



Memorandum

TO: Members of the City of Bloomington Board of Public Works

FROM: Beth Cate, Corporation Counsel

RE: Supplemental information on conflicts of interest analysis, regarding Griffin Realty contract for assistance with bid process to sell police building

DATE: October 20, 2023

This memo provides additional information to members of the Board of Public Works (“BPW”) on the ethics analysis conducted by the Legal Department and the City Ethics Officer regarding the City entering into a contract with Griffin Realty and Don Griffin to assist with the public bidding process for sale of the Bloomington Police Department building located at 220 E. 3rd Street.

We considered several provisions of law and the City Personnel Manual in our analysis, to determine whether entering into a contract with Griffin Realty to market the availability of the police building and generate high-quality bids for the BPW’s consideration, would involve any violation of state law or create potential ethics concerns for the City.

IC 35-44.1-1-4(b) makes it a Level 6 felony punishable by 6 months-2.5 years in prison, and up to \$10,000 in fines, for a public servant (which under IC 35-31.5-2-261 includes current government officials, employees, and board/commission members) to knowingly or intentionally have a pecuniary interest in, or derive a profit from, a contract or purchase connected with an action by the government entity served by the public servant.

“Pecuniary interest” is defined as “an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of” the public servant or their dependent. IC 35-44.1-1-4(a)(3).

Because Don Griffin is no longer Deputy Mayor and has not been for almost 10 months, this provision does not apply to him.

IC 35-44.1-1-5 makes “profiteering from public service” a Level 6 felony and defines it as a person (1) “knowingly or intentionally obtaining a pecuniary interest in a contract or purchase with an agency within one year after separation from employment with the agency,” when (2) that person is no longer a public servant for the agency “but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of ... the contract ... or purchase....” IC 35-44.1-1-5(b). “Agency” is defined to mean “any authority ... of ... a city” IC 35-31.5-2-11(a).

The purpose of IC 35-44.1-1-5 is to discourage current public servants from paying a contractor more than they otherwise would, in the hope or expectation that they would personally profit off the excess

payments by quitting public service and going to work for the contractor. This statute does not apply to Don Griffin because he did not approve, negotiate, or prepare prior to leaving the City, the contract or purchase in question, which is the contract for services to assist with the bid process for sale of the police building. The Legal Department and Controller's Office drafted the materials included in the Invitation to Quote, including the contract terms that would apply to the firm selected to help during the bid process. The only term he contributed to the resulting contract for services is the compensation amount included in Griffin Realty's response to the Invitation to Quote.

Nor can hiring Mr. Griffin to help generate bids to sell the *current* police building, properly be considered deriving pecuniary interest from the City's prior purchase of the Showers West property for a new public safety headquarters, which Mr. Griffin (among several others) participated in negotiating on behalf of the City.

With respect to the Invitation to Quote, as we indicated earlier, the Administration selected Griffin Realty as the lowest responsive and responsible firm supplying a quote in response to an Invitation to Quote that the Administration sent to seven firms (in addition to Griffin Realty, ReMax; FC Tucker; Cushman Wakefield; Marcus Millichap; JLL; and Colliers) directly as well as asking outside counsel working on property matters to distribute through their networks. The City's usual practice is to contract with the lowest responsive and responsible bidder on services and projects, as it did here. As indicated earlier, Griffin Realty quoted the City the same rate it charges all clients, and that rate was 25-50% lower than that offered by the only other respondent. In a conversation with that other respondent, they confirmed that they would not match Griffin Realty's rate.

We also consulted Chapter 13.08 of the City of Bloomington Personnel Manual, which provides the City's Ethics and Conflict of Interest Policy. Section 13.08 states that in addition to requiring compliance with applicable state laws on conflicts of interest, discussed above, "the City strives to avoid situations that have the potential for impropriety or the appearance of impropriety even where not expressly prohibited by state law."

Additionally, under Section 13.08(B)(8) of the Manual titled "Profiteering from Public Service":

- a. A person who approves, negotiates, or prepares the terms or specifications of a contract or purchase for the City shall not knowingly obtain a financial interest in that contract or purchase for one (1) year after he/she separates from employment with the City. Any exceptions shall require written approval of the Mayor.
- b. The City reserves the right to consider as a factor in awarding a contract or bid the fact that a former employee, who worked personally and substantially on the subject matter while a City employee and within twelve (12) months of City employment, may have an unfair knowledge for a project or bid. At the option of the City, such involvement may constitute grounds for disqualification for the contract or bid.

As discussed above, during Don Griffin's time as Deputy Mayor, he did not approve, negotiate, or prepare the terms or specifications of the realtor services contract in question. Nor, of course, did he negotiate or prepare while at the City any contract for the sale of the police building – any such contract is yet to come, after the public bidding process. Nor, as noted above, is Mr. Griffin's earlier involvement in the Showers West acquisition relevant here, because that is a separate contract. Section 13.08(B)(8)(a), like IC 35-44.1-1-5, is aimed at not allowing public servants to skew the terms of a given public contract so that they can jump ship soon after to the private contractor and profit personally off that same contract.

As noted in our October 10 memo, with respect to Section 13.08(B)(8)(b), while Mr. Griffin of course interacted with the Bloomington Police Department in his role as Deputy Mayor, and engaged personally and substantially in activities surrounding the acquisition of Showers West, he would not have had any unfair knowledge when it came to bidding on consultant services to sell the current police building. He had left the City prior to appraisals being obtained for that building, and all those receiving the Invitation to Quote for consultant services on the police building sale received and had access to the same information needed to bid on the services requested: building size, location, zoning designation, and the need for an extended departure date for the Bloomington Police Department. Likewise, all those receiving the Invitation to Quote (which included other local firms extremely familiar with the current police building) had the same ability to ask questions for further information, and all answers were provided equally on the City's public bidding web page. Again, the City followed its usual practice – selecting the lowest responsive and responsible bidder – in choosing Griffin Realty. Finally, Deputy Mayor Allen recused himself from the consideration of the bidders and selection of Griffin Realty, given his work on Mr. Griffin's recent mayoral campaign.

We concluded that the circumstances do not present conflicts or ethics concerns with respect to hiring Griffin Realty to perform the services outlined in the contract.

We note further that during his term as Deputy Mayor, Mr. Griffin was subject to a conflicts of interest management agreement with the City requiring him to screen himself from any relationships or business dealings between Griffin Realty and the City, and barring him from sharing any City confidential information with Griffin Realty or any other unauthorized third parties. Prior to that, Mr. Griffin observed similar restrictions as chair of the Bloomington Redevelopment Commission. Accordingly, he did not participate in, make any decisions about, or shape any dealings between Griffin Realty and the City during his time in office, and so his later return to Griffin Realty could not have influenced any such dealings.

Finally, it is not unusual or inappropriate to allow someone who has served in City administration to return to their prior work after leaving public service and to enter into an agreement for new services to the City. By way of comparison, another former Deputy Mayor, Mick Renneisen, retired from the City in April 2021, and signed a contract with the City in August 2021 to provide consulting services to the City (specifically, managing the hiring process for the City's director of audit and finance systems position). Former Deputy Mayor Griffin left City administration nearly 10 months ago. To refuse to permit Mr. Griffin to participate as a bidder for the services in question, in the circumstances described above and in the Legal Department's October 10 memo, would effectively be punishing him for engaging in public service, and would serve to discourage others from so engaging in future.