

**REPORT OF CONSULTANT TO THE CITY
OF BELLEVUE CONCERNING CONFLICT
OF INTEREST ALLEGATIONS AGAINST
COUNCILMEMBER GRANT DEGGINGER**



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June 5, 2011

On May 16, 2011, DLA Piper LLP (US) (“DLA Piper”) submitted its interim report (the “Interim Report”) to the City of Bellevue concerning DLA Piper’s investigation into allegations that three members of the Bellevue City Council (the “Council”) had or have conflicts of interest potentially impacting their consideration of issues relating to Sound Transit’s East Link light rail project. In the Interim Report, as directed by the Council on April 18, 2011, we summarized the conflict of interest allegations that had been made against the three Councilmembers and set forth our conclusions as to which allegations warranted further investigation, legal analysis, or both. In the Interim Report, we also stated that if we were able to complete our investigation with respect to any particular set of allegations while the investigation remained ongoing with respect to other issues, we would consider issuing a final report setting forth our findings and conclusions as to the completed portion of the investigation while we continued to conduct the remainder of the investigation.

We have now completed our investigation of the conflict of interest allegations against Councilmember Grant Degginger. Our findings and conclusions are set forth in this report.¹

I. Scope Of Allegations Investigated

As noted in the Interim Report, all of the allegations concerning Councilmember Degginger relate in some way to his status as a shareholder of the law firm Lane Powell, which regularly represents Sound Transit in a variety of legal matters, but which does not represent Sound Transit in connection with Sound Transit’s East Link light rail project.

We considered publicly made allegations that Councilmember Degginger’s past representation of Sound Transit and Lane Powell’s current representation of Sound Transit create a conflict of interest with respect to the Council’s consideration of issues concerning the East Link light rail project. We also considered a number of allegations brought to our attention by other Councilmembers. Deputy Mayor Lee provided us with correspondence from members of the public who asserted that the amount of legal fees paid to Lane Powell by Sound Transit suggested that Lane Powell had been hired for additional legal work by Sound Transit based on actions taken by Councilmember Degginger on the Council. Mayor Davidson asked us to consider whether Councilmember Degginger may have improperly participated in certain Council

¹ We have completed our analysis regarding the conflict of interest allegations against Councilmember Claudia Balducci, and we included our findings and conclusions as to her in the Interim Report issued on May 16, 2011. As of this writing, we are proceeding with our investigation of the conflict of interest allegations with respect to Councilmember Kevin Wallace, but we have not yet received documents we requested from Councilmember Wallace on May 13, 2011. We have been informed by Councilmember Wallace’s counsel that Councilmember Wallace intends to fully cooperate and provide all of the documents we requested using a method of collection satisfactory to us, and his counsel’s latest email communication informed us that counsel expects the document production to begin during the week of June 6, 2011 after he has the opportunity to read the Interim Report. In the meantime, we were able to complete our investigation with respect to the conflict of interest allegations against Councilmember Grant Degginger, and our findings and conclusions as to him are the subject of this report.

discussions and votes relating to Sound Transit while he was personally representing Sound Transit in a lawsuit against Qwest Communications in 2002 and 2003. Councilmember Robertson informed us that a member of the public had filed a complaint against Councilmember Degginger with the Public Disclosure Commission in the summer of 2010, alleging that Councilmember Degginger had not made certain required disclosures concerning Lane Powell.

Based on our review of those allegations, we determined that: (1) we would conduct a “peer review” of the City Attorney’s September 29, 2010 ethics opinion concerning Councilmember Degginger’s past representation of Sound Transit and Lane Powell’s ongoing representation of Sound Transit; (2) we would, as part of that peer review, obtain appropriate information as necessary about Lane Powell’s engagements for Sound Transit and Sound Transit’s process for selecting outside counsel; and (3) we would conduct a legal analysis of the allegations raised by Mayor Davidson concerning Councilmember Degginger’s past representation of Sound Transit and his participation in Council proceedings in 2003. We also determined, for the reasons set forth in the Interim Report, that we would not conduct any further investigation into the allegations relating to Councilmember Degginger’s public disclosures brought to our attention by Councilmember Robertson.

