

OPINION NUMBER 86-5

DATE: August 26, 1986

SUBJECT: Volunteer Services - Protocol Section

REQUESTED BY: Mayor Maureen O'Connor

PREPARED BY: Jack Katz, Chief Deputy

QUESTION PRESENTED

May the Mayor use volunteer services to perform protocol services and provide logistical assistance in support thereof. The August 4, 1986 memorandum from the Mayor posing those questions is a multi-faceted inquiry and is appended hereto for informative purposes.

CONCLUSION

Volunteers may be used, within operational parameters discussed in this opinion, to provide protocol activities. Support services, such as office space, supplies, equipment and clerical assistance, may be provided as a necessary adjunct to the protocol function.

DISCUSSION AND ANALYSIS

A. Background

The Mayor has expressed a desire to establish a process wherein matters of protocol may be performed by volunteers, in and on behalf of the Mayor's office. As envisioned (and set forth in the August 4, 1986 memorandum to this office, copy attached) the protocol section would be staffed by volunteers under the direction of Mavourneen O'Connor, and would operate out of the Mayor's office. Matters of protocol would include, but not be limited to, arranging official luncheons, dinners, receptions and meetings for the Mayor. It would also be concerned with arranging visits to the City by dignitaries and official trips by the Mayor to other jurisdictions.

The protocol function is not a new concept to public sector operation. At many levels of government it exists as an integral

part of the official organizational structure. In the City of San Diego, protocol as a past practice has been performed in an informal fashion, most usually handled in an ad-hoc manner. We do know that the City does not presently have a programmed, budgeted line item for such activity. We make that observation for the sole purpose of recognizing that no personnel services money is appropriated for that activity.

That, in and of itself, does not negate the propriety of such function. The Mayor is the official head of the City for all ceremonial purposes (Charter section 24) and implicit therein,

performs in such ceremonial capacity as to necessitate arrangements for and coordination of matters of protocol.

#### B. Charter Authority Regarding Use of Volunteers

San Diego is a Charter City, said Charter having been adopted pursuant to the Constitution of the State of California. (See current Cal. Const. art. XI, sec. 3.) The Charter delineates the form and structure of the City and establishes, generally, the scope of municipal authority. Despite that truism, it is well accepted that the Charter is not a grant of power to the City but a limitation thereupon. (Cal. Const. art. XI, sec. 5; Charter sec. 2; see also "Municipal Affairs" in California, 60 Cal.L.Rev. 1055, 1060 (1972).) The City has plenary authority in matters of municipal affairs (sometimes referred to as "Home Rule.") (Cal. Const. art. XI, sec. 5) and the exercise of any power not specifically limited in permissible.

The personnel structure of San Diego is provided in Article VIII of the Charter, entitled "Civil Service." (Charter section 115 et. seq.) Employment in the City is divided into the Unclassified and Classified Service (Charter sec. 117) and all regular officers and employees of the City are defined therein. No provision for use of volunteers is contained in those sections but there is no express limitation either. It is our opinion that absent such limitation, volunteers may be used for specific and narrowly defined purposes.

We note that Charter section 117 provides that all members of Boards and Commissions are included in the Unclassified Service of the City. Those members are, in a sense, "volunteers," since they do volunteer for appointment and are uncompensated for their service, (See sections 41, 41.1, 43 and 144 of the Charter) but an important distinction exists concerning the degree of responsibility and extent to which such Board and Commission members may influence City action. This matter will be discussed later in this opinion as it relates to disclosure requirements.

#### C. Volunteers; Definition for Purposes Herein

The City of San Diego has, for many years, used volunteer workers to provide services at no personnel expense to the City and such use is a matter of past practice. For example, the Senior Citizens' section is staffed with a host of volunteers and provides a valuable service to the City. We have also conducted volunteer student intern programs in which the volunteer student receives school credit and the City receives valuable public service in return.

Since neither our Charter or Municipal Code defines "volunteer," we are obliged to look elsewhere for guidance. The issue of volunteer assistance to City government (and officers

thereof) is minimally discussed in published opinions and, when discussed, generally relates to volunteer fire fighters or school crossing guards.

It is common practice by courts, when constructing legal inquiries such as is present herein, to rely upon any guidance as may be available, despite its application to other jurisdictions or levels of government. Such cross reference analysis is, at times, the only available information. The California Supreme Court, in a somewhat analogous situation, held that in interpreting the meaning of the scope of bargaining under a City Charter, it would be appropriate to refer to interpretations of the federal National Labor Relations Act for enlightenment. *Firefighters Union, Local 1186 v. City of Vallejo*, 12 C.3d 608, 617, 116 Cal.Rptr. 507, 513 (1974).

While we jealously and vigorously protect our "Home Rule" prerogative, we are similarly not constrained from looking elsewhere for enlightenment. The California State Government Volunteers Act is set forth in California Government Code, sec. 3110 et. seq. Drawing upon the language of that Act, we find and adopt the definition of "volunteer" as "any person who, of his own free will, provides goods or services, without any financial gain . . ." (Cal. Gov. Code sec. 3111) to the City or any agency thereof. The legislative findings and declarations in support of such concept are set forth in the following section 3112 and read as follows:

The legislature finds and declares that:

(a) Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others,

the state would be wise to make use of volunteers in state service wherever practically possible.

