

**Edward M. Shack
Attorney at Law
814 San Jacinto Blvd. #202
Austin, Texas 78701
512 477 8392**

July 28, 2014

Via E-Mail

CITY OF AUSTIN
ETHICS REVIEW COMMISSION
P.O. Box 1088
Austin, Texas 78767-1088

RE: April 18, 2014 City Auditor's Integrity Unit "Report on Allegations Involving a Zero Waste Advisory Commissioner"; "Direct Economic Effect"

Dear Chair and Members of the Ethics Review Commission:

I have practiced law in the area of governmental ethics and conflicts of interest for more than 30 years. In the 1990's I served as a member of the City of Austin Ethics Review Commission and worked with the conflict of interest provisions set forth in City Code Sections 2-7-63 and 2-7-64. Texas Disposal Systems asked me to review the above-referenced report and related agenda items and background material and comment on the matter.

With respect to the above-referenced matter, related to former ZWAC Commissioner Daniela Ochoa-Gonzalez, I have reviewed the CAIU's Report, as well as the backup materials and transcripts related to the three agenda items identified in the report related to waste and recyclable material haulers. Specifically, the Zero Waste Advisory Commission ("ZWAC") agenda items that were identified in the CAIU's Report were as follows:

February 13, 2013	"Discussion and action - URO (Phase 2 Ordinance)"
April 10, 2013	"Discussion and action - Austin Energy Waste Disposal Contract"
August 14, 2013	"Discussion and action - Special Events Ordinance"

I believe the CAIU Report incorrectly identified these agenda items as "TDS agenda items." They were clearly not "TDS agenda items." These agenda items were not "reasonably likely" to have a direct economic effect on Texas Disposal Systems ("TDS") to the exclusion of other haulers. Instead, the URO item and Special Events Ordinance affected all haulers similarly without any direct economic effect to any particular hauler. With respect to the Austin Energy Waste Disposal Contract on the April 10, 2013 ZWAC meeting agenda, TDS was not being awarded the contract, was no longer in competition for that contract, and could not possibly be considered "reasonably likely" to have had any direct economic effect from the award of the

contract to another hauler. All of the information related to these three agenda items is readily ascertainable from the City staff's backup documents.

Although there is no published City precedent interpreting the phrase "direct economic effect," it is important for the Ethics Review Commission to apply common sense to the City Code provision and ensure that City staff is not improperly and unfairly interpreting the City Code. Under State law, Government Code, section 572.053, a similar restriction expressly excludes from the conflict of interest provision a vote on "a measure that will affect an entire class of business entities."

If "direct economic effect" were to extend to TDS on agenda items such as those set forth in the CAIU's Report, where any possible economic effect on TDS is so extremely remote, then it becomes highly likely that many other members of City Boards and Commissions are also violating the conflict of interest rules. I do not believe such a distorted interpretation is the intent of the ordinance or in the best interest of our City.

In my opinion, with a simple, clear, accurate, and fair code interpretation of the phrase, "direct economic effect," the Ethics Review Commission can establish common sense boundaries for the City Auditor and others to follow, as well as rectify the injustice that has befallen former ZWAC Commissioner Ochoa-Gonzalez.

I regret that I am out of State and unable to attend the July 29, 2014 Ethics Review Commission meeting at which the topic of this report will be addressed. I appreciate you considering my views on these topics and hope that you will find that a "direct economic effect" means just that -- the person or entity is benefitting directly from the agenda item rather than some remote, indefinable interest, as is the case with these three agenda items.

Respectfully submitted,

/s/ Edward M. Shack

Edward M. Shack