II. Summary Of Factual Investigation

In connection with our consideration of whether Councilmember Degginger has any conflict of interest with respect to the East Link project based on his prior representation of Sound Transit or on Lane Powell’s current representation of Sound Transit, we conducted a factual investigation into Sound Transit’s process for selecting outside counsel and into the fees paid by Sound Transit to Lane Powell. As part of that investigation, we received, pursuant to a public disclosure request, information from Sound Transit concerning legal fees paid by Sound Transit to Lane Powell and to other law firms since the year 2000. We also interviewed Desmond Brown, Sound Transit’s General Counsel, and three members of Sound Transit’s legal department who have engaged Lane Powell as outside counsel for various matters — Loren Armstrong (Legal Counsel), Betty Ngan (Senior Legal Counsel), and Jim Niemer (Senior Legal Counsel). Mr. Armstrong has been a member of Sound Transit’s legal department for approximately four years and has worked with Lane Powell as outside counsel on three engagements while at Sound Transit. Ms. Ngan has been a member of Sound Transit’s legal department since 2001 and has worked with Lane Powell as outside counsel on three engagements while at Sound Transit. Mr. Niemer has been a member of Sound Transit’s legal department since 2007 and is a former partner at Lane Powell. Mr. Niemer has worked with Lane Powell as outside counsel on two engagements while at Sound Transit. Both Mr. Armstrong and Mr. Niemer indicated that they may have also used Lane Powell for additional, small advice matters in the past. Mr. Brown and his legal staff were fully cooperative and forthcoming in responding to our requests for information and to schedule interviews.

We did not investigate what portion, if any, of Lane Powell’s fees from Sound Transit have been allocated or distributed to Councilmember Degginger. Instead, we conducted our analysis of the allegations against Councilmember Degginger using the following assumptions: (1) that Councilmember Degginger has received a portion of Lane Powell’s fees from Sound Transit, and (2) that the amount of fees that Councilmember Degginger has received from Lane Powell’s representation of Sound Transit based on his partial ownership interest in the firm is not *de minimis*. We express no view as to whether or not these assumptions are in fact true, and no inference should be drawn that they are true based on their inclusion in this report. Those assumptions are, if anything, unfavorable to Councilmember Degginger in the context of this report, and using them for purposes of this report has avoided the need to obtain information directly from Lane Powell, which might trigger client confidentiality and privilege concerns on the firm’s part.

A. Sound Transit’s Process For Selecting Outside Legal Counsel

The following description of Sound Transit’s process for selecting outside legal counsel is based on information we received during our interviews of Mr. Brown, Mr. Armstrong, Ms. Ngan, and Mr. Niemer.

Sound Transit’s legal department currently consists of nine attorneys. All of the attorneys in the legal department report to Mr. Brown, Sound Transit’s General Counsel, but individual attorneys in the legal department may also have periodic interactions with the CEO and the Board. The General Counsel reports to the CEO in the first instance, but also interacts directly with the Board. The legal department provides advice and counsel in connection with Sound Transit’s policy decisions, but it does not have any direct involvement in high-level policy decision-making.

Sound Transit’s legal department handles many legal issues internally and typically engages outside counsel for matters that require particular expertise that Sound Transit does not have in-house, or for matters that are expected to be time- or resource-intensive. The legal department does not have a formal, structured process for determining whether to engage outside legal counsel in connection with a matter or for selecting which lawyer or law firm to engage as outside legal counsel for any particular matter. The decision whether to engage outside counsel on a matter is largely left to the judgment and discretion of the Sound Transit attorney responsible for the matter. The Sound Transit attorney responsible for the matter also has discretion to choose which outside attorney or law firm to engage for any particular matter. That decision is subject to approval by Sound Transit’s General Counsel. The General Counsel will sometimes push back if he thinks that the attorney selected is inappropriate for the matter, but he typically defers to the responsible attorney’s selection. No person outside of the legal department — and, specifically, neither the Sound Transit Board nor the CEO — plays any role in the selection of Sound Transit’s outside legal counsel.

Every year or two, Sound Transit has an open call for attorneys and law firms who wish to be included on Sound Transit’s “on-call” list. In their submissions for the

on-call list, firms can designate their specialties and their rates. It is fairly easy for a firm or an attorney to get included on the on-call list. The on-call list is most frequently consulted in connection with smaller matters or non-litigation matters. Sound Transit's General Counsel encourages the attorneys in the legal department to spread work around to a number of lawyers and law firms on the on-call list where possible. In addition, for liability litigation matters that are covered by insurance, Sound Transit will ordinarily select outside counsel from the carrier's list of panel counsel, and Sound Transit generally tries to spread such work out among the various panel counsel, unless the litigation involves an area in which one of the panel firms has a particular expertise.

