

September 7, 2004

SDEC Formal Advice Letter No. FA04-06

Advice Provided to:

Casey Gwinn  
San Diego City Attorney  
1200 Third Avenue, Suite 1600  
San Diego, CA 92101

Re: Request for Advice Regarding Post-Employment Restrictions

Dear Mr. Gwinn:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated July 14, 2004. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Your letter seeks advice concerning a variety of professional activities anticipated after your retirement from the City in December of 2004. Your questions and the Commission's responses are detailed below.

### QUESTIONS

1. May you lawfully use a City-leased office at the San Diego Family Justice Center in connection with the relationship you have with the Family Justice Center Foundation and the District Attorney's Office?
2. May you lawfully continue to serve in an uncompensated capacity on the boards of Camp Hope, Inc. and the San Diego Family Justice Center Foundation?
3. May you continue to work closely with the City in connection with the ongoing operations of Camp Hope and the San Diego Family Justice Center if you receive no income from the City of San Diego other than your vested retirement income?
4. Will there be any restrictions on your ability to participate, advocate, or lobby in connection with the future development of a permanent home for the San Diego Family Justice Center using an existing City-owned facility, if you have no financial interest in the outcome?

5. Will there be any restrictions on your ability to participate, advocate, or lobby in connection with the future development plans for a permanent facility at Camp Hope, assuming you work with Camp Hope only in a volunteer capacity?
6. If your lobbying activities related to the San Diego Family Justice Center and Camp Hope are restricted by local laws, would such restrictions be avoided if you carefully tracked your time and billing to ensure that you did not receive compensation for such lobbying activities?
7. Will you have any ongoing reporting obligations under the Political Reform Act or the City's Ethics Ordinance with regard to any contemplated post-employment activities, particularly with regard to income received from the County or from a federal grant via a private non-profit corporation which is a community partner agency at the San Diego Family Justice Center Foundation?

#### **SHORT ANSWERS**

1. Yes. The Ethics Ordinance does not restrict your ability to use City-leased office space.
2. Yes. The Ethics Ordinance does not restrict any post-employment activities undertaken in a volunteer capacity.
3. The Ethics Ordinance is not concerned with income received from the City of San Diego after your retirement. However, please see the discussion below regarding post-employment lobbying activities for additional restrictions set forth in the Ethics Ordinance that might pertain to your contemplated activities.
4. Yes. You are not permitted to directly or indirectly influence a municipal decision concerning the San Diego Family Justice Center for twelve months after you retire from the City if you receive compensation for these activities from a private business.
5. Yes. You are not permitted to directly or indirectly influence a municipal decision concerning Camp Hope for twelve months after you retire from the City if you receive compensation for these activities from a private business.
6. Yes. Your lobbying activities would not be restricted if you were not compensated by a private business for such activities.
7. According to the Ethics Ordinance, as a former City Official, you will be required to file a leaving office Statement of Economic Interests within thirty days of leaving office, covering the previous twelve month period. There are no additional reporting obligations pursuant to the Ethics Ordinance. However, the Lobbying Ordinance does include registration and reporting requirements for individuals who qualify as lobbyists.

## **BACKGROUND**

You are currently serving as the City Attorney for the City of San Diego. During your term in office, you have been instrumental in the creation of the San Diego Family Justice Center (the Center), a facility that provides comprehensive services to victims of domestic violence and their children. The Center has become a public/private partnership between the City of San Diego, the County of San Diego, and the private sector. The Center operates out of City-leased office space. The lease is funded primarily by the City, and is administered by the City's Real Estate Assets Department. Several other agencies, including the County of San Diego (Aging and Independent Services, the District Attorney's Office, and the Probation Department), have staff on-site at this facility, pursuant to a Memorandum of Understanding between the City and each agency.

In addition, you have been actively involved in the development of Camp Hope, a camp for victims of domestic violence and their children. Camp Hope operates on City property pursuant to a lease currently held by the San Diego Family Justice Center Foundation (discussed in more detail below), and the lease is managed by the City Manager. Camp Hope is a public/private partnership between the City's Water Department, the City Attorney's Office, the City's Police Department, and a host of private, non-profit agencies.

