

August 7, 2002

SDEC Formal Advice Letter No. FA02-02

Advice Provided to:

Charles B. Christensen, Esq.
Christensen, Schwerdtfeger & Spath LLP
444 West C Street, Suite 200
San Diego, CA 92101

Re: Request for Advice Regarding Revolving Door Issues for Housing
Commission Members

Dear Mr. Christensen:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated July 25, 2002. You requested formal advice from the Ethics Commission concerning the effect of the revolving door provisions of the Ethics Ordinance on members of the San Diego Housing Commission. Your questions and the Commission's response, based on the information provided in your letter, are detailed below.

QUESTIONS

1. Do the post-service lobbying restrictions contained in San Diego Municipal Code [SDMC] section 27.3550 apply to Housing Commissioners who elect, after the effective date of the Lobbying regulation, to waive receipt of compensation they may collect pursuant to SDMC section 98.0301(f)(4)?

2. Are the members of the Housing Commission who occupy publicly subsidized housing or otherwise receive Section 8 benefits considered “compensated” officials by virtue of receiving these benefits thus triggering the post-service lobbying restrictions contained in SDMC section 27.3550?

SHORT ANSWERS

1. If a Housing Commissioner waives the SDMC section 98.0301(f)(4) compensation for twelve months prior to leaving office, the post-service lobbying restrictions contained in SDMC section 27.3550 will not become applicable.
2. Because Housing Commissioners who occupy publicly subsidized housing or otherwise receive Section 8 benefits do not receive that public benefit in exchange for their service as a member of the Housing Commission, the receipt of that benefit does not, in and of itself, make such members “compensated city officials” for the purposes of SDMC section 27.3550.

BACKGROUND

The San Diego Housing Commission is a state agency formed pursuant to an ordinance of the City of San Diego. SDMC section 98.0301(f) establishes the qualifications and basic legal parameters for the Commission as follows:

- (f) Appointment of Commission Members. The Commission shall consist of seven (7) members who shall be appointed by the Mayor with the approval of the City Council. Four members shall constitute a quorum and the affirmative vote of four members shall be necessary for any action by the Commission.
 - (1) Two (2) commissioners appointed pursuant to this section shall be tenants of housing authority units. At least one (1) commissioner so appointed shall be over 62 years of age.
 - (2) The term of office of each member shall be four (4) years, except that the terms of office of the two (2) members who are tenants of Housing Authority units shall be two (2) years and as set forth in Section 34272 of the Health and Safety Code of the State of California.

- (3) Vacancies occurring during a term shall be filled for the unexpired term by the Mayor with the approval of the City Council. A member shall hold office until his successor has been appointed and qualified.
- (4) Each member shall receive as compensation the sum of Fifty Dollars (\$50.00) for each Commission meeting attended; provided that the total compensation for each member shall not exceed One Hundred Dollars (\$100.00) in any one month. In addition, each member shall receive necessary travel and subsistence expenses incurred in the discharge of his duties. Any member may waive compensation by filing a written waiver of compensation form with the Executive Director.
- (5) For inefficiency, neglect of duty, or misconduct in office, a member may be removed upon the affirmative vote of a majority of the members of the City Council.

The City of San Diego Ethics Ordinance contains certain lobbying restrictions at SDMC section 27.3550 that are applicable to former City Officials who terminate status as a City official after July 1, 2002, and who were compensated for City service within the “previous twelve months.” Many of the terms used in the Ethics Ordinance are defined. The definition of “City Official” includes members of any agencies of the City of San Diego, including the Housing Commission. The term “compensation” is broadly defined to include “salary, wages, fees, and any discount or economic opportunity not made available in the regular course of business to members of the public” in exchange for “the services or time of a person.”

ANALYSIS

The legislative history documenting the adoption of the post-service lobbying restrictions in the Ethics Ordinance makes it clear that the City Council did not intend for these regulations to apply to volunteer members of City boards and commissions. The City of San Diego Charter provides that members of boards and commissions created pursuant to the City Charter are precluded from accepting compensation for service on their respective board or commission. However, the Housing Commission is an anomaly in that it is not created pursuant to City Charter, but rather, pursuant to state law. Therefore, it is legally permissible to serve on the Housing Commission and be compensated for such service. The City Council has provided for compensation in the amount specified in SDMC section 98.0301(f).

There is no question that, as presently codified, a member of the Housing Commission who accepts the compensation specified in SDMC section 98.0301(f) is a “compensated City

Official” within the meaning of the Ethics Ordinance. However, to trigger the application of the post- service lobbying restrictions, a three part test must be satisfied under Section 27.3550:

- 1) The City official must terminate status as a City official after July 1, 2002; and
- 2) The former City Official must have served as a City Official within the previous twelve months; and,
- 3) The former City official must have been compensated for service as a City Official.

It is the opinion of the Ethics Commission that if a member of the Housing Commission leaves office after July 1, 2002, either by resignation, the expiration of a term, or any other manner, the test under SDMC section 27.3550 is satisfied only if that member received compensation for serving as a Housing Commissioner during the final twelve months of office. For example, if a Commissioner waives all Housing Commission compensation beginning in December of 2003 and then leaves office on December 31, 2004, that Commissioner will be eligible to work as a compensated lobbyist immediately upon leaving office. Because that Commissioner was not compensated during the last 12 months of office, the lobbying restrictions of SDMC section 27.3550 do not become applicable.

A key aspect of the three part test outlined above is that the “compensation” received by the City Official must be given “in exchange for the service or time of the person” in their capacity as a City Official. This connection or ‘quid pro quo” between the receipt of compensation and the performance of duties as a City Official is recognized both in the definition of “compensation” in the Ethics Ordinance as well as in the third step of the above test. It is our understanding that the public benefits received by the tenant members of the Housing Commission are not being awarded in exchange for “service” as a member of the Housing Commission. In fact, we understand that these tenant members of the Housing Commission had already qualified for, and were already receiving, these benefits before they became eligible for consideration to be appointed as tenant members of the Housing Commission. That being the case, it is quite clear that these benefits were not awarded in exchange for services related to their performance as Housing Commissioners.

CONCLUSION

To avoid triggering the application of SDMC section 27.3550, a Housing Commissioner must refrain, for at least the last twelve months of office, from accepting the compensation for service as a Housing Commissioner that is available under SDMC section 98.0301(f). Additionally, because the public benefits received by the tenant members of the Housing Commission (Section 8 Housing or publicly subsidized housing) are not being awarded in exchange for

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service as a members of the Housing Commission, these benefits alone do not qualify as compensation within the meaning of Section 27.3550(d)(2) of the Ethics Ordinance.

Thank you for contacting the Ethics Commission regarding this matter.

Sincerely,

Charles B. Walker
Executive Director