With respect to more complex litigation and other complex matters, the Sound Transit legal department selects outside counsel based on a variety of factors, including: (1) the need for specialized expertise in a particular field; (2) whether any lawyer or law firm has prior experience with the particular issues involved (*e.g.*, whether the matter arises out of or is related to a prior matter for which Sound Transit engaged outside counsel); (3) the responsible Sound Transit attorney's prior experiences using the firm or lawyer as outside counsel; (4) the expected size and complexity of the matter, and whether a particular firm or lawyer has the resources to handle it; (4) billing rates; and (5) whether any otherwise-qualified firm is conflicted out of the representation.

The lawyers we spoke to told us that litigation matters for which they engage outside counsel frequently require specialized expertise (for example, specialized construction litigation expertise or condemnation expertise), or are large, complex cases that require outside counsel with significant resources. They stated that for such matters, there are often a very small number of firms that are truly qualified to do the work. The lawyers we spoke to said that they will often immediately have in mind a particular lawyer or law firm who they believe is the right fit for a particular matter, or there will be a small number of lawyers or firms who they will consider calling for the matter. Because of its size (based on a review of publicly available websites of law firms with offices in Washington state that have received any Sound Transit work, Lane Powell ranks fourth in number of lawyers in Washington state, with 111 lawyers in the state as of this writing), and because certain Lane Powell attorneys have expertise in areas that are relevant to Sound Transit's business and operations, including construction claims and utility relocation, Lane Powell is often on the short-list of law firms that are considered by Sound Transit for significant matters.

Each of the Sound Transit attorneys we spoke to stated that no one outside of the Sound Transit legal department had ever attempted to influence his or her selection of outside legal counsel for any matter. Each of the attorneys also stated that Grant Degginger's actions as a member of the Bellevue City Council had never influenced in any way his or her decisions with respect to any decision to engage outside legal counsel.

B. Legal Fees Paid By Sound Transit To Lane Powell

Lane Powell has earned substantial amounts of legal fees for its representation of Sound Transit in a variety of matters during each year from 2000 (the earliest year for

which we requested fee information from Sound Transit) through 2011. The amount of legal fees paid to Lane Powell per year during that period varied considerably, from a low of \$53,088.96 in 2005 to a high of \$661,276.01, in 2010. As a percentage of Sound Transit's total payments to outside counsel, the fees paid to Lane Powell ranged from a low of less than 2% in 2005 and 2008, to a high of approximately 14.2%, in 2002. In 2010, the \$661,276.01 of fees paid to Lane Powell amounted to 7.9% of Sound Transit's total payments to outside counsel for legal services. In each year from 2000 through 2011, Sound Transit paid more in legal fees to at least two other law firms (and, in many years, to three or four other law firms) than it did to Lane Powell. In 2010, Lane Powell's \$661,276.01 in fees received from Sound Transit ranked it fourth among firms who received fees from the transit agency that year; the firm that received the highest amount of fees in 2010 was paid \$4,416,536.54.

Sound Transit also provided us with information concerning fees paid to Lane Powell on a per-matter basis for the years 2006 through 2011. Lane Powell earned fees from Sound Transit on between twelve and twenty-four different matters in any given year from 2006 through 2011, but a very large percentage of the fees earned was generated by a very small number of matters, each of which extended over multiple years. For example, Lane Powell has represented Sound Transit for approximately six years in connection with an ongoing construction dispute relating to the Federal Way Transit Center. During the period 2006 through 2011, Sound Transit has paid Lane Powell over \$900,000 in fees in connection with that dispute. The fees earned in connection with that matter alone represent about 39.5% of the total fees paid by Sound Transit to Lane Powell from 2006 through 2011, and fees from that matter also accounted for approximately 65% of the \$661,276.01 in fees paid by Sound Transit to Lane Powell in 2010. Lane Powell also represented Sound Transit in connection with a significant construction dispute relating to the Mercer Island Park and Ride until 2009. From 2006 through 2009, Sound Transit paid Lane Powell over \$445,000 in fees for that matter, accounting for approximately 19.4% of the total fees paid by Sound Transit to Lane Powell from 2006 through 2011.

III. Applicable Legal Standards

The City does not have a dedicated local ethics code that applies to the Councilmembers. Chapter 3.92 of the Bellevue City Code, adopted in 1989 and titled "Code of Ethics — City Council and City Boards, Commissions and Committees," recites that the business of the Council should be conducted in accordance with "high ethical standards" and adopts by reference the provisions of RCW Chapters 42.22 and 42.23. RCW Chapter 42.22 was repealed in 1994. RCW Chapter 42.23 contains two primary provisions that govern the conduct of municipal officers — RCW 42.23.030 and RCW 42.23.070.