Finally, you were involved in the creation of the San Diego Family Justice Center Foundation (the Foundation) in June of 2003, a private non-profit 501(c)(3) corporation established to support the work of Camp Hope and the City's Family Justice Center. You currently serve as an uncompensated member of the Foundation's Board. In October of 2003, President Bush created a Family Justice Center Initiative to create Family Justice Centers across the country modeled after the San Diego Center. In June of 2004, the Foundation received a \$1.6 million grant from the federal government to provide training and technical assistance to the federally funded sites over the next two years. You were also involved in the creation of Camp Hope, Inc., another 501(c)(3) non-profit corporation. This entity handles the operations of Camp Hope. You currently serve in a volunteer capacity as the President of this entity's Board of Directors.

When you retire from the City of San Diego in December of 2004, you plan to receive compensation from two sources: the San Diego County District Attorney's Office and the Foundation. According to the information you've provided, you will be working for the District Attorney "as her assigned Special Assistant, coordinating her relationship with the Family Justice Center." In addition, you have indicated that your work for the District Attorney will involve overseeing a "regional effort to develop a system of Family Justice Centers in San Diego County" and to assist on related policy matters. With respect to your work for the Foundation, you have indicated that you will be overseeing the training and technical assistance for the President's Family Justice Center Initiative, and that your compensation from the Foundation will come from the federal grant discussed above. In connection with your work for the District Attorney and the Foundation, you anticipate maintaining an office at the Family Justice Center. Finally, you plan to advocate for a proposal to redevelop the current downtown Main Library Building and move the Family Justice Center to this location.

## ANALYSIS AND CONCLUSIONS

### Use of Office at Family Justice Center

You have asked if you may use a City-leased office at the San Diego Family Justice Center in connection with your relationship with the Family Justice Center Foundation and the District Attorney's Office. The Ethics Ordinance does not specifically address the post-employment use of City-leased office space or property. You have indicated that you will continue to serve as an uncompensated member of the Foundation's Board, and that you plan to receive compensation from the Foundation to oversee the training and provide technical assistance for the President's Family Justice Center Initiative. In addition, you have indicated that you plan to receive income from the District Attorney's Office, and that the District Attorney's Office currently occupies some of the space at the Family Justice Center pursuant to a Memorandum of Understanding with the City.

As discussed in greater detail below, you will not be permitted to engage in direct communications with City Officials for the purpose of lobbying if you receive compensation from the Foundation for such lobbying activities. It therefore stands to reason that, if your use of the City-leased office space were solely related to this prohibited activity, the use of the office space would not be advisable. However, you have indicated that you plan to work with the Family Justice Center and Camp Hope in several different capacities, the majority of which are not proscribed by the City's post-employment lobbying restrictions. We must therefore conclude that the Ethics Ordinance does not prohibit your use of this office space.

### Service on Boards

You have asked whether you may continue to serve in an uncompensated capacity on the boards of Camp Hope, Inc. and the San Diego Family Justice Center Foundation. As discussed in greater detail below, the provisions in the Ethics Ordinance concerning post-employment activities are only applicable to situations in which you receive compensation. The Ethics Ordinance does not restrict any post-employment activities undertaken in a volunteer capacity.

### Compensated Activities

You have asked whether you may continue to work closely with the City in connection with the ongoing operations of Camp Hope and the San Diego Family Justice Center if you receive no income from the City of San Diego other than your vested retirement income. The provisions of the Ethics Ordinance are not concerned with post-employment income that you might receive from the City of San Diego. Instead, the post-employment restrictions codified in the Ethics Ordinance concern compensated lobbying activities undertaken on behalf of a private business within twelve months after you leave the City. As discussed in greater detail below, these restrictions do not apply to lobbying activities undertaken on behalf of a public agency. Therefore, you will be entitled to lobby City Officials on behalf of the District Attorney's Office. However, your lobbying activities will be restricted if you receive income in connection with

these activities from the San Diego Family Justice Center Foundation, because the Foundation is considered a “private business” pursuant to the definition set forth in the Ethics Ordinance. SDMC § 27.3503.

