

James B. Gottstein

From: James B. Gottstein <james.b.gottstein@gottsteinlaw.com>
Sent: Wednesday, March 30, 2016 10:39 AM
To: Senator.Gary.Stevens@akleg.gov
Cc: Senator.Click.Bishop@akleg.gov; Senator.John.Coghill@akleg.gov;
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charles.westmoreland@juneauempire.com
Subject: Fairness
Attachments: 13-130713Pfeffer2HawkerWithSteinerAndMcClintockE-mails.pdf;
10-130620Pfeffer2HawkerWithSteinerAndMcClintockE-mails.pdf

Dear Sen. Stevens:

I read in today's Dispatch News that you were considering having the Legislature buy the Anchorage Legislative Information Office Building for well above market value so as not to hurt Mark Pfeffer and that purchasing the building at market "isn't realistic" because of the amount of the loan.

Attached please find two exhibits that were [filed in the case](#) that demonstrate the Landlord knew AS 36.30.083(a) did not authorize the expansion and modifications as well as foreshadowing the technique used to

pretend the lease was for less than the market rate. So, as an initial matter, you don't want to hurt someone who knowingly violated the procurement code to enrich himself at the expense of the people of Alaska?

Secondly, the idea that you have any idea how much money Messrs. Pfeffer and Acree have invested in the building is quite questionable. I asked for this information in discovery in the case, but acceding to the protestations of the Landlord, the judge denied that request so I don't know either. What I do know is the loan was not based on what Messrs. Pfeffer and Acree invested, but the inflated value of the building.

The idea that the State of Alaska should pay more than market value for the building because of the amount of the loan is nonsense.

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From: Mark Pfeffer
Sent: Thursday, June 20, 2013 10:55 AM
To: Mike Hawker (mhawker@gci.net)
Subject: FW: LAA procurement issues

FYI,

The back channel between lawyers.

Mark Pfeffer

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Cell Phone
907 317 5030

From: John L. Steiner
Sent: Thursday, June 20, 2013 10:39 AM
To: Donald W. McClintock; Mark Pfeffer
Cc: Heidi A. Wyckoff
Subject: RE: LAA procurement issues

Don, I just spoke to Mark (before either of us had seen your email) and reviewed some of the background stuff. I gathered enough to know that the intent was to extend based on beating the as-is BOV by 10%, but then NOT being limited by that standard in the material modification. If the lease can be materially modified, why only in some respects and not in others? (That's a rhetorical question.)

I don't know whether beating a post-renovation BOV or appraisal by 10% will prove feasible, but I do not believe Rep. Hawker wants or expects to be told that standard limits improvements to the building. Getting the full first year appropriation done next session should be done in any event.

I still have some stuff to look through to be prepared to talk to Doug, but will get there shortly.

John L. Steiner
Project Director and Counsel

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From: Donald W. McClintock [mailto:dwm@anchorlaw.com]
Sent: Thursday, June 20, 2013 10:18 AM

To: Mark Pfeffer; John L. Steiner
Cc: Heidi A. Wyckoff
Subject: LAA procuremnt issues

Mark and John,

I had another call with Doug. He is certainly driving the form of the deal around his view of how the procurement issues line up; something we probably should be in line with so long as it is not overly conservative and costs real money.

What he wanted to know was whether we would have an appraisal done on the completed loan. I told him typically we would have one to support our construction loan so one should be ordered this summer once the plans and finishes have advanced enough. His vision of .083 and .040 is that the rent should be 10% below appraisal. Mark is that your financial plan? You can probably get the numbers to work out if the lease rate assumes a 10 year term and you can qualify for 25 year financing or the income approach uses a different cap rate than what you do for the financing. But that is the road he is going down and he really wants both leases done at the same time, one for the extension and the other for the material modification and new lease rate. The new lease would take place effective October 2014 on completion and acceptance and we would have some bridging lease until then.

I have not given him permission to talk to Mark, just because we want to keep Mark and Hawker only talking to each other, but I told him he should feel free to talk to John directly.

During the discussion, he also said his plan B, which is belts and suspenders, is to have the 36.30 appropriation done next session as well.

Call with questions.

Don

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From: Mark Pfeffer
Sent: Saturday, July 13, 2013 10:01 AM
To: Mike Hawker
Subject: Fwd: conversation with Gardner / Attorney client conversation

Before I called you the other day Steiner told me to tell you that he is keenly aware that Rep. Hawker starts with "I hate lawyers".

So at least he is sensitized sentiment.

Anyway see the attached internal memo.

I think Gardner is just flat out wrong.

A) you can extend as is where is.

B) you voted to allow major modifications

C) you can commit previously appropriated funds for the purpose of new and or improved facilities.

D) if the full legislature decides to move forward by approving the lease (and the governor signs off) what more do you need?

I think Gardner has "A" way to keep going but he needs to be brought along other ways.

