

AS OF JANUARY 1, 2008, THIS LETTER HAS
BEEN SUPERSEDED BY AMENDMENTS TO SDMC
SECTIONS 27.4001 et seq.

September 3, 2002

SDEC Informal Advice Letter IA02-04

Advice Provided to:

Scott Barnett
President & Chief Executive Officer
Lincoln Club of San Diego
4445 Eastgate Mall, Suite 200
San Diego, CA 92121

Re: Request for Advice Regarding Registering as a Lobbyist

Dear Mr. Barnett:

This advice letter has been prepared in response to your e-mail to the City of San Diego Ethics Commission dated August 20, 2002. You have requested an advisory letter from the Ethics Commission concerning whether you are required to register as a lobbyist with the City of San Diego.

QUESTION

Are you, as the President and CEO of the Lincoln Club of San Diego County, required to register as a lobbyist with the City of San Diego City pursuant to requirements contained in the Municipal Lobbying Ordinance, Chapter II, Article 7, Division 40 of the San Diego Municipal Code [SDMC]?

SHORT ANSWER

The information contained in your August 20, 2002, e-mail does not provide the Ethics Commission with sufficient information to conclude that you are, or are not, required to register with the City of San Diego as a lobbyist. This letter, therefore, does not confer immunity upon you with regard to any registration requirements you may have. If, however, your compensation for lobbying activities does not cause you to reach the threshold compensation amount of \$2,288 for a single calendar quarter, then you may assume that you are not required to register as a lobbyist.

ANALYSIS

You supplied the Ethics Commission with the following facts concerning your job duties and your interaction with City Officials:

You are the President and CEO of the Lincoln Club, which is comprised of two political action committees, and whose primary purpose is to recruit and support candidates for public office, and support “free enterprise” principles. Your organization does not represent any particular business, type of business, or interest, nor does it lobby for specific projects or policies to benefit a specific member. In your first six months as President, you did not have any private or public conversations with any members of the City Council for the purpose of supporting or opposing any policy issue. On one occasion, you sent e-mails urging that the mayor and City Council follow a particular course of action (oppose PLA requirements for Sea World).

You indicated that in the future you may testify in public or may urge elected officials to take certain positions on various issues, or advocate for certain major public and/or public private projects deemed consistent with the mission of the Lincoln Club. It is foreseeable that you will communicate with members of the City Council on issues of Lincoln Club interest that could have a corollary impact on individual members of your organization. You may also play a role in the Lincoln Club’s support or opposition to a ballot measure or legislative matter.

You stated, however, that such lobbying activities, if it were to occur, would constitute a very minor part of your overall responsibilities and would result in relatively little of your time. You anticipate that most of your time will be spent on fundraising; member recruitment; administrative oversight duties; member services; organizational responsibilities; meetings with the board, committees, members, potential candidates, and candidates for local, state and national office; local and State GOP activities; planning events; research; discussions of policy issues that may or may not be in the City of San Diego; ballot measures; and other public policy issues.¹

Under the City’s lobbying ordinance, if an individual engages in lobbying *and* that individual receives, or becomes entitled to receive, the threshold compensation during any calendar quarter for lobbying activities, then that person is a lobbyist and must register and file quarterly reports with the City. In order to determine if an individual satisfies both parts of this requirement, it is

¹Please note that some of these activities you listed (e.g. “other public policy issues”) are not fully explained and could potentially be construed as constituting lobbying activities if they involve directly communicating with city officials for the purpose of influencing a municipal decision.

essential to examine the activities that constitute lobbying and how the threshold compensation amount is determined.

What is Lobbying?

Lobbying is direct communication with a City official for the purpose of influencing a municipal decision. Definitions contained in SDMC section 27.4002 facilitate the interpretation of this concept by breaking it up into the following parts:

1. **“Direct communication”** means talking to or corresponding with someone in a way that does not become part of the record of a public hearing.²
2. **“City Official”** includes more than just an elected City officeholder. The term encompasses an elected or appointed City officeholder; City Board member; City consultant required to file an economic disclosure statement by a Council-adopted conflict of interest code; or Council member acting as an officer of the Housing Authority or the Redevelopment Agency. Also included as a City official is any employee of the City or any City agency who, as part of his or her official duties, participates in the consideration of any Municipal Decision other than in a purely clerical, secretarial or ministerial capacity.
3. **“Influencing”** means affecting or attempting to affect any action by a City official by any method, including providing information, promoting, supporting, opposing or seeking to modify or delay.
4. **“Municipal Decision”** encompasses the drafting, introduction, consideration, adoption, defeat, or repeal of any ordinance or resolution; the amendment of any ordinance or resolution; a report by a City official to Council or a Council committee; contracts; quasi-judicial decisions such as decisions on land development permits and maps, or any grant of, denial of, modification to, or revocation of a permit or license; and any other decision of the City Council or a City Board. City Boards include the boards of directors of all City agencies, and any board, commission, committee, or task force of the City which the Council created under the authority of the City Charter, the Municipal Code, or Council resolution.

