

September 14, 2015

Ethics Committee  
c/o Ms. Emily K. Neuberger,  
Senior Vice President & General Counsel  
Wayne County Airport Authority  
Detroit Metropolitan Wayne County Airport  
L.C. Smith Terminal – Mezzanine  
Detroit, MI 48242

*Re: Clark Hill & Spirit Airlines*

Dear Ms. Neuberger:

Pursuant to our September 14, 2015 telephone conversation, it is my understanding that Spirit Airlines does business with the Authority. Additionally, Spirit Airlines is considering leasing property from the Wayne County Airport Authority and has asked Clark Hill to review the lease. Reginald Turner is an attorney at Clark Hill and current Board Member of the Authority. The concern is whether or not there is either a real or apparent conflict of interest presented by Spirit Airlines doing business with the Authority as well as with Clark Hill.

On July 28, 2014, at the direction of the Ethics Committee, we issued Advisory Opinion 2014-1. At that time, Siemens was vetting the law firm of Clark Hill for business advisory services. Siemens, at the time, was also doing business with the Airport Authority as well as Clark Hill. We stated in that conclusion the following:

“Additionally, it will be critical that after disclosure, Mr. Turner not work on any matters involving Siemens projects/contracts involving the Authority while he is employed at Clark Hill. Pursuant to Mr. Turner’s June 27, 2014 email sent at 10:03 p.m., and his July 1, 2014 email sent at 11:37 a.m., Mr. Turner has indicated he will be one of the attorney’s at Clark Hill working on strategic business advisory services for Siemens, but he will recuse himself from any projects for Siemens that involves the Authority. Moreover, Mr. Turner indicated in his email that Clark Hill will not accept any engagement from Siemens for matters that involve the Authority. These actions will erect a wall of separation between his employment duties and his responsibilities to the Authority as a Board Member.”

## **I. Review of Pertinent Sections of the Ethics Ordinance**

### **a. Real or Appearance of Conflict**

It is clear that Mr. Turner is a “Board Member” of the Authority as defined by the Ordinance, and Clark Hill is Mr. Turner’s “Business” and would be providing business advisory

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services and/or legal services to Spirit Airlines for “Compensation”, as such terms are all defined in the Ordinance.

Section II B.9 of the Ordinance states that “All Board Members and Employees shall avoid even the appearance of any impropriety or Conflict of Interest”.

Section II B states “Unless otherwise permitted ... a violation of any of the following shall constitute a Conflict of Interest:

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- “4. No Board Member or Employee shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, which tends to influence the manner in which the Board Member or Employee or any other Board Member or Employee performs his or her Official Duties.
5. No Board Member or Employee shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
6. No Board Member or Employee shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her Official Duties or *when that employment may tend to impair his or her independence of judgment or action in the performance of his or her Official Duties.*
7. No Board Member or Employee shall participate, as an agent or representative of the Authority, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or *indirectly, a financial or personal interest.*”

## **b. The Concern**

The above Ordinance sections are identified in relation to this question because it could be argued (or at least viewed) that Spirit Airlines is retaining the law firm of Clark Hill for airport related work so as to possibly directly or indirectly influence Mr. Turner in his role as a Wayne County Airport Authority Board Member, giving Spirit Airlines favorable treatment at the airports.

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## **II. Review of Exception in Ordinance**

The Ordinance was drafted in a manner so as to provide exceptions to the general prohibitions related to conflicts of interests. Section II C of the Ordinance sets forth those exceptions as follows:

The following are exceptions to the prohibitions and restrictions set forth in subparagraph B-“CONFLICT OF INTEREST - - GENERAL” above:

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7. Actions which might otherwise be alleged to constitute a Conflict of Interest shall be deemed to comply with this Ordinance and not to be a Conflict of Interest if:
  - a. before acting, the Board Member or Employee requested from the Committee and received a written opinion from Independent Counsel that the action does not constitute a Conflict of Interest; and
  - b. the material facts, as stated in the request for an opinion, are true and complete; and
  - c. the actions taken were consistent with the opinion.

### **a. Disclose and Recuse**

Invoking the Exception above does not make the conflict a nullity. The Ordinance provides guidance in Section II F. Section II F. 1 requires Board Members and Employee to disclose the full nature and extent of his or her direct or indirect financial or Personal Interest in a matter before him. This would be true for a matter that has the appearance of an impropriety as well. Section II F. 1 further states:

No Board Member or Employee shall participate, as an agent or representative of the Authority, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or Personal Interest. The Board Member or Employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

Section IIF.2 echoes the same logic as set forth above related to “disclose” and “recuse.”

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### **III. Conclusion**

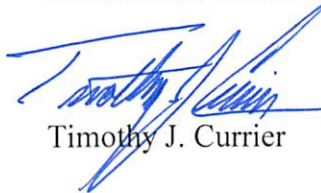
It is clear that there is at least the appearance of a Conflict of Interest. Mr. Turner needs to disclose this potential for conflict. After he discloses same, he needs to recuse himself completely from any involvement in this matter.

Additionally, in this circumstance where the airlines is negotiating a lease with the Airport, it will be critical that after disclosure, Mr. Turner not work on any matters with Spirit Airlines involving the Authority while he is employed at Clark Hill. These actions will erect a wall of separation between his employment duties and his responsibilities to the Authority as a Board Member.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

**BEIER HOWLETT, P.C.**



Timothy J. Currier

TJC/jc  
cc: Michael P. Salhaney, Esq.  
Reginald M. Turner, Jr. Esq.