

**[NOTE: In 2014, the California Fair Political Practices Commission amended Regulation 18706 to state that an outcome is “reasonably foreseeable” if it is a “realistic possibility.” An outcome need not be “substantially likely” to be considered “reasonably foreseeable.”]**

February 6, 2008

SDEC Informal Advice Letter No. IA08-02

Council President Scott Peters  
City Council District 1  
202 “C” Street, 10th Floor  
San Diego, CA 92101

Re: Request for Advice Regarding Participation in Upcoming Labor Negotiations

Dear Council President Peters:

This advice letter responds to your February 4, 2008, request for advice from the Ethics Commission regarding an interpretation of the provisions of the City’s Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Your request pertains to your ability to participate in upcoming labor negotiations between the City and its various employee organizations in light of your potential candidacy in the June 2008 primary election for the office of City Attorney. Specifically, you have asked whether the potential endorsement of your candidacy from one or more employee organizations would create a personal interest in the labor negotiations such that your participation would be prohibited. Because you have not identified any specific municipal decisions, we are treating your inquiry as a request for informal advice.

### **QUESTION**

Does the City’s Ethics Ordinance prohibit you from participating in upcoming labor negotiations with employee organizations because one or more employee organizations may ultimately endorse you as a candidate for City Attorney in the June 2008 primary election?

### **SHORT ANSWER**

No. The City’s Ethics Ordinance does not prohibit you from participating in upcoming labor negotiations with employee organizations.

### **BACKGROUND**

You are currently serving out the remainder of your second term as the Councilmember for City Council District 1. You are considering becoming a candidate for City Attorney in the June 2008 primary election. The question you raise pertains to your activities as a current elected official and how those activities may be restricted by your potential candidacy.

## ANALYSIS

The question you present requires us to look at the City's Ethics Ordinance, which is located at SDMC sections 27.3501 through 27.3595. The Ethics Ordinance contains the City's rules governing conflicts of interest. Applicable definitions and provisions from the California Political Reform Act and the related regulations adopted by the California Fair Political Practices Commission [FPPC] expressly apply to the City's Ethics Ordinance. SDMC § 27.3503. As indicated below, we will turn to interpretations of state law for guidance in interpreting the City's Ethics Ordinance.

### *A. Conflict of Interest Considerations*

SDMC section 27.3561 prohibits you, as a City Official, from knowingly influencing a municipal decision if it is reasonably foreseeable that the municipal decision will have a material financial effect on any of your economic interests. The term, "municipal decision" includes any decision made by the City Council. Thus, any City Council decision pertaining to labor negotiations will be considered a "municipal decision" under the Ethics Ordinance.

"Economic interests," are defined in the Ethics Ordinance as follows:

- (1) any business entity in which the City Official or a member of the City Official's immediate family has invested \$2,000 or more;
- (2) any business entity for which the City Official or a member of the City Official's immediate family is a director, officer, partner, trustee, employee, or hold any position of management;
- (3) any real property which the City Official or a member of the City Official's immediate family has invested \$2,000 or more;
- (4) any person from whom a City Official or a member of the City Official's immediate family has received (or by whom you have been promised) \$500 or more in income within twelve months prior to the municipal decision; and
- (5) any person from whom a City Official or a member of the City Official's immediate family has received gifts which total \$320 or more within twelve months prior to the municipal decision.
- (6) the personal expenses, income, assets, or liabilities of a City Official or a member of the City Official's immediate family.

Based on the information you provided to us, none of the above economic interests apply to you. In other words, none of the employee organizations at issue have given you income or gifts; you do not have an investment interest, position of management, or real property interest in any of these entities; and the labor negotiations at issue will not impact your personal expenses, income<sup>1</sup>, assets, or liabilities. As such, nothing in the Ethics Ordinance presently precludes you from participating in labor negotiations involving these employee organizations.