RCW 42.23.030 prohibits a municipal officer from being "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," and from accepting "directly or indirectly, any compensation, gratuity

or reward in connection with such contract from any other person beneficially interested therein.” Washington courts have interpreted the term “beneficial interest” in RCW 42.23.030 to be limited to financial interests. *See Barry v. Johns*, 82 Wn. App. 865, 868, 920 P.2d 222 (1996) (“We conclude . . . that RCW 42.23.030 applies only to municipal contracts involving business transactions, employment matters and other financial interests . . .”).

RCW 42.23.070 prohibits a municipal officer from (1) using his or her position to “secure special privileges or exemptions for himself, herself, or others” (RCW 42.23.070(1)); (2) giving or receiving any compensation, gift, reward, or gratuity for a matter connected with his or her duties (RCW 42.23.070(2)); (3) engaging in any business or professional activity that the officer might reasonably expect would induce him or her to disclose confidential information acquired by reason of his or her official position (RCW 42.23.070(3)); and (4) disclosing confidential information acquired by reason of his or her official position or using such information for his or her personal gain or benefit (RCW 42.23.070(4)).

With regard to the meaning of the phrase “special privileges or exemptions” in RCW 42.23.070(1),² one Washington authority suggests that the phrase is meant to prevent an officer from using his office to give himself or another person a privilege or exemption not authorized by law, or from giving a person preferential access to government resources or facilities without adequate justification. *See* AGO 2010 No. 3, at 9 (“A special privilege or exemption is a privilege or exemption to which the person is not legally entitled. A special privilege involves being allowed to do something that would otherwise be prohibited, while a special exemption involves being relieved from doing something that would be otherwise mandated. A special privilege may arise if an organization or corporation is granted preferential access to state agency facilities or employees without adequate justification for that preference.”) (internal citation and footnote omitted).³ We are not aware of any Washington authority that has construed RCW 42.23.070(1) in the context of legislative policy decisions. Clearly, however, RCW 42.23.070(1) cannot be interpreted to apply to prohibit all Council policymaking decisions that might benefit some person or entity in some way, because policy decisions by their very nature tend to benefit certain people and not others.⁴ Accordingly, we

² The Florida Supreme Court did not consider this language to be a model of clarity, as it ruled that a state ethics statute using that exact phrase was unconstitutionally vague. *See State v. Rou*, 366 So.2d 385, 385 (Fla. 1978) (“The statute is unconstitutionally vague and leaves its enforcement to the whims of prosecutors. It does not convey[] a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. The terms ‘special privileges or exemptions’ afford one no guidelines, no ascertainable standard of guilt, no barometer by which a public official may measure his specific conduct.”) (internal citations and quotation marks omitted).

³ *Cf. Hubbard v. Spokane County*, 146 Wn.2d 699, 703-04, 711-13, 50 P.3d 602 (2002) (suggesting that RCW 42.23.070(1) would prohibit alleged decision to issue building permit in violation of zoning code); *In re Recall Charges Against Feetham*, 149 Wn.2d 860, 867, 72 P.3d 741 (2003) (allegation that official directed that provisions of building code not be applied to particular party legally sufficient to allege violation of RCW 42.23.070(1)).

⁴ *See Rou*, 366 So.2d at 385-86 (“In this instance, a penalty is sought to be imposed against the accused County Commissioner by virtue of his having placed a public road contiguous to certain private property

believe that a violation of RCW 42.23.070(1) in the context of a legislative policy decision would require, at a minimum, a showing that the official specifically intended for his actions to create a special benefit for himself or another person. *See Recall Charges Against Feetham*, 149 Wn.2d at 866-70 (finding alleged violations of RCW 42.23.070(1) factually and legally sufficient where allegations, if true, showed that official intended to break the law and confer special benefits; finding additional alleged violation of RCW 42.23.070(1) insufficient where party “did not provide specific facts to support its conclusions that Feetham *was attempting to secure a special privilege to himself*”) (emphasis added).

IV. Findings And Legal Conclusions

A. There Is No Evidence To Suggest That Sound Transit’s Decisions To Engage Outside Legal Counsel Have Been Influenced By Councilmember Degginger’s Actions On The Council.

