

January 28, 2005

SDEC Formal Advice Letter No. FA05-03

Advice Provided to:
Honorable Mayor Dick Murphy
Friends of Mayor Dick Murphy
7185 Navajo Road, Suite L
San Diego, CA 92119

Re: Request for Advice Regarding Acceptance of Volunteer Legal Services

Dear Mayor Murphy:

This advice letter has been prepared in response to your letter to the San Diego Ethics Commission dated January 26, 2005. You are seeking advice from the Ethics Commission concerning the acceptance of volunteer legal services by the Friends of Mayor Dick Murphy Committee in connection with current post-election legal proceedings.

QUESTIONS

1. If Mr. Steiner renders free legal services to the Committee, are the legal services permitted under applicable City and State law?
2. If the answer to the first question is affirmative, does the Committee have any requirement to report these free legal services?

SHORT ANSWERS

1. Yes. The contemplated volunteer legal services would not be considered a gift to a City Official, and would therefore not be subject to the \$360 annual gift limit. Legal services provided in connection with a post-election legal proceeding are generally considered campaign contributions. However, Mr. Steiner will reportedly provide legal services in a volunteer capacity, and volunteer personal services are exempt from the definition of "contribution" provided that any employees of Mr. Steiner's law firm who assist him in his efforts on behalf of the Committee do not spend more than ten percent of their compensated time in one month doing so.

2. No. The Committee will not have any reporting requirements associated with the free legal services as long as any employees of Mr. Steiner's law firm who assist him in his efforts on behalf of the Committee do not spend more than ten percent of their compensated time in one month doing so.

BACKGROUND

In your request for advice, you indicate that Attorney Robert Steiner wishes to volunteer his time in connection with ongoing litigation arising from a challenge to the validity of your victory in the November 2004 mayoral election. While Mr. Steiner does not plan to charge you or the Committee for his time, any collateral litigation costs associated with his services will be billed to and paid for by the Committee.

According to the information you have provided, Mr. Steiner is a retired partner in the law firm of Luce, Forward, Hamilton & Scripps LLP. Since 2000, Mr. Steiner has been a retired partner working for the firm pursuant to an annual contract which provides that, in addition to his retirement income from the firm's pension system, he will be paid a portion of any legal fees he generates. There are no requirements concerning the amount of legal fees Mr. Steiner is required to generate. In fact, his agreement with the firm reportedly allows him to donate his legal services at his own discretion.

You also note that the Luce, Forward firm has an attorney-client relationship with the City of San Diego, although Mr. Steiner does not financially benefit in any manner from the fees paid by the City to the firm.

Finally, you indicate that, during the course of providing volunteer legal services to the Committee, Mr. Steiner may receive administrative or legal support from one or more Luce, Forward employees. You indicate that you are aware of the guidelines set forth in Fair Political Practices [FPPC] Regulation 18423, and that the support provided by each employee will not exceed ten percent of the employee's compensated time in any one month.

ANALYSIS AND CONCLUSION

As you know, the Ethics Commission has jurisdiction to enforce the City's Ethics Ordinance, the Election Campaign Control Ordinance [ECCO], and the Municipal Lobbying Ordinance. The Ethics Commission does not have jurisdiction over state law, although many of the provisions in local law are based in large part on state law. In order to opine on whether the proposed volunteer legal services are permissible under local law, we must first determine whether such services would be considered a gift, and therefore regulated by the City's Ethics Ordinance, or whether they would be considered a campaign contribution, and therefore regulated by ECCO.

The Ethics Ordinance defines a "gift" as any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. SDMC section 27.3503. However, the Ethics Ordinance specifically indicates that campaign contributions are not considered "benefits" and are therefore not subject to the gift limits codified

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in local and state law. San Diego Municipal Code [SDMC] section 27.3525(o). (As you know, the gift limit for calendar year 2005 is \$360 from a single reportable source.)

According to the definitions in ECCO, the term “contribution” has the same meaning as the term is defined in California Government Code section 82015, which indicates that a “contribution” includes any payment for which full and adequate consideration is not made to the donor which is received by or made at the behest of an elected officeholder unless it is clear that the payment was made for personal purposes unrelated to his or her candidacy or status as an officeholder. SDMC section 27.2903 and Cal. Gov’t Code section 82015. Therefore, in general, any legal services provided to the Committee in connection with the subject election challenge would be considered a contribution to the Committee rather than a gift to you. However, California Government Code section 82015 specifically includes the following exemption for “volunteer personal services”:

Notwithstanding the foregoing definition of “contribution,” the term does not include volunteer personal services or payments made by an individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

Cal. Gov’t Code §82015(g).

Accordingly, if Mr. Steiner provides free legal services to the Committee without any expectation of payment, the exception for volunteer personal services would apply. It should be noted, however, that the FPPC has promulgated a regulation that explains when the “volunteer personal services” exemption is not applicable. In particular, FPPC Regulation 18423 states as follows:

The payment of salary, reimbursement for personal expenses, or other compensation by an employer to an employee who spends more than 10% of his compensated time in any one month rendering services for political purposes is a contribution, as defined in Government Code Section 82015 and 2 Cal. Adm. Code Section 18215, or an expenditure, as defined in Government Code Section 82025 and 2 Cal. Adm. Code Section 18225, by the employer if:

- (1) The employee renders services as the request or direction of the employer;
or
- (2) The employee, with consent of the employer, is relieved of any normal working responsibilities related to his employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.

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This Regulation further states that personal services are rendered for political purposes if the services are “received by or made at the behest of a candidate or committee by an employee.”

Cal. Code of Regs. tit. 2. § 18423.

In your request, you have indicated that you are mindful of the guidelines set forth in FPPC Regulation 18423, and that any employees of Luce, Forward who assist Mr. Steiner in his efforts on behalf of the Committee will not spend more than ten percent of their compensated time in any one month doing so. Based on this information, the provisions of FPPC Regulation 18423 will not apply, and the volunteer legal services provided by Mr. Steiner will fall under the “volunteer personal services” exemption. As a result, such services will not be reportable as contributions to the Committee, and will not be subject to the contribution limits set forth in ECCO.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

If you have any additional questions, please do not hesitate to contact our office.

Sincerely,

Stacey Fulhorst
Executive Director