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<sup>1</sup> The Ethics Commission does not operate as a finder of facts with regard to conflicts of interest advice, and thus we cannot say whether or not it is substantially likely that a particular decision pertaining to labor negotiations would

You have raised the possibility that one or more of these employee organizations may choose to endorse your candidacy in the 2008 City Attorney race. Under such circumstances, the question is whether or not an endorsement by an employee organization would cause that organization to become one of your economic interests. As indicated above, endorsements are not included in the list of economic interests set forth in SDMC section 27.3561. You will not, therefore, have an economic interest in any organization by the mere fact of receiving an endorsement from that organization. This is confirmed by *In re Young*, FPPC Adv. Ltr. A-89-149, wherein the FPPC advised a Vice Mayor that her involvement with a citizens group and its subsequent endorsement of her campaign did not create any type of conflict of interest for her.

Even if the members of a particular employee organization choose to make campaign contributions to support your candidacy,<sup>2</sup> this conclusion would not change. Under state law, campaign contributions are expressly excluded from the definitions of “gift” and “income.” Cal Gov’t Code §§ 82028(b)(4), 82030(b)(1). The Ethics Ordinance’s use of these terms is intended to be consistent with state law definitions. SDMC § 27.3503. In addition, the Ethics Ordinance expressly excludes campaign contributions from the definition of “gift.” SDMC § 27.3525(o). The FPPC, in *In re Morrison*, FPPC Adv. Ltr. A-05-244, confirmed that “campaign contributions that are required to be reported . . . are not among the enumerated economic interests and are not considered either ‘income’ or ‘gifts’” for purpose of the state’s conflict of interest laws.<sup>3</sup> Thus, any campaign contributions you receive from any source, including members of an employee organization, would not cause you to have an economic interest in that source.

#### *B. Misuse of City Position*

In addition to the conflict of interest provisions identified above, the City’s Ethics Ordinance contains a series of provisions under SDMC section 27.3564 designed to ensure that City Officials do not misuse their position or City resources. In particular, section 27.3564(a) prohibits City Officials using their position or the authority of their office to induce or coerce any person to provide anything of value that inures to their private benefit. This section is intended to prevent City Officials from abusing their official power in order to obtain a benefit that does not result “naturally from the lawful and proper performance of duties.” *Id.* Nothing in the facts you have presented suggests that you would violate this code section by participating in municipal decisions that could impact employee organizations. Even if you were to vote in favor of a municipal decision that benefited an employee organization endorsing you, that vote would not violate section 27.3564(a) unless it resulted from an unlawful or improper performance of your duties, e.g., agreeing to trade your vote in exchange for the organization’s endorsement. Absent

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result in your endorsement by an employee organization, and that such an endorsement would lead to you becoming the next City Attorney and obtaining the salary associated with that position. Even if a change in your salary was substantially likely to result from a municipal decision, however, there is an exception for governmental salaries that exempts such income from a conflict of interest analysis. FPPC Regulation 18705.5(b).

<sup>2</sup> Although individual members of any employee organization may make a campaign contribution to support your candidacy, the City’s campaign finance laws prevent the organization itself from making contributions to City candidates. SDMC § 27.2950.

<sup>3</sup> There is an exception to the above rule for appointed members of a board or commission that makes decisions concerning licenses, permits, and other entitlements. Such members may be disqualified from a decision after receiving more than \$250 in campaign contributions from a party to the decision. Cal. Gov’t Code § 84308. By its express terms, however, this provision does not apply to any governmental body whose members are directly elected by the voters. Accordingly, section 84308 does not apply to you.

such an unlawful or improper performance of your duties, however, a vote that impacts an entity that supports your political aspirations does not violate the provisions of section 27.3564(a).

In addition, SDMC section 27.3564(b) prohibits City Officials from engaging in campaign-related activities using City resources. Thus, you may not use City staff, facilities, supplies, etc. as part of an effort to promote your candidacy or curry campaign favors, including seeking endorsements, from any entity. But again, there is nothing in the facts before us that suggest any such misuse of City resources.

### **CONCLUSION**

As set forth above, a campaign endorsement does not create an economic interest for purposes of the Ethics Ordinance's conflict of interest laws. Accordingly, if you decide to run for office and an employee organization endorses your candidacy, that endorsement would not preclude you from participating in municipal decisions that could have a material financial impact on the organization. Moreover, the Ethics Ordinance's "misuse of position" provisions do not prohibit you from lawfully and properly exercising the duties of your office by voting on matters that could impact an entity that is endorsing your candidacy.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

Sincerely,

Alison Adema  
General Counsel

By: Stephen Ross  
Program Manager-Technical Assistance