In addition to the post-employment restrictions concerning income for lobbying received from a private business, the Ethics Ordinance also addresses your financial interests in the context of the actions you took while you were a City Official. In particular, section 27.3560 prohibits City Officials from having any financial interest in any contract made by them in their official capacity. This provision is based on Government Code section 1090, and the decisional case law concerning 1090 indicates that it applies to post-employment activities if a governmental official benefits from a contract he or she made while acting in a former official capacity. Because you have not asked any questions concerning the potential application of this Ethics Ordinance provision, we have not performed any research or analysis regarding this issue.

### Lobbying Activities

You have asked if there will be any legal restrictions on your ability to participate, advocate, or lobby for the future development of a permanent home for the San Diego Family Justice Center, as well as for a permanent facility for Camp Hope. You have also asked whether any possible restrictions would be avoided if you did not receive compensation for such lobbying activities.

The City’s Ethics Ordinance sets forth the following guidelines regarding post-employment lobbying activities:

(a) It is unlawful for any former City Official who received compensation from the City to work on a particular project during his or her City service to engage in direct communication with the City, for compensation, with regard to any pending application for discretionary funding or discretionary entitlements before the City relating to that particular project on behalf of any person other than a Public Agency for a one year period immediately following termination of service with the City.

...

(b) It is unlawful for any former City Official, for compensation, to knowingly counsel or assist any person other than a Public Agency in connection with an appearance or communication in which the former City Official is prohibited from engaging pursuant to subsection (a) for a one year period immediately following termination of service with the City.

...

(d) It is unlawful for any former City Official to engage in direct communication for the purpose of lobbying the City if all of the following circumstances apply:

- (1) the former City Official served as a City Official within the previous twelve months; and
- (2) the former City Official received compensation from the City for his or her service as a City Official; and
- (3) the former City Official is receiving compensation from a private business to engage in direct communication with the City.

SDMC § 27.3550.

With respect to the Center and Camp Hope, you “worked on a particular” project as that phrase is defined in the ordinance. SDMC § 27.3550(a)(1). Therefore, you are not permitted to engage in any direct communications with the City, for compensation, in an effort to influence any municipal decisions concerning the San Diego Family Justice Center or Camp Hope for twelve months after you retire from City service. As indicated above, you are also prohibited from indirectly influencing a municipal decision by assisting another party behind the scenes with respect to municipal decisions concerning the San Diego Family Justice Center or Camp Hope. Please note that the definition of “influencing a municipal decision” includes any attempt to affect any municipal decision, including the provision of information, statistics, analysis or studies. SDMC § 27.3503.

Therefore, in answer to your questions, you may not attempt to influence any municipal decisions regarding a permanent location for the San Diego Family Justice Center or for Camp Hope if you receive compensation from a private business for such activities within twelve months after your retirement. As indicated above, these restrictions do not apply if you receive compensation from a public agency (such as the San Diego County District Attorney’s Office), or if you are not compensated in any manner for your lobbying efforts.

### Reporting Obligations

You have asked if you will have any on-going reporting obligations under the State’s Political Reform Act or the City’s Ethics Ordinance regarding any of your contemplated activities. The Ethics Ordinance indicates that all “high level filers” shall file Statements of Economic Interests pursuant to the Political Reform Act. SDMC § 27.3510. As the City Attorney, you are considered a “high level filer” as that term is defined in the ordinance. SDMC § 27.3503. According to SDMC section 27.3510(f), you will be required to file a leaving office Statement of Economic Interests within thirty calendar days of leaving office, covering the previous twelve month period. As a former City Official, you will not have any other reporting obligations pursuant to the Ethics Ordinance. Because the Ethics Commission does not have jurisdiction to enforce those provisions of the Political Reform Act that are not incorporated into local law, the Commission cannot provide you with advice concerning any other state law reporting requirements that might apply to your contemplated activities.

In addition to the Ethics Ordinance, it should be noted that the City’s Lobbying Ordinance sets forth registration and reporting requirements for those individuals who qualify as lobbyists. Although your lobbying activities are restricted during the first twelve months after you leave

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City service (see discussion above), the lobbying reporting requirements could apply to your activities thereafter. Please refer to SDMC sections 27.4005 through 27.4017 for additional information regarding registration and reporting for qualified lobbyists.

I hope the foregoing provides you with sufficient guidance as you plan your post-employment professional activities. If you have any additional questions, please contact our office.

Sincerely,

Stacey Fulhorst  
Executive Director

SF/s