Anyway, don't stress out over this we'll get there. I think we plan an all hands meeting Monday the 22nd and we don't leave the table until we have agreement on direction.

Lastly, Juli seemed to be fully on board with the direction we discussed. The new schedule worked for her better than the October start.

I'm around if you want to discuss.

Mark Pfeffer
Sent from my iPhone
907-317-5030

Begin forwarded message:

From: "John L. Steiner" <JSteiner@PfefferDevelopment.com>
Date: July 13, 2013, 8:44:59 AM AKDT
To: "Donald W. McClintock" <dwm@anchorlaw.com>, Mark Pfeffer <MPfeffer@PfefferDevelopment.com>, 'bob acree' <bobacree@gmail.com>
Subject: RE: conversation with Gardner / Attorney client conversation

I concur with Don's summary, but will expand on it.

Gardner said he liked the .083 rationale because that section begins "Notwithstanding any other provision of this chapter" which he felt offers complete legal justification and protection. But that

assumes—as he has assumed—that the long-term enlarged and renovated LIO would have to come in at 10% below a BOV for that facility and be limited to 10 years. We explained that the long term deal was not conceived with those expectations, which we believe was fully understood by Rep. Hawker. Gardner seemed to think some of the legislative council members voted in reliance on exactly the contrary understanding: that the renovated space would satisfy those parameters.

Gardner has always tended to focus on procurement issues, and specifically raised that again: he said that if we are falling under .080 and not .083, he did not see why that would not need to be selected through an RFP. I responded that the Procurement Code makes this real estate interest transaction exempt from all procurement rules other than .080, and that so long as it complies with that section's legislative approval requirement, no other process is required. He did not concede that point, but offered no reason it was not so. We did not discuss the fact that this transaction was approved by the legislative council as an outgrowth of the its conclusion based on the prior RFI that other feasible and timely alternatives were not available.

Reading between the lines, it seems he likes the .083 rationale also because he assumes competition is ordinarily required, and that it is only the 10% below market standard that provides justification for not competing. He thinks *that* would need to be true for the expanded and renovated space, and if it *were* to be true for the finished project, that should also bring the non-competitive expansion and renovation under the protection of .083 (even though that section addresses only extension, not enlargement—a factor we did not discuss with him yesterday).

He also said he did not see the justification for extending the existing space for ten years AS IS under .083 since it was not contemplated that they would remain in it AS IS. He implied that he thought it was—or would be seen to be—disingenuous to extend based on a 10% below market AS IS justification, when it was not the plan to actually continue that AS IS deal. I responded that indeed they would continue to enjoy that deal—for ten years—if they elect not to approve the renovation modification. It would only be if they conclude the renovation deal is better, and approve that one independently under .080, that the extension would not continue AS IS under .083.

Overall, the deal is not as he had understood it or thought it should be, so he is at least very skeptical and initially resistant to the differences.

I should note that while he was clearly not happy with the plan as we laid it out, he remained cordial with us and said he would read the drafts and continue to think about it. And while he was concerned about how other legislators would view it, he said he was also not keen to get crosswise with Rep. Hawker, with whom he said he was not in regular touch right now due to Rep. Hawker being out of state for personal reasons.

If Gardner continues to believe there is a procurement issue, it may be useful to carve out the procurement portion of my internal analysis, and provide that to him.

Don, please let us know if you disagree with my recollections in any way. Thanks.

John L. Steiner

Project Director and Counsel

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From: Donald W. McClintock [<mailto:dwm@anchorlaw.com>]
Sent: Friday, July 12, 2013 5:22 PM
To: Mark Pfeffer; 'bob acree'
Cc: John L. Steiner
Subject: conversation with Gardner / Attorney client conversation

All,

The initial conversation with Gardner was a little rocky. Although his earlier tone a few weeks ago seemed to be more interested in addressing solutions to the contracting issues, today he was quite dug in with his theory that the motions contemplate a final contract that is 10% below FMV and a deal that can entirely be justified by section 083. He seems to have blown right past his concerns shared a few weeks ago about how to do a material modification under section 083 and discounted the value of a section 080 approval by the legislature. I think John and I fundamentally are not confident that the entire deal can be done under section 083 with the material modification as well. Plus the 10 year term limit is a problem.

He also was not receptive to the reimbursement concept.

We explained that we understood both the motion structure (which he now discounted as not being meaningful or a real justification for how we structured the deal) and the business deal was to allow a FMV deal approved by AHFC. He stated that he had other clients in the Legislature other than Hawker who will be very concerned about not getting a 10% below FMV deal. Hawker is out for a week and he clearly will not budge until after he speaks with him.

We did leave it that next week can be spent ironing out boilerplate, etc., but the big issues will go on hold on his side until after Hawker returns.

John can chip in when he gets access to a computer.

Don

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