What is the Threshold Compensation?

²An individual needs at least one direct communication with a City Official to be considered a lobbyist under the City’s lobbying laws. That one direct communication triggers an obligation to determine if it, when coupled with other lobbying activities in a calendar quarter, will cause the individual to reach the threshold compensation. An individual without a single direct communication with a City Official is not considered a lobbyist regardless of the amount of other lobbying-related activities performed.

Under the SDMC, an individual who engages in lobbying activities does not need to register and file quarterly reports until he or she has received, or becomes entitled to receive, the “threshold compensation” during any calendar quarter for lobbying activities. Then, after receiving or becoming entitled to receive that amount, that individual must register as a lobbyist and report quarterly until (a) he or she terminates the registration; or (b) the registration expires. Note that SDMC section 27.4013 provides that registrations automatically expire on January 5th, and lobbyists have until January 15 to renew their registration.

Details regarding the threshold compensation requirement are contained in SDMC section 27.4005. For calendar year 2002, the threshold compensation is \$2,288. Provisions of the lobbying ordinance require that the threshold amount be adjusted annually, based on the percentage change in the San Diego Consumer Price Index. The threshold compensation amount is published every year no later than January 10.

In determining whether or not you've reached the threshold amount, you must take into account all compensation you've received or become entitled to receive *not only* for direct communication with a City Official, *but also* for monitoring a municipal decision you're seeking to influence; preparing testimony and presentations; attending hearings on a municipal decision you're seeking to influence; communicating with a client or employer about a municipal decision you're seeking to influence; and waiting to meet with City officials. These and similar activities are an integral part of influencing a municipal decision.

How Is the Threshold Compensation Calculated?

Your request for advice did not identify your salary, the average number of hours you work per week, or the amount of time you anticipate spending on lobbying activities. For this reason, the Commission has no means of determining whether your anticipated activities will likely result in a requirement that you register as a lobbyist. The Commission can, however, provide you with guidelines that will enable you to determine yourself if the activities you engage in and the salary you receive will result in a registration requirement. The following chart³ shows the average time you must spend on lobbying activities before you meet the \$2,288 threshold for 2002.

Annual Salary	Hourly Salary	Avg. Time/Qtr Spent Lobbying	Avg. Time/Week Spent Lobbying (13 wks/qtr)	Avg. Time/Day Spent Lobbying (64 workdays/qtr)
\$50,000	\$24.03	95 hrs., 13 minutes	7 hrs., 20 minutes	1 hr., 30 minutes
\$80,000	\$38.46	59 hrs., 29 minutes	4 hrs., 35 minutes	56 minutes
\$120,000	\$57.68	39 hrs., 40 minutes	3 hrs., 3 minutes	37 minutes
\$150,000	\$72.12	31 hrs., 43 minutes	2 hrs., 26 minutes	30 minutes

³ Based on a 40 hour work week. More or less hours worked per week will require the time per day or week spent lobbying to increase or decrease, respectively, in order to reach the threshold compensation.

Based on the above chart, and assuming for sake of discussion that your annual salary (which includes any economic consideration for services rendered, other than reimbursement for travel expenses) is \$120,000, then \$2,288 represents the compensation you would earn for three hours and three minutes of work per week over the course of a calendar quarter. A person earning \$120,000 per year would, therefore, have to register as a lobbyist if he or she spent an average of at least three hours and three minutes a week on lobbying activities. If a person earning \$120,000 did not spend that much time on lobbying activities, then he or she would have no obligation to register.

APPLICATION OF THE FACTS TO THE LAW

As described above, once you have engaged in at least one direct communication with a City Official for the purpose of influencing a municipal decision on behalf of the Lincoln Club or any other entity, two items of information are necessary to determine whether you are required to register as a lobbyist with the City: (1) how many hours you engaged in lobbying activities for the quarter, and 2) how much compensation you received for those activities. If you lobbied, and also cross the threshold of \$2,288 for any quarter in 2002, you are required to register.

Although you have not provided the Ethics Commission with information regarding your salary and number of hours spent on lobbying activities, the facts you did provide with regard to your job duties suggest (assuming your job duties do not change) that you are not required to register as a lobbyist. The facts you presented regarding the extent of your lobbying activity in your first six months of tenure as president of the Lincoln Club (one e-mail to the mayor and City Council urging opposition to PLA requirements for Sea World) do evidence a direct communication with a City Official and therefore do trigger an obligation on your part to determine if your other activities count toward the threshold compensation. However, based on your itemization of how the majority of your time is spent, it does not appear that you met the threshold compensation level which would have required you to register as a lobbyist. Whether you cross the threshold compensation level in the future will depend upon (1) whether you have additional direct communications; (2) the amount of your salary; and (3) the number of hours you spend on activities that count toward the threshold compensation. It is the intent of this letter to provide you with the guidance you will need to make these determinations in the future.

Sincerely,

Charles B. Walker
Executive Director