COMPARISON OF DUTIES

Ethics Commission & the City Attorney's Office

EDUCATION

The City Attorney's Office provides advice to City Officials. It does not provide advice to anyone who is not a City Official. In other words, the City Attorney's Office does not provide assistance to candidates for elective office, their campaign staffs, ballot measure committees, or any other political committees regarding the City's campaign laws. In addition, the City Attorney's Office does not provide guidance to current or prospective lobbyists with regard to their obligations under the City's Lobbying Ordinance. By contrast, the Ethics Commission fields questions from all such individuals, as well as from all City Officials.

The Ethics Commission has created, and regularly updates, many educational resources for all of the individuals and entities subject to governmental ethics laws. These resources include fact sheets, FAQs, a campaign manual, a lobbying manual, and the maintenance of electronic Interested Persons lists that provides updates to interested parties and solicits their feedback on campaign, lobbying, and other ethics-related matters. Creating, maintaining, and updating these types of resources are not functions of the City Attorney's Office.

Pursuant to Council Policy 000-04, the Ethics Commission oversees an ethics training program for nearly 1,300 City Officials, including elected officials, unclassified employees, board and commission members, project area committee members, officers and employees of the City's agencies (CCDC, SEDC, Housing Commission, SDDPC, and Convention Center Corporation), and consultants. Providing this type of training is not a function of the City Attorney's Office.

ENFORCEMENT

The Ethics Commission handles administrative enforcement of governmental ethics laws. By contrast, the City Attorney's Office prosecutes violations criminally. As evidenced by the creation of similar administrative enforcement agencies throughout the state and country (Los Angeles Ethics Commission, San Francisco Ethics Commission, Oakland Public Ethics Commission, California Fair Political Practices Commission, Federal Elections Commission), administrative tools are generally the preferred enforcement mechanism for violations of governmental ethics laws.

The vast majority of ethics violations do not warrant criminal prosecution. (Those that do may be forwarded to one of several criminal enforcement agencies, including the City Attorney, District Attorney, California Attorney General, or United States Attorney.) Moreover, administrative and criminal actions have substantially different remedies. An Ethics Commission enforcement action may result in the imposition of an administrative fine. On the other hand, a City Attorney enforcement action may result in a fine and/or imprisonment, as well as a criminal record. A City Attorney enforcement action concerning an elected City Official could also result in the forfeiture of his or her office. SDMC section 27.3583(c).

AUDITING

One of the key functions of the Ethics Commission is the audit of campaign committees to ensure that information disclosed by City candidate and ballot measure committees is complete and accurate. The role of the City Attorney does not include auditing campaign statements.

CONFLICTS

There are inherent conflicts between the role of the City Attorney and the role of the Ethics Commission, as illustrated by the following:

- The City Attorney is an elected official subject to the City's campaign laws. It would present a conflict for the City Attorney's Office to prosecute candidates seeking the office of City Attorney.
- All of the attorneys in the City Attorney's Office are required to adhere to the City's Ethics Ordinance. Requiring the City Attorney's Office to enforce the Ethics Ordinance against its own employees is fraught with conflict.
- The City Attorney's Office serves as the legal advisor to various City Officials, including the Mayor and Councilmembers. At a minimum, an appearance of a conflict would be created if the City Attorney's Office were to investigate alleged violations of ethics laws by the same City Officials who are essentially its clients.

In recognition of these conflicts, the voters approved an amendment to the City Charter in 2004 to provide the Commission with legal counsel independent of the City Attorney's Office.