

Supreme Court: Public Official May Not Rely On Government Attorney's Advice As to Conflict of Interest Rules

by Lloyd W. Pellman and Stephen N. Roberts

Public officials throughout the state face a thorny issue whenever they consider making a decision that may affect them personally. A recent decision of the California Supreme Court, *People v. Maria Socorro Chacon*, No. S125536 (February 8, 2007) ("*Chacon*"), holds that a public official may not use reliance upon the advice of his or her government agency's counsel as a defense in a prosecution for an alleged conflict of interest.

Chacon involved a city council member who was chosen by the council to be the city manager while she was still serving on the council. At the same time, the council repealed an ordinance providing that someone who had served as a council member could not be employed by the city until a year's time had passed. Ultimately she resigned from the council to take the job as city manager. The District Attorney prosecuted Chacon for violation of California Government Code section 1090, which prohibits council members, board members and other government officials from participating in "making," or even serving on a body which "makes," a contract in which the official has a financial interest - here, her contract as city manager. In defense, Ms. Chacon argued that she had relied upon the advice of the city attorney, who, she said, advised her that the entire arrangement was legal. All of this arose in a criminal proceeding, as section 1097 of the Government Code authorizes criminal prosecution for violation of section 1090.

The matter ended up before the California Supreme Court. After first stating that advice of counsel was not a defense to a criminal violation of section 1090, because the accused's knowledge of the illegality of her actions was not an element of proving the crime, the Supreme Court went on to consider a defense offered by Chacon known as "entrapment by estoppel." This defense arose out of a 1959 civil rights case, *Raley v. Ohio* (1959) 360 U.S. 423, in which defendants were convicted of contempt because they refused to answer a state commission's questions, although the chairman of the commission had advised them (contrary to Ohio law) that they had the right to be silent by invoking the privilege against self-incrimination. The U.S. Supreme Court held that a criminal conviction under such circumstances was not defensible because it violated the due process clause of the United States Constitution - otherwise the court would have been sanctioning an entrapment by the government. In the recent case, Chacon argued that she was in the same position; she relied upon the City Attorney's advice, and not to permit that as a defense would violate the doctrine of entrapment by estoppel.

[FULL STORY]

February 22, 2007



PUBLIC AGENCY PRACTICE

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