

MEMORANDUM OF LAW

DATE: July 3, 1990
TO: Councilmember John Hartley
FROM: City Attorney
SUBJECT: Payment for Mid-City for Youth Conference

This is in response to your memorandum of June 26, 1990, in which you ask about the legal propriety of Council District funds being used to pay for the services of a consultant. The background facts are contained in your June 26th memorandum. Further facts were obtained from your Chief of Staff, Raquel Beltran.

The consultant provided facilitation services to a youth conference that you and community leaders organized for the Mid-City area from December 1989 to May 1990. The purpose of the conference was to pull together community people to identify the needs and wants of youth of the Third District, in particular, their educational, recreational, and juvenile diversion needs, as a means to reduce crime in the Third District. The consultant-facilitator was ICA West, a nonprofit corporation. The \$3,000 consultant's fee was "loaned" to ICA West by "San Diegans for John Hartley," a campaign committee. You would now like the Third District Council office's budget to pay ICA West for the consultant-facilitator services, with the expectation that ICA West would reimburse the campaign committee for the loaned amounts.

The issue raises several legal questions, which we discuss separately below.

1. "Public Purpose" Doctrine and Council Policy 000-4.

The "public purpose" doctrine was described at some length in our Memorandum of Law (MOL) to your Chief of Staff, Raquel Beltran, dated March 22, 1990. In lieu of repeating that description here, we enclose a copy of the MOL with its attachments.

The conference was designed to help identify services, needs, and wants of youth of the Third District as a means to reduce crime in the Third District. On the facts presented, a court would probably find that the youth conference served a legitimate public purpose and therefore City funds could properly be used to pay for consultant-facilitator services.

2. Council Policy No. 300-07.

Council Policy No. 300-07 on "Consultant Services Selection" applies to all City departments, including Council offices (copy of Council Policy enclosed). Among other things, this policy

requires "notice of intent to seek consulting services" to be published in the City's official newspaper if the cost of a consultant's services exceeds \$3,000. (Paragraph A. 2.) In the present instance, the consultant's fee is exactly \$3,000, so compliance with this portion of the Council Policy is not required.

That same policy states, however, that for all consultant services contracts (not just those over \$3,000), a minimum of three (3) qualified consultants should (but is not required to) be considered for selection. (Paragraph A. 3.) Also, proposed consultant contracts should be reviewed by both the Personnel Director and by the City's Equal Opportunity Contracting Program Manager before the commitment of City funds is made. The Personnel Director reviews consultant contracts to determine whether existing City work forces may be used in lieu of the proposed contract services. The Equal Opportunity Contracting Program Manager reviews proposed consultant contracts for compliance with the City's Affirmative Action Program. If those procedures were not followed for the contract with ICA West, they should be followed in the future.

3. Political Reform Act of 1974 (Government Code section 85202 - Prohibited Uses of Campaign Funds).

The Political Reform Act of 1974, as amended in 1989, sets forth restrictions on the use of campaign funds. It states in relevant part that "Campaign funds shall not be used to make loans other than to organizations pursuant to Government Code section 85803." Government Code section 85802(g).

Government Code section 85803 reads in relevant part:

Campaign funds may be used to make . . .
loans to bona fide charitable, educational,
civic, religious, or similar tax exempt,

nonprofit organizations, where no substantial
part of the proceeds will have a material
financial effect on the candidate, elected
officer, member of his or her immediate
family, or the campaign treasurer, and where
the donation or loan bears a reasonable
relationship to a political, legislative or
governmental purpose. (Emphasis added.)

Government Code section 85803, added by 1989 Stats. ch. 1452.

This statute sets forth a two part test to determine the propriety of loans from campaign funds: 1) Whether the type of organization is eligible to receive campaign funds; and, 2) whether the loan is for a political, legislative or government purpose.

We have not been provided enough facts to determine whether ICA West is the type of nonprofit organization that meets the first part of the test of Government Code section 85803 to permit loans of campaign funds. Assuming ICA West meets that test, however, loaning campaign funds for facilitator services for the youth conference in the Mid-City area probably meets the political or governmental purpose part of the statutory test.

In summary, the City funds may be used to pay for the consultant services of ICA West, since a court would likely find the expenditure for facilitator services for a youth conference in Mid-City was for a public purpose. Since the contract is for \$3,000, strict compliance with Council Policy No. 300-07 is not required, but we advise that the procedural aspects of that policy should be followed in future cases. Last, the loan of campaign funds to ICA West raises issues under Government Code sections 85202 and 85803, which places restrictions on the use of campaign funds. We do not have enough facts in our possession to determine whether the loan from the campaign fund to ICA West was proper. The ruling would in any event not affect whether City funds could pay ICA West.

JOHN W. WITT, City Attorney

By

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Enclosures

ML-90-77