the circumstances in which conflict and potential conflicts exist and may be avoided by decision-makers of public policy. Based upon this experience, I believe that the superior court erred in its ruling.

Your office's premier publication, the *California Attorney General's 2010 Conflict of Interest Guide*, is a desktop reference that is an invaluable resource for public law practitioners in our analysis of conflict of interest issues. As stated in the Guide's Introduction, "Conflict-of-interest laws are grounded on the notion that government officials owe paramount loyalty to the public, and that personal or private financial considerations on the part of government officials should not be allowed to enter the decision-making process." Your publication further states that "... with respect to conflict of interest laws, courts have frequently adopted the analysis of Attorney General opinions and have commented favorably on the service afforded by those opinions and this Guide."¹ In this case, we believe the Court of Appeal will be immeasurably benefited by the expertise and guidance that you can provide as a "friend of the court."

As more fully described in the briefs on file with the Court, the conflicts of interest alleged by the District in its appeal are serious and warrant close scrutiny.² As an example, the District's former CEO (2006-08) participated in the making of District contracts that directly benefitted himself, since he was simultaneously the CEO of an entity on the other side of the contracts. Even though he purportedly recused himself at certain times during the lengthy negotiation process, he nonetheless proceeded to advise the District throughout the course of the negotiations. This appeal raises important legal issues and arguments of paramount public policy concerning Government Code Section 1090 which, if correct, would necessitate that the Court of Appeal void the 2008 Agreements that provide the predicate for the closure of San Leandro Hospital. (*Lexin v. Superior Court*, 47 Cal. 4th 1050 (2010))

The case is of utmost importance to the City of San Leandro and its residents. If the superior court's decision is affirmed, Sutter will be allowed to close San Leandro Hospital as a full-service acute care and emergency services facility. The hospital's closure would result in a devastating loss of vital healthcare services to the citizens of San Leandro and central Alameda County and will severely limit access to healthcare services. San Leandro Hospital received 27,000 visits in 2009. The hospital's closure would create even greater demands on

¹ *Conflicts of Interest Guide*, Office of the Attorney General (2010), analyzing Government Code Section 1090, pp. 55-83.

² It is my understanding that the Attorney General's Office is in receipt of copies of the briefs. If you would like electronic copies, please indicate the email address to whom they should be forwarded.

the remaining acute hospitals in Alameda County that are already seriously overburdened and subject to emergency room diversion.

It is for these reasons that the City of San Leandro respectfully requests that the Attorney General's Office participate as amicus curiae in support of the Eden Township Healthcare District.³

If you have any questions or need additional information, please contact Jayne Williams, City Attorney for the City of San Leandro at 510-808-2032 (jwilliams@meyersnave.com), or Kevin Fong, attorney for Eden Township Healthcare District at 415-983-1000 (kevin.fong@pillsburylaw.com).

Very truly yours,



Jayne W. Williams
City Attorney



Stephen H. Cassidy
Mayor

c: Lianne Marshall, City Manager
Marian Handa, City Clerk
Kevin Fong, Counsel for Eden Township Healthcare District

³ The filing deadline for an amicus curiae brief is August 8, 2011.



FAX TRANSMITTAL

Date: July 27, 2011

Client No:

TO: Attorney General Kamala Harris

FROM: Jayne W. Williams
Principal
Meyers Nave
San Leandro City Attorney

A handwritten signature in blue ink, appearing to read "Jayne", written over the name in the FROM field.

RE: Request from City of San Leandro for AG Amicus Participation in the Matter of *Eden Township Healthcare District v. Sutter Health, et. al.*

NO. OF PAGES SENT (INCL. THIS SHEET): 4

HARD COPY TO FOLLOW? No

ADDITIONAL COMMENTS:

I appreciate, in advance, your favorable consideration of this time sensitive request on behalf of the City of San Leandro. On Monday Mayor Stephen Cassidy spoke to Jeffrey Pennock of your office regarding the City's interest in this case and the importance of the Attorney General's participation as amicus curiae. I'm hopeful that you can assist.

Please feel free to contact me or Kevin Fong, counsel for Eden Township Healthcare District, if you need additional information or have questions.

Best regards,

/Jayne

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