Based on our interviews of Sound Transit’s General Counsel and other attorneys from Sound Transit’s Legal Department and our review of information provided to us by Sound Transit concerning fees paid to outside counsel for the period from 2000 through 2011, we believe that there is no credible evidence to support the allegation that Sound Transit rewarded or punished Lane Powell with decisions about awarding legal work based on any vote, position, or other action taken by Councilmember Degginger on the Council, or that Councilmember Degginger has taken any action as a member of the Council intended to afford himself a special privilege or exemption, or financial benefit, as a shareholder of Lane Powell or otherwise.

First, the process for selecting outside legal counsel at Sound Transit appears to be sufficiently insulated from Sound Transit’s policymaking function to preclude any reasonable inference that the transit agency selected Lane Powell as outside counsel based on Councilmember Degginger’s actions as a member of the Council. Sound Transit’s legal department alone has the authority to select and retain outside counsel for Sound Transit, and decisions about which lawyer or law firm to engage for particular matters are largely within the discretion of the in-house Sound Transit attorneys with responsibility for the particular matters, subject to the approval of Sound Transit’s General Counsel. The legal department does not have a significant role in high-level Sound Transit policy decisions, such as selecting routes for light rail, and the legal department’s decisions with respect to the engagement of outside counsel are not subject to any approval from outside the legal department, including from the Board or the CEO. That structure substantially reduces the likelihood that Sound Transit’s decisions about

resulting in improvement to the owner of said property. It is a customary duty of County Commissioners to make determinations relating to construction of new roads and improvement of old ones. In making such determinations certain private owners are benefited instead of others. To say that such decisions are criminal in nature is incredible and justifies the conclusion of many highly qualified citizens to refuse to serve in public office.”).

which lawyer or law firm to engage to represent Sound Transit in a particular matter would be influenced by the organization's high-level policy preferences on issues like light-rail routing, and we have seen no evidence that any such influence has been brought to bear.

Second, we are not aware of any allegation that Councilmember Degginger's actions, votes, or positions on the Council in fact influenced or were designed to influence any decisions by Sound Transit about whether to engage Lane Powell as outside legal counsel for particular matters, and our interviews of Sound Transit's General Counsel and other in-house Sound Transit attorneys give us no reason to suspect that any Sound Transit decisions have been so influenced. The citizen allegations passed on to us by Deputy Mayor Lee appear to have been based simply on a speculative theory that, given the size of the aggregate legal fees paid to Sound Transit in various years, and in particular on the fact that Sound Transit paid Lane Powell more legal fees in 2010 (a year in which the Council had substantial disagreements about Sound Transit's preferred routing for the East Link light rail project through Bellevue) than in any prior year, Sound Transit must have been awarding legal work to Lane Powell as a result of Councilmember Degginger's actions on the Council. As we explain below, however, the amounts of legal fees paid by Sound Transit to Lane Powell in any particular year, including 2010, do not support any inference that Sound Transit awarded Lane Powell additional work based on Councilmember Degginger's actions on the Council.

Third, our review of information provided to us by Sound Transit concerning legal fees paid to outside counsel does not suggest that Lane Powell was awarded additional legal work by Sound Transit as a result of Councilmember Degginger's actions on the Council. In aggregate terms, although the amount of fees paid by Sound Transit to Lane Powell is substantial, the fees paid to Lane Powell in any given year amount to only a fraction, and often a small fraction, of Sound Transit's total payments to outside counsel. In addition, considering Lane Powell's size, its practice areas, and its position in the Seattle legal market relative to other law firms, the amounts of fees paid by Sound Transit to Lane Powell do not appear to be in any way suspicious or out of line. Our review of information provided by Sound Transit concerning the fees paid to Lane Powell by matter further undermines any suggestion of impropriety. As noted above, that information shows that the allegedly suspicious "spike" in legal fees noted in the correspondence provided to us by Deputy Mayor Lee was related to a large construction dispute in which Lane Powell has represented Sound Transit since 2005. We are aware of no votes or other actions taken by Councilmember Degginger in 2005 that are alleged to have triggered any award of legal work by Sound Transit to Lane Powell in that year. That ongoing matter alone accounted for over 65% of the total fees paid by Sound Transit to Lane Powell in 2010. Finally, the \$661,276.01 in fees paid to Lane Powell by Sound Transit in 2010 amounted to 7.9% of the total amount paid by Sound Transit to outside counsel in 2010, which is generally consistent with prior years.

