

AS OF JANUARY 5, 2005, THIS LETTER IS SUPPLEMENTED BY
SAN DIEGO MUNICIPAL CODE SECTIONS 27.2965 – 27.2969

IN ADDITION, SOME OF THE SAN DIEGO MUNICIPAL CODE SECTIONS
REFERENCED IN THIS LETTER WERE RE-NUMBERED AS OF JANUARY 5,
2005 (SEE COMPARISON CHART WITH “OLD” AND “NEW” SECTION NUMBERS
ON THE ETHICS COMMISSION WEBSITE)

July 16, 2003

Advice Provided to: SDEC Informal Advice Letter IA03-07

Pamela Wilson, Esq.

Sullivan Wertz McDade & Wallace

945 Fourth Avenue

San Diego, CA 92101

Re: Request for Advice Regarding Reporting and Reimbursement of

Officeholder Legal Defense Expenses

Dear Ms. Wilson:

This letter is being re-issued to correct the number of the advice letter noted above from IA03-06 to IA03-07.

This advice letter has been prepared in response to your letter to the City of San Diego

Ethics Commission dated June 30, 2003. In your letter you pose a two-part question and provide answers to the questions based on your own legal analysis. You are seeking advice from the Ethics Commission in the form of concurrence with your answers. Your letter asks general, hypothetical questions, and accordingly we consider your letter to be a request for informal advice. Your two-part question is presented as follows:

Question Presented: Must an officeholder report officeholder related legal expenses as campaign committee expenditures, and if so, is the officeholder still eligible to have such funds reimbursed by the City pursuant to Government Code § 995.8?

With regard to the first part of your question, the Commission concurs with both your analysis and conclusion. The Election Campaign Control Ordinance [ECCO] at San Diego Municipal Code [SDMC] section 27.2940 provides that “candidates and committees shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.*”, the state law commonly known as the Political Reform Act. SDMC section 27.0103 and the Political Reform Act both define “candidate” to include elected officeholders. The Political Reform Act and the state regulations implementing the Political Reform Act are therefore controlling. Title 2, section 18225 of the California Code of Regulations provides in ambiguous terms that “an expenditure is any monetary or non-monetary payment made for political purposes” and that “a payment is made for political purposes if it is made by a candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder.” For purposes of your requesting letter, you ask us to hypothetically assume that the legal expenses at issue are not personal or unrelated to your client’s status as an office holder. In other words, and as affirmatively stated in your letter, “the legal expenses at issue do arise from the officeholder’s status as an officeholder.” Accepting this assumption as a part of your hypothetical question, we concur with you that your client must report officeholder related legal expenses as campaign committee expenditures.

As for the second part of your question, you are seeking advice regarding your client’s eligibility for reimbursement from the City pursuant to Government Code section 995.8. Because your question involves a subject outside the jurisdiction of the Ethics Commission, I must refrain from giving advice on this part of the question. The responsibilities and duties of the Ethics Commission are set forth in SDMC section 26.0414(b) and include “issuing formal and informal advice and opinions to any person regarding the governmental ethics laws within the Commission’s jurisdiction.” The term “governmental ethics laws” is defined in the SDMC to mean “local laws governing campaign contribution limits, campaign contribution disclosure, campaign expenditure disclosure, statements of economic interests, receipt and disclosure of gifts, conflicts of interest, lobbying registration and disclosure, and other matters proposed by the Commission and adopted by a majority of the City Council.” Government Code section 995.8 relates to claims against public entities and the defense of public employees. This is not a local governmental ethics law which the Ethics Commission has any jurisdiction to enforce or render advice upon.

I would like to add gratuitously, however, that if your client is eligible for reimbursement from the City pursuant to Government Code § 995.8 and if the City Council decides to grant a request for reimbursement, I believe that the reimbursement could not be made directly to your client’s controlled committee as this would violate the contribution limits and prohibition against organizational contributions contained in ECCO. The Council could consider the possibility of granting the reimbursement on the condition that the officeholder make a personal contribution to his controlled committee because, as you know, personal contributions are not subject to the contribution limits under ECCO.

Sincerely,

Charles B. Walker

Executive Director

CBW:jm