

Mixed Loyalties

The convoluted case of the amicus brief.

PaceHealth's planned move to north Springfield is considered potentially damaging to Eugene. Eugene could lose a major regional medical center and thousands of family wage jobs, local street repairs could be delayed for decades, and it could cost Eugene millions to establish a new, smaller hospital in the city center. And yet Eugene City Attorney Glenn Klein has written a legal brief that is seen as supporting PeaceHealth's move.

Is it a conflict of interest? Not according to the city attorney, city staff or Oregon's vague ethics rules. But some city councilors and local land-use activists are outraged anyway, and say the problem illustrates why Eugene needs its own in-house city attorney rather than a private lawyer who can also represent anyone he wants.

Klein is being paid by PeaceHealth to write a legal brief for the League of Oregon Cities (LOC) regarding an appeals court case involving hospital development plans. Springfield is challenging an unfavorable ruling by the Land Use Board of Appeals (LUBA) regarding transportation issues. LUBA says the city and hospital can't wait 10 years or more to deal with anticipated traffic snarl created by the hospital (see *EW* news story, Jan. 8).

Eugene councilors have mixed views on the LUBA ruling, but city staff bypassed the council and went directly to Klein. Assistant City Manager Jim Carlson says it was his idea. "After I had read the LUBA decision and talked to staff from Planning and Development," Carlson says, "I encouraged Glenn to agree to prepare the amicus for the League."

Carlson says LUBA's interpretation of the Transportation Planning Rule "significantly restricts how cities (and counties) will be able to time and undertake transportation projects in their jurisdictions. I felt that the decision had potential negative implications for the city of Eugene. Limiting the discretion of city councils and county boards of commissioners in this area seemed to me, as well as the other members of staff, like a bad idea ... and we agree with the dissenting referee" on the LUBA panel.

But Carlson may have been acting contrary to the city's Growth Management Policies adopted in 1997 and still in force. Policy 14 states that "Development shall be required to pay the full cost of extending infrastructure and services," with possible exceptions for "higher-density, in-fill, mixed-use and redevelopment." Klein had little to say in response to questions posed by *EW*, other than, "There was no direct or perceived conflict of interest: The city of Eugene has not taken a position on the RiverBend development and is not fighting it."



Glenn Klein

In addition, before agreeing to write the amicus, I checked with the city of Eugene to ensure that the city had no objection or concern about it."

But did Klein, who's considered an expert on municipal law, even need a waiver from the city to write the brief? UO law professor of legal ethics Tom Lininger says "As a general matter, clients deserve undivided loyalty. Oregon's ethical rules instruct lawyers to avoid both actual and likely conflicts of interest. An actual conflict of interest exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client." And he went on to say that a "waiver solves the conflict problem as a technical matter." But the final authority on the matter appears to be Klein himself.

City Manager Dennis Taylor said at a council work session March 8 with Klein at his side that, "This wasn't one of those situations where the city attorney has to seek approval from the city manager or perhaps staff ... I don't believe that in a technical sense the waiver was asked for and obtained. What was given the city manager's staff was a heads-up that this was happening."

Councilor David Kelly raised the issue at the work session, saying he was concerned about the impact of the brief on Eugene. "The brief doesn't take a position on PeaceHealth's move to Springfield as such," he said, "but it certainly facilitates that move, which is not in Eugene's interest ... Didn't this action constitute policy-making by staff by not referring that question to us?"

Taylor responded, saying, "I don't think it was. It was Oregon Cities that was intervening."

Eugene was not involved per se other than through our membership in the League."

Klein declined to answer *EW* questions about whether his firm's \$1.6 million contract with the city implies a lawyer-client relationship that precludes him from taking any action that would harm the city. He also would not say how much he was paid by PeaceHealth for his work.

Kelly says the council is not legally in a position to oppose the PeaceHealth move, but the council has taken "a series of positions regarding PeaceHealth staying in Eugene."

Because these were "political/policy" decisions, Kelly says, "I don't believe it was appropriate for Klein to write the amicus brief." And if permission or a waiver of conflict were requested, Kelly says it "should have been brought to the council" instead of the city manager's office.

Councilor Bonny Bettman says Klein was "probably within his legal rights," but she faults the current system whereby the city contracts all its legal services with Harrang Long Gary Rudnick PC instead of hiring an in-house attorney without mixed loyalties.

"We had an opportunity to deal with this," she says, referring to a failed charter amendment vote to establish an in-house city attorney, "and nobody showed up to the plate." A charter review committee recommended the amendment, but it failed at the polls in 2002 following Voters Pamphlet opposition statements from former city managers, and a *Register-Guard* editorial Oct. 10, 2002 saying it was an "unnecessary and potentially damaging idea." The *R-G* did not disclose that it also uses Harrang Long for legal services. **EW**

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