In sum, we have not found any evidence to support the allegation Sound Transit has given additional legal work to Lane Powell as a result of any of Councilmember Degginger's actions on the Council, and we do not believe that allegation warrants any further investigation.

B. The City Attorney Correctly Concluded That Councilmember Degginger's Participation In Council Decisions Concerning East Link Does Not Violate RCW 42.23.030 Or RCW 42.23.070.

On September 29, 2010, the City Attorney prepared an ethics opinion summarizing prior discussions between the City Attorney and Councilmember Degginger about whether Councilmember Degginger was required to recuse himself from Council decisions concerning the East Link project based on Lane Powell's current representation of Sound Transit on matters unrelated to East Link or based on Councilmember Degginger's representation of Sound Transit in a lawsuit with Qwest Communications in the time period 2002-2003.

The City Attorney opined that Councilmember Degginger was not required to recuse himself from Council discussions and decisions concerning the East Link project based on Lane Powell's representation of Sound Transit on unrelated matters. The City Attorney opined that Lane Powell's representation of Sound Transit did not implicate RCW 42.23.030 because the facts presented to her did not involve or contemplate Councilmember Degginger or Lane Powell having any potential financial interest in a city contract. The City Attorney further opined that Councilmember Degginger's participation in Council decisions concerning East Link did not violate RCW 42.23.070, because there was no indication that Councilmember Degginger had made any attempt to secure a special privilege or exemption for Sound Transit. In support of that conclusion, the City Attorney noted, among other things, that Councilmember Degginger was not always aligned with Sound Transit's positions on issues relating to light rail, that there had been no attempt to hide or conceal Lane Powell's representation of Sound Transit, and that Councilmember Degginger did not stand to benefit in any meaningful sense from Lane Powell's continued representation of Sound Transit.

We agree with the City Attorney's conclusions that, on the facts presented to her, Councilmember Degginger's participation in Council decisions concerning the East Link project does not violate RCW 42.23.030 or RCW 42.23.070.

Like the City Attorney, we are unaware of any allegation that Councilmember Degginger or Lane Powell have had or may have a financial interest in any city contract. Accordingly, RCW 42.23.030 is inapplicable.

Turning to RCW 42.23.070, as noted above, that statute prohibits a municipal officer from (1) using his or her position to "secure special privileges or exemptions for himself, herself, or others" (RCW 42.23.070(1)); (2) giving or receiving any compensation, gift, reward, or gratuity for a matter connected with his or her duties (RCW 42.23.070(2)); (3) engaging in any business or professional activity that the officer

might reasonably expect would induce him or her to disclose confidential information acquired by reason of his or her official position (RCW 42.23.070(3)); and (4) disclosing confidential information acquired by reason of his or her official position or using such information for his or her personal gain or benefit (RCW 42.23.070(4)).

We do not believe that Lane Powell's or Councilmember Degginger's representation of Sound Transit on unrelated matters could reasonably be expected to induce Councilmember Degginger to disclose confidential information learned in his position as a Councilmember, in breach of his duties as a Councilmember. Because Lane Powell is not working on Sound Transit matters relating to the East Link project, there appears to be nothing that Councilmember Degginger could learn from his consideration of issues relating to East Link in Council discussions that would even be germane to the matters on which other Lane Powell lawyers are representing Sound Transit. Therefore, we conclude that his participation in Council decisions concerning East Link does not violate RCW 42.23.070(3). We are also not aware of any allegation that Councilmember Degginger has improperly disclosed or used confidential information obtained as a result of his position, or that he lacks an understanding of his duty to keep confidences as a member of the Council, and we therefore find no violation of RCW 42.23.070(4). In addition, as discussed above, we do not believe that there is any credible evidence that Sound Transit has "rewarded" Councilmember Degginger by hiring Lane Powell for additional legal work based on Councilmember Degginger's performance of his duties on the Council, and so we conclude that Councilmember Degginger has not violated RCW 42.23.070(2).