(b) The spirit of citizen initiative and self-reliance that has prevailed throughout the United States for over the past two centuries needs to be recognized and fostered whenever possible in meeting the basic human needs in the state.

(c) In every community or neighborhood there are individuals who, by their personality, concern, experience, commitment, and training, can serve as citizen action leaders.

(d) There presently exists sufficient resources to assist citizen action efforts.

There are an infinite number of skilled, experienced community groups, and volunteer organizations available to help mobilize citizen initiatives. Such groups include business and fraternal organizations, churches, women's organizations, voluntary action centers, schools and other community organizations in both the public and private sectors.

(e) Legal and market disincentives and impediments need to be eliminated in order to establish an optimum environment for citizen initiative and volunteer action.

(f) There is a need for a clearinghouse, to provide information concerning resources and alternatives to foster self-reliance and citizen action.

(g) It is not the intent of the Legislature that volunteers replace or supplant public employees, where such employees are providing services deemed necessary for the government to perform, but that they add new dimensions to providing of governmental services.

The above stated findings apply equally to the City of San Diego and may, if desired by the Mayor and City Council, be promulgated as a codified ordinance.

#### D. Caveats Regarding Use of Volunteers

As stated in the legislative findings and declarations above (particularly subsection (g)) there are good and valid reasons for but implicit limitations upon the use of volunteers. In that regard, we offer several observations:

1. Working within a Civil Service structure of personnel management and operation, volunteers are just that -- volunteers. The City Council adopts an annual appropriation ordinance which specifies in detail the number of compensated positions authorized for any given fiscal year (Charter sec. 71). These positions are in both the Classified and Unclassified service, are either appointed or elected, and are all defined as to duty. (Charter sec. 125.) All these positions fit within the formal organizational structure of the City and are shown on appropriate organizational charts. Volunteer services and positions are not included within the force structure authorized in the appropriation ordinance. Not appearing therein,

volunteers may not organizationally supervise the activities of regularly compensated City officers and employees. Such supervisory authority properly and legally belongs to budget authorized or bargaining unit classifications. Also, volunteers may not replace public employees or positions heretofore authorized by budgetary or bargaining unit negotiations. However, this does not and would not prohibit volunteers from working in concert with regularly authorized and compensated City officers and employees (to perform assigned tasks) since common sense dictates that volunteers do not work in a vacuum.

2. Volunteers may not assume or be assigned duties at such level of responsibility as to be able to legally bind the City in any contractual or other obligatory fashion.

3. Volunteers, although uncompensated, may be reimbursed for necessary and proper expenses incurred as a volunteer (i.e., parking in garage, parking meters, etc.) and may be provided the use of City facilities and equipment such as an office, desk, chair, telephone, etc., as long as it is in furtherance of the volunteer assignments. The value of services received by the City from those uncompensated volunteer workers are sufficient quid pro quo to justify relatively minor support expenses. The services are clearly for a public purpose. Further, it would be functionally irrational to attempt to use citizen volunteers and yet not provide the wherewithal in which they can function.

#### E. Volunteers; Disclosure Requirements

The fact that volunteers are uncompensated does not completely address the issue of Conflict of Interest and submission of Statements of Economic Interest (herein called "Disclosure"). As we touched upon in section B (supra) the members of Boards and Commissions are uncompensated and, in a literal sense, are citizen volunteers. Their situation and that of the true volunteer (about which this opinion concerns) has two important differences.

Members of Boards and Commissions are appointed to those positions by formal Council action. The duties and responsibilities such members have are set forth in the Charter or the Municipal Code and entail varying degrees of decision making power or influence. Most all have been and are subject to Conflict of Interest Codes promulgated pursuant to the Political Reform Act of 1974, as amended. (Cal. Gov. Code sec. 87300, et. seq.) Included within those duly promulgated (and adopted by Council action) Codes is the requirement to file disclosure statements, if they are denominated therein as a "designated

employee." (See Cal. Gov. Code sec. 82019.)

The situation of the citizen volunteer worker which this opinion addresses is quite different. As structured and envisioned in the Mayor's inquiry of August 4, 1986, the "volunteer" would not, under the most generous construction, rise to the level of designated employee. This class of volunteer would not be vested with decision making or influence bearing authority. Upon such situational representation, we conclude that the volunteers involved in and associated with protocol would not be subject to any provision of the Political Reform Act of 1974 and would not be required to file disclosure statements.

Irrespective of the above opinion, we would advise any and all volunteers, whether engaged in protocol or other function, to familiarize themselves with and abide by the provisions of the Conflict of Interest Code for the Department of Mayor and Department of Executive Services, particularly Article I, General Standards and Article II, Conduct and Responsibilities of Employees. Since the basic provisions of all City of San Diego departmental and agency Conflict of Interest Codes are similar, the above advice would apply to all volunteers in City government. We would further advise volunteers to be familiar with and comply with Council Policy No. 000-4.

#### SUMMARY

The above background and analysis is provided as general legal guidance in response to the inquiry of August 4, 1986, entitled "Volunteer Services - Protocol Section." We have concluded that the use of volunteers in the manner set forth is legal and appropriate. So, too, is the provision for space, facilities and support. We have not referred to any volunteer individuals by name because we believe that aspect is irrelevant to our analysis and opinion.

Respectfully submitted,  
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By  
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Attachment

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APPROVED:

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