



November 9, 2004

Hon. Wendy Davis  
Councilmember, District 9  
1000 Throckmorton Street  
Fort Worth, Texas 76102

Re: Employment agreement with Republic Title of Texas, Inc.

Dear Ms. Davis:

I have been advised that First American Corporation and First American Title Insurance Company (First Am) have acquired all of the outstanding stock of First Land Title Company (First Land), formerly known as Safeco Land Title Company of Tarrant County. The former shareholders First Land, you and Jeff Davis, have entered into employment agreements with Republic Title of Texas, Inc. (RTT), a wholly owned subsidiary of First Am. You have been employed as chief executive officer of RTT's Fort Worth Division, known as Republic Title of Fort Worth.

I have further been advised that your employment agreement provides for compensation in the form of a salary, without any incentives or commissions. Normal benefits, such as medical and dental insurance provided to other RTT employees, are also a part of your employment agreement.

Finally, I have been advised that RTT does not currently have, foresee or contemplate any contractual relationship with the City of Fort Worth. However, clients of RTT and its Fort Worth Division may have matters pending before the city, including regulatory matters such as zoning cases or business dealings such as contractual matters. I was asked to provide an opinion as to whether such matters would or could constitute a conflict of interest under state law, city charter or city code.

**OFFICE OF THE CITY ATTORNEY**

THE CITY OF FORT WORTH ★ 1000 THROCKMORTON STREET ★ FORT WORTH, TEXAS 76102  
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Having researched the state law, city charter, city code of ethics and prior city attorney opinions, I advise as follows:

1. The City of Fort Worth and DFW International Airport cannot purchase title insurance or other services from RTT.

City Charter Chapter XXVII, Section 16 prohibits a member of the City Council from having a direct or indirect financial interest in a contract with the City, or selling land, goods or services to the City. Prior city attorney opinions have interpreted this prohibition to extend to DFW International Airport as well, since the Airport is owned in part by the City of Fort Worth.

As noted above, I have been advised that RTT does not currently have, foresee or contemplate any contractual relationships with the City of Fort Worth.

2. RTT may not write title insurance or provide other services under a contract with a person or entity if the customer has (a) a contract with the City which requires the purchase of that insurance or those services, or (b) the RTT contract is used to fulfill a condition or requirement of a contract between that person or entity and the City.

As noted above, City Charter Chapter XXVII, Section 16 prohibits indirect interests in City contracts. In situations involving the sale of goods or services to a City contractor or subcontractor, as opposed to the City itself, it has been the consistent interpretation of the City Attorney's office that the Charter prohibits the transaction where there is a clear nexus with a City contract, such as where the City contract requires the purchase of those goods or services or that purchase is used to fulfill a condition or requirement of a City contract. So, for example, a council member cannot sell liability insurance to a city contractor or subcontractor if the insurance is required by the City contract or subcontract [see City Attorney Ethics Opinion #104, #105, #149, but see also Op. # 106 – rule not applicable to policies in effect when member takes office). Likewise, a person or entity which enters into a tax abatement agreement with the City which is conditioned upon the utilization of Fort Worth-based or minority/women business enterprises cannot use a contract with a city officer to meet that contractual condition. (see City Attorney Ethics Opinion #196).

3. You will be required to abstain from participating or voting in zoning cases when you have a "substantial interest", as defined by state law and city code, in the property, the applicant for the zoning change, the owner of the property (if different from the applicant), or the representative of the owner or applicant. Although in my opinion it would not be required, you may consider requesting abstention in certain other cases, such as cases in which there is a contract of sale for the property that names RTT as escrow agent and title company, particularly if the sale is contingent on the zoning change.

With regard to regulatory matters such as zoning cases, state law and the city code of ethics require a council member to abstain from participating or voting if the member has a "substantial interest" in the business entity or real property involved in the matter when the vote will have a special economic effect on the entity or real property.

Under state law, a council member has a "substantial interest" in a business entity if the member (1) owns 10% or more (or \$15,000) of the voting stock or fair market value of the entity, or (2) funds received from that entity exceed 10% of the member's gross income for the year. A "substantial interest" in real property is defined as an equitable or legal ownership with a fair market value of \$2,500 or more. Sec. 171.002, Local Government Code.

The City ethics code includes the above and adds that a member has a "substantial interest" by being a director, officer or employee of the entity; a creditor or debtor of the entity in the amount of \$5000 or more; or having property pledged to an entity in an amount of \$5000 or more. City Code, Sec. 2-237.

A council member also has a "substantial interest" if a relative in the first degree (spouse, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother's spouse, sister's spouse, son-in-law or daughter-in-law) has a "substantial interest", as defined, in the business entity or real property.

In zoning cases, for example, a member must abstain when he or she has a substantial interest, as defined, in the applicant for the zoning change or the owner of the property (if different from the applicant). In addition, there is an attorney general opinion that has interpreted the state law to require abstention if the member has a substantial interest in the firm representing a zoning applicant before the government body. (see Atty Gen. Op. 1994, DM-309).

What if the applicant/property owner is a customer of RTT? Under the state law and the city code, you would have a "substantial interest" in RTT by virtue of your employment (under the City Code of Ethics) and salary (under state law -- presuming that the salary would constitute more than 10% of your annual income). However, in my opinion you would not have the legally defined "substantial interest" in the business entity or property involved in the zoning case before the council unless Republic Title was the applicant, owner or the representative of the applicant or owner before the City Council. You could therefore legally vote on zoning and regulatory matters involving customers of RTT, provided, of course, that the business is not solicited, offered or accepted as a quid pro quo for a vote on the matter.

In order to guard against even the appearance of impropriety, you may consider requesting abstention in zoning cases in which there is a real estate sales contract pending on the subject property and RTT is providing title insurance and/or other services in connection with that sales contract, if the real estate contract is contingent on zoning

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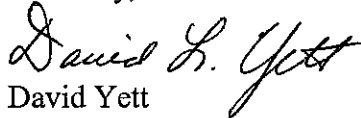
approval. . It again should be noted that your employment contract has been structured so as to make it a straight salary arrangement, and not based on commissions or level of sales, so that a vote on a zoning or other regulatory matter does not affect the amount of your compensation.

5. A council member may not accept a benefit as consideration in exchange for a decision, opinion, recommendation, vote, or other exercise of official discretion.

Although no extended discussion is necessary, no ethics opinion should neglect to mention the state bribery statutes (State Penal Code 36.02).

I greatly appreciate the cooperation of you and your employer in providing the necessary information to assist with this opinion. Please contact me if you have further questions or concerns. As always, I am happy to counsel with you with regard to any particular vote or decision of the Council on which you may desire legal advice.

Sincerely,



David Yett  
City Attorney