We also agree with the City Attorney that Councilmember Degginger's participation in Council decisions concerning East Link does not violate RCW 42.23.070(1). First, as we noted in our Interim Report, because the Council's decisions concerning its preferred alignment for the East Link project do not bind Sound Transit, and because Sound Transit, not the City, will make the final decision on the East Link alignment, it is unlikely that Councilmember Degginger's participation in discussions and decisions concerning the Council's preferred alignment could under any circumstances be considered as an attempt to grant Sound Transit any special privilege or exemption. Second, we are not aware of any allegation that Councilmember Degginger has in fact attempted to use his position on the Council to secure any special benefit for Sound Transit, as opposed to simply acting to advance what he believes to be the best interests of the City, or to secure any benefit for himself or for Lane Powell.⁵ Because, as explained above, we believe that a violation of RCW 42.23.070(1) requires a showing that an official acted with the specific intent to confer a special benefit on himself or another person, neither the fact that Councilmember Degginger or his law firm represents Sound Transit on unrelated matters nor the mere allegation or theory that Councilmember Degginger might therefore have some level of incentive to support Sound Transit's

⁵ As discussed above, we have seen no credible evidence to suggest that Sound Transit has awarded any legal work to Lane Powell based on Councilmember Degginger's actions on the Council. In addition, we have seen no evidence to suggest that Councilmember Degginger has taken any actions as a Councilmember for the purpose of helping Lane Powell obtain legal work from Sound Transit.

preferred East Link route through Bellevue is itself sufficient to establish a violation of RCW 42.23.070(1).

Finally, although the City Attorney did not specifically discuss the “appearance of fairness” doctrine, currently codified at RCW Chapter 42.36, in her September 29, 2010 ethics opinion to Councilmember Degginger, we note that the doctrine would apply only in a “quasi-judicial proceeding.”⁶ The Council’s discussions and decisions concerning its preferred East Link alignment are not quasi-judicial proceedings under the statutory definition, and so the doctrine does not apply to such discussions and decisions. We express no opinion about whether or under what circumstances the appearance of fairness doctrine might require Councilmember Degginger to recuse himself from any hypothetical future quasi-judicial proceeding concerning or involving East Link or Sound Transit. Such analysis would require consideration of the concrete facts surrounding the particular quasi-judicial proceeding at issue.

C. Councilmember Degginger’s Participation In Council Decisions Concerning East Link Does Not Violate Washington’s Rules Of Professional Conduct.

As an attorney, Councilmember Degginger is also subject to Washington’s Rules of Professional Conduct (the “RPCs”). *See* RPC Preamble, at [3] (noting that “there are Rules that apply to lawyers . . . even when they are acting in a nonprofessional capacity”). Accordingly, although the City Attorney did not expressly opine on whether Councilmember Degginger’s participation in Council decisions concerning East Link could violate Washington’s RPCs, we undertake that analysis here.

RPC 1.11 provides special conflict of interest rules for attorneys who serve as public officers or employees. As relevant here, RPC 1.11 provides that:

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed [in] writing

RPC 1.11(d); *see* WSBA Advisory Opinion 2168 (2007) (“Only RPC 1.11(d) is relevant to a lawyer currently serving as a public officer or employee”). RPC 1.7 provides

⁶ The statute defines “quasi-judicial proceedings” as actions of a legislative body that “determines the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.” RCW 42.36.010.

rules relating to conflicts of interest involving current clients. RPC 1.9 sets out a lawyer's duties to former clients.

As set forth below, we believe that Councilmember Degginger's participation in Council decisions concerning East Link while Lane Powell represents Sound Transit in unrelated matters does not violate RPC 1.7, RPC 1.9, or RPC 1.11.

1. RPC 1.7

RPC 1.7(a) provides that, with certain exceptions, "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." The rule further states that a "concurrent conflict of interest" exists if: "(1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." In addition, under RPC 1.10, if any lawyer in a firm has a concurrent conflict of interest, it is generally imputed to all other lawyers in the firm. *See* RPC 1.10 ("Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9 . . .").

Assuming that Sound Transit could be considered "adverse" to Bellevue in connection with the East Link project, neither Councilmember Degginger's participation in Council decisions concerning East Link nor Lane Powell's representation of Sound Transit in unrelated matters creates a concurrent conflict of interest under RPC 1.7. First, and importantly, because Councilmember Degginger does not have an attorney-client relationship with the City, RPC 1.7(a)(1) does not apply. *See, e.g.,* ; WSBA Advisory Opinion 1626 (1995) (noting that lawyer who serves as member of city council does not have attorney-client relationship with city council); WSBA Advisory Opinion No. 2128 (2006) (stating that where attorney/public official does not have attorney-client relationship with government entity, attorney's responsibilities "are governed by RPC 1.7(a)(2) and RPC 1.11"; "RPC 1.7(a)(1) is inapplicable because it addresses concurrent conflicts *between two clients*." (emphasis added). Accordingly, a concurrent conflict of interest could exist only if there was a "significant risk" that Lane Powell's representation of Sound Transit would be "materially limited" by Councilmember Degginger's responsibilities to the City of Bellevue. Because Lane Powell does not represent Sound Transit in connection with the East Link project, there appears to be no risk that Lane Powell's representation of Sound Transit would be materially limited by Councilmember Degginger's obligations to the City of Bellevue, and we are not aware of any facts to suggest that any such risk exists. Accordingly, we believe that Councilmember Degginger's participation in Council decisions concerning East Link while other Lane Powell attorneys represent Sound Transit in unrelated matters does not create a conflict of interest under RPC 1.7.

