

From: **Kim White**

Date: Thu, Apr 9, 2015 at 9:07 AM

Subject: River City Company

To: **Mark West**

Hi Mark—

Sorry for the delayed response, but in answering your question regarding our 990 Form and board designations, I reached out to Allen McCallie, River City Company's attorney. Allen works with our staff and auditors on completing our 990 each year and in fact was instrumental in setting up the River City Company organization 30 years ago. I believe his response below should provide the clarification you were looking for.

Kim H White | President/CEO | River City Company

850 Market Street | 2nd Floor Miller Plaza | Chattanooga, TN 37402

Kim:

You have asked me about the designation in RiverCity's annual Form 990 of four of the board members as "non-independent."

As you know, RiverCity was incorporated in 1986 as a nonprofit entity to serve as a downtown economic development engine for the benefit of the City and County. By definition, the work that RiverCity does is to benefit the City and County, and the RiverCity charter thus requires that its board always includes the City Mayor and County Mayor, and the Chairpersons from both the County Commission and the City Council, or their designees from those bodies.

While RiverCity also has community leaders from the Electric Power Board and from CARTA automatically designated as board members, RiverCity was not organized expressly to benefit those other governmental organizations, and thus they are considered as independent and unrelated board members.

In completing the Form 990 each year, I have advised RiverCity's auditors to designate the two Mayors and the Chairpersons from the County Commission and City Council as "not independent" board members just to be clear, and to be conservative. The IRS instructions on this question in Part VI of the Form 990 are hyper-technical, and I have always recommended answering this question very conservatively in order to

acknowledge that RiverCity's mission is directly connected to the City and County.

The first instruction highlighted below says that non-independent board members include persons who are "officers of a related organization." I think that description arguably would include the two Mayors, as CEOs of their respective governments, and also to the Council and Commission Chairpersons, or their designees. Additionally, while there is no financial benefit to these four members in any way, I do feel that RiverCity is "involved in transactions" with the City and County as described in the third paragraph of the instructions highlighted below.

I would again emphasize that even though I conservatively consider these four individuals to be "non-independent under the IRS rules, there is no compensation or other economic benefit paid to them, nor to any other RiverCity board members, all of whom serve in a voluntary and uncompensated capacity.

The two Mayors, and the two representatives from the City Council and County Commission, also have voting rights which are no different than the other members of RiverCity's board

The instructions in the 990 also refer you to Schedule L of the Form 990, which itself references financial transactions involving the organization and its board members and family members. While RiverCity has no financial relationships of any kind with these board members, we do regularly undertake projects for the benefit of the City and County, and thus our conservative view is to reference the connections between those board members and the governmental entities which they serve.

The specific instructions to this section of the 990 are as follow:

A member of the governing body is considered "independent" only if all four of the following circumstances applied at all times during the organization's tax year.

The member was not compensated as an officer or other employee of the organization or of a related organization (see the Instructions for Schedule R (Form 990)) except as provided in the religious exception discussed below. Nor was the member compensated by an unrelated organization or individual for services provided to the filing organization or to a related organization, if such compensation is required to be reported in Part VII, Section A.

The member did not receive total **compensation** exceeding \$10,000 during the organization's tax year (including a short year, regardless of whether such compensation is reported in Part VII) from the organization and related organizations as

an **independent contractor**, other than **reasonable compensation** for services provided in the capacity as a member of the governing body. For example, a person who receives reasonable expense reimbursements and reasonable compensation as a director of the organization does not cease to be independent merely because he or she also receives payments of \$7,500 from the organization for other arrangements.

Neither the member, nor any family member of the member, was involved in a transaction with the organization (whether directly or indirectly through affiliation with another organization) that is required to be reported on Schedule L (Form 990 or 990-EZ) for the organization's tax year.

Neither the member, nor any family member of the member, was involved in a transaction with a taxable or tax-exempt related organization (whether directly or indirectly through affiliation with another organization) of a type and amount that would be reportable on Schedule L (Form 990 or 990-EZ) if required to be filed by the related organization.

Please let me know if any further information is needed.

ALM

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