

WHATCOM COUNTY PROSECUTING ATTORNEY

ERIC J. RICHEY

311 Grand Avenue, Suite 201
Bellingham, Washington 98225-4079
(360) 778-5710 /Main Office FAX (360)778-5711
Appellate FAX (360) 778-5712

CHIEF CRIMINAL DEPUTY
Erik Sigmar

ASST. CHIEF CRIMINAL DEPUTY
Warren Page

CRIMINAL DEPUTIES
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Dona Bracke
Jonathan Richardson
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MEMORANDUM

To: Rud Browne, Whatcom County Councilmember
From: Karen N. Frakes, Whatcom County Chief Civil Deputy Prosecuting Attorney
Date: February 14, 2020
RE: Conflict of Interest Question

I have had the opportunity to review your written request for a legal opinion, dated February 11, 2020, on the potential existence of a conflict of interest if you were to participate in the appropriation of funds in the pending matter involving the County, the Boys & Girls Club, and Kids' World. While you are very clear that you have a long-standing friendship with Bob Warshawer, one of the owners of Kids' World, and are involved in several investments with him, you are also very clear that you have never had any involvement with Kids' World, financially or otherwise, and have never participated in any real estate transactions with Mr. Warshawer. In other words, you would not personally benefit from any transaction involving Kids' World.

Under state law, chapter 42.23 RCW (Code of Ethics for Municipal Officers—Contract Interests) contains the provisions relevant to this issue. RCW 42.23.030 provides, in pertinent part, as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. . .

While “beneficial interest” is not specifically defined in the statute, the Washington State Court of Appeals has interpreted it to mean a financial benefit. *See, Barry v. Johns*, 82 Wash. App. 865 (1996). You do not appear to have a financial interest in any potential contract with Kids’ World. Moreover, you clearly do not meet the definition of having a remote interest in such a contract under RCW 42.23.040.

Turning next to local law, chapter 2.104 of the Whatcom County Code (WCC) contains the Code of Ethics applicable to elected officials. The provisions in our local code mirror the state provisions discussed above and, therefore, would, more likely than not, be interpreted the same way.

In conclusion, it is my opinion that your participation in the pending matter involving the County, the Boys and Girls Club, and Kids’ World would not conflict with any provisions in state or local law. If you have any further questions or concerns, please let me know and I would be happy to discuss them with you.