

August 24, 2007

SDEC Informal Advice Letter No. IA07-06

Prescilla Dugard
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Rd., Ste. 200
San Diego, CA 92106

Re: Request for Advice Regarding Legal Counsel for Public Agencies

Dear Ms. Dugard:

This advice letter has been prepared in response to your correspondence to the City of San Diego Ethics Commission dated August 6, 2007. You are seeking general advice from the Ethics Commission interpreting the provisions of the City's Lobbying Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Because you have not identified any specific individuals or municipal decisions, we are treating your correspondence as a request for informal advice.

QUESTION

If a public agency retains legal counsel to represent its interests, is that legal counsel entitled to the "public official" exemption contained in the Lobbying Ordinance?

SHORT ANSWER

Yes. Individuals retained to represent the interests of a public agency are entitled to the "public official" exemption contained in the Lobbying Ordinance.

DISCUSSION

The City of San Diego Lobbying Ordinance imposes registration and reporting requirements on "lobbyists" who attempt to influence municipal decisions. A "lobbyist" is defined as "an individual who receives or becomes entitled to receive the threshold compensation amount during any calendar quarter for lobbying, and who has had at least one direct communication with a City Official in that calendar quarter." SDMC § 27.4002. This term is further defined to include "individuals employed by a firm under contract to provide Lobbying services, whose pro-rated salary for Lobbying activities meets the threshold Compensation during any calendar quarter." *Id.* Accordingly, an individual who works for a firm retained by a party to lobby the City on behalf of that party, will generally become a "lobbyist" under the Lobbying Ordinance once that individual has received, or become entitled to receive, the threshold compensation amount (currently \$2,730) for engaging in lobbying activities.

The Lobbying Ordinance, however, contains an exemption that is relevant to your question. In particular, the Ordinance states that the following persons are exempt from the requirements of the Ordinance: “a Public Official acting in his or her official capacity and any government employee acting within the scope of his or her employment.” SDMC § 27.4004(a). The term, “Public Official” is defined in the Ordinance to mean “an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies; the State of California; the City; any political subdivision of the State, including counties and districts; or any public corporation, agency or commission.” SDMC § 27.4002.

As indicated by its plain language, the Ordinance does not limit the scope of this exemption to individuals who are officers or employees of a public agency. This exemption is also clearly intended to extend to “officially designated representatives” of public agencies. In other words, the exemption will apply to an employee of a private firm that has been designated by a public agency to lobby on the agency’s behalf in the same way that the exemption applies to the agency’s own officers and employees. In both instances, the lobbying efforts are for the purpose of advancing the interests of the public agency. The retention of a private firm to represent the public agency does not change the fact that the lobbying efforts are conducted for the benefit of a public agency. The public official exemption, therefore, will apply to individuals who are retained to work as legal counsel for a public agency.¹

CONCLUSION

As set forth above, the Lobbying Ordinance contains an exemption for officers, employees, and “officially designated representatives” of a public agency. A private firm that has a contractual relationship with a public agency to perform lobbying services on behalf of that agency is clearly an “officially designated representative” of the agency. Accordingly, that firm’s employees are exempt from the provisions of the Lobbying Ordinance when they lobby the City on behalf of the public agency.

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.

Sincerely,

Cristie C. McGuire
General Counsel

By: Stephen Ross
Program Manager-Technical Assistance

¹ On July 31, 2007, the San Diego City Council approved a number of amendments to the City's Lobbying Ordinance, but did not make any substantive changes to the definition of “public official” or to the exemption applicable to public officials. Accordingly, the conclusions reached in this letter will not change when the amendments go into effect on January 1, 2008.