2. RPC 1.9

RPC 1.9, Duties To Former Clients, generally prohibits a lawyer who has represented a client in a matter from (1) representing another person in a matter that is the same or substantially related if that person's interests are materially adverse to the interests of the former client; and (2) using information relating to the representation to the former client's disadvantage. Even assuming Sound Transit could be considered a "former client" of Lane Powell, as noted above, Councilmember Degginger does not have an attorney-client relationship with the City of Bellevue, and therefore his service on the Council does not constitute "representing another person," let alone doing so in connection with any matter for which Sound Transit could be considered a former client. RPC 1.9 is therefore not applicable.

3. RPC 1.11(d)(2)

RPC 1.11(d)(2) provides that a lawyer who serves as a public official may not "participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed [in] writing." Under the plain language of RPC 1.11(d)(2), that rule would require Councilmember Degginger to recuse himself from Council decisions concerning East Link (or secure the appropriate consent) only if Lane Powell had represented Sound Transit in connection with East Link matters concerning Bellevue *and* Councilmember Degginger had personally and substantially participated in that representation. *See* RPC 1.11 cmt.[3] (noting that conflicts under RPC 1.11(d)(2) not imputed to other lawyers in law firm). Based on the facts that we are aware of, RPC 1.11(d)(2) does not apply, as neither Lane Powell nor Councilmember Degginger has represented Sound Transit in connection with East Link issues in Bellevue.

D. Councilmember Degginger's Participation In Council Discussions And Votes Relating To Sound Transit in 2003 Does Not Violate RCW 42.23.030, RCW 42.23.070, Or Washington's RPCs.

As noted above, during the initial phase of our investigation, Mayor Davidson requested that we determine whether Councilmember Degginger had a conflict of interest with respect to certain Council discussions and votes in which he participated while he was representing Sound Transit in litigation with Qwest Communications in 2002 and 2003. Specifically, Mayor Davidson referred us to the following discussions and votes: (1) a May 27, 2003 discussion concerning the Eastside Transit Partnership's formation of a subcommittee to review and discuss unanticipated East Subarea Sound Transit revenues; (2) an August 4, 2003 consent calendar item authorizing a four-party agreement among the City, the King County Department of Transportation, Washington State Department of Transportation, and Sound Transit; (3) a September 15, 2003 discussion concerning the Access Downtown project; (4) an October 6, 2003 discussion concerning a letter from the Seattle mayor about plans for the I-90 corridor; and (5) a

November 17, 2003 vote authorizing a lease with Sound Transit in the Bellevue Transit Center.

Based on the legal analysis conducted above, we conclude that Councilmember Degginger's participation in those Council discussions and votes concerning Sound Transit did not violate RCW 42.23.030, RCW 42.23.070, or Washington's RPCs. None of the discussions or votes brought to our attention by Mayor Davidson appear to relate in any way to the dispute in which Councilmember Degginger was representing Sound Transit. In the absence of any allegation or evidence that Councilmember Degginger had a financial interest in a contract voted on, cast any vote with the intention of securing some special benefit for Sound Transit, received any improper gift or reward for an official action, or misused confidential information, the fact that Councilmember Degginger personally represented Sound Transit on a wholly unrelated matter at the time of those discussions and votes does not amount to a violation of RCW 42.23.030, RCW 42.23.070, or any provision of the RPCs.

V. Conclusion

Based on our investigation and analysis of the conflict of interest allegations that have been raised concerning Councilmember Grant Degginger, it is our opinion that Councilmember Degginger has not violated any applicable provision of Washington law, and that Councilmember Degginger is not required under applicable law to recuse himself in connection with the Council's policy decisions with respect to the East Link light rail project. We express no opinion concerning whether, or under what circumstances, the appearance of fairness doctrine would require recusal in connection with any future quasi-judicial proceeding relating to the East Link project.