

OPINION NUMBER 86-3

DATE: July 29, 1986

SUBJECT: Compensation of Civil Service  
Commissioners

REQUESTED BY: Rich Snapper, Personnel Director

PREPARED BY: John M. Kaheny, Deputy City Attorney

#### QUESTION PRESENTED

Do the current provisions of Charter section 70 permit Civil Service Commissioners to receive a stipend, honorarium, fee or any other monetary reward for such duties as disciplinary appeal hearings and Charter section 128 investigations?

#### CONCLUSION

The provisions of section 70 of the Charter of The City of San Diego do not authorize Civil Service Commissioners to receive a stipend, honorarium, fee or other type of monetary reward from The City of San Diego for performing those duties enumerated in the Charter. However, the current practice of reimbursing members of the Civil Service Commission for actual expenses incurred in the performance of duty (such as budgeted travel to IPMA conferences) is not prohibited by the Charter.

#### BACKGROUND

In a memorandum dated June 13, 1986, you requested an opinion on whether or not the current provisions of Charter section 70 permit Civil Service Commissioners to receive a stipend, honorarium, fee or any other monetary reward for extra duties such as disciplinary appeal hearings and Charter section 128 investigations. As an initial point of clarification, you should be aware that disciplinary hearings and investigations are not extra duties but part of the regular duties of the Civil Service Commission enumerated in article VIII of the Charter of The City of San Diego.

#### ANALYSIS

Section 70 of the Charter of The City of San Diego states in part that: "All members of Commissions shall serve without compensation except where otherwise provided by State law or this Charter." After diligent research, we can not find any provision either in State law or the Charter authorizing compensation for Civil Service Commissioners of The City of San Diego. In fact, compensation for Civil Service Commissioners has not been authorized by the Charter since the Commission was created in 1915. The key issue then is whether or not a stipend, honorarium, fee or other monetary reward for performing such

duties is compensation within the meaning of Charter section 70.

The terms "compensation" and "salary" are often used synonymously in California and at least one California appellate court has indicated that the term includes "stipend, wages, pay or allowance." *Reynolds v. Reynolds*, 14 Cal.App.3d 42 (1936). It has also been held that while fees may include salaries, fees ordinarily constitute a payment for a particular service performed and a salary constitutes fixed compensation for continuous service over a period of time. *County of San Diego v. Milotz*, 46 Cal.2d 761, 300 P.2d 1 (1956). The word "honorarium" means a voluntary award for that which no remuneration could be collected by law. *Cunningham v. Commissioners of Internal Revenue*, 67 F.2d 205 (3rd Cir. 1933). Compensation, however, does not include reimbursements for actual expenses incurred in the performance of duty. *Collins v. Riley*, 24 Cal.2d 912 (1944).

It is a well settled rule in California that compensation for official services depends entirely upon the law and that statutes relating to such compensation are strictly construed in favor of the government. A public officer may only collect and retain such compensation as is specifically provided by law and any money paid by a governmental agency without authority of law may be recovered from such officer. *County of San Diego v. Milotz*, 46 Cal.2d at 767; *Van Riessen v. City of Santa Monica*, 63 Cal.App.3d 193, 133 Cal.Rptr. 618 (1976).

The issue of particular City officials' eligibility for compensation under the Charter is not a new one. The freeholders Charter, under which The City of San Diego was organized in May of 1889 (Stats. 1889, pp. 643-729), was silent as to the salary

of the City Council but some officials were given fixed salaries while others were given salaries to be determined by the Council. After the Charter was amended in 1905, reducing the number of Council members from twenty-seven to nine, the Council reacted by passing an ordinance providing themselves with a salary. When the City Auditor refused to issue a salary warrant, a law suit by a Council member followed. The Court of Appeals ruled in favor of the City Auditor holding that absent specific authority in the Charter the Council served without compensation. *Woods v. Potter*, 8 Cal.App. 41 (1908).

The 1915 Charter amendment which created the Civil Service Commission did not specifically address compensation for Commissioners. It only stated that the unclassified service included "all officers, members of appointive boards and commissioners and other persons serving the City without compensation." Current Charter section 70 was not adopted until the Charter revision of 1931. At that time, the sentence "All

members of commissions shall serve without compensation except as otherwise provided by State law or this Charter" was inserted into the Charter. It has remained intact for fifty-five years.

#### SUMMARY

Based on the above analysis of the law and the legislative history of the Charter, we believe that neither the current Charter of The City of San Diego nor State law authorizes Civil Service Commissioners to receive a stipend, honorarium, fee or other type of monetary reward from The City of San Diego for performing those duties enumerated in the Charter. Any payment for services must be specifically authorized either by an amendment to the Charter or a change in State law as indicated by the terms of Charter section 70. However, the current practice of reimbursing members of the Civil Service Commission for actual expenses incurred in the performance of duty (such as budgeted travel to IPMA conferences) is not prohibited by the Charter.

Respectfully submitted,  
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APPROVED:

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