

## **OPINION NUMBER 2002-2**

**DATE:** March 13, 2002

**SUBJECT:** Solicitation of Political Contributions from Employees and Members of City Boards and Commission

**REQUESTED BY:** Mayor Dick Murphy

**PREPARED BY:** City Attorney

### **INTRODUCTION**

This Opinion addresses specific questions addressed to the City Attorney at the February 6, 2002, meeting of the Rules Committee. At that meeting, the Rules Committee was considering an ethics ordinance [Ordinance] for the City of San Diego [City] being proposed by the San Diego Ethics Commission. The specific questions addressed to the City Attorney pertain to a proposal to codify, as a part of the Ordinance, existing state law that generally precludes the solicitation of campaign contributions from City employees and City officers. Answers to the specific questions require an in-depth analysis of the law pertaining to state and local regulation of political activities.

### **QUESTIONS PRESENTED**

1. Does the term "officer" as used in California Government Code section 3205 include uncompensated members of boards and commissions of the City?
2. Does the term "City official" as used in section 27.3571 of the proposed Ordinance regulate solicitation of political contributions from uncompensated members of boards and commissions of the City?

## SHORT ANSWERS

1. Yes. Consistent with established case law and published legal opinions of the California Attorney General and the City Attorney, a board or commission member would be considered a public officer subject to Government Code section 3205. However, this would only be the case if the City board or commission on which the member serves has been vested with the exercise of any sovereign power or governmental functions of the City through language contained in the City Charter or by action of the City Council. Attachment B of this Opinion contains a list of existing boards and commissions designated by the City Council as having members who are involved in making decisions, along with a list of those whose members do not.
2. Yes, in part. The term “City official” as used in the proposed Ordinance includes uncompensated members of City boards and commissions. However, this applies only to board and commission members who are public officials subject to the Political Reform Act and required to file annual statements of economic interests. Members of City advisory boards who are not required to file statements of economic interests would not be subject to the provisions of proposed section 27.3571 of the Ordinance.

## BACKGROUND

### A. History of City Regulation of Political Activity of Employees and Officers

Prior to the 1960’s, both state and local legislation contained broad prohibitions against public employees and officials being involved in the political process. The state prohibited civil servants from taking “an active part in a county or municipal political campaign.” Cal. Stats. 1935, ch. 48 4. Prior to 1979, City Charter section 31 prevented City employees from taking “an active part opposing or supporting any candidates in any City of San Diego political campaign,” even during non-working hours. This prohibition did not apply to elected officers or unsalaried members of commissions.<sup>1</sup> During the same period, from initial adoption of the City Charter on April 7, 1931, until 1979, Charter section 134 broadly prohibited persons in the administrative service of the City from being “in any manner concerned in giving, soliciting or receiving any assessment, subscription or contribution for any political purpose whatever from any other officer, employee or person.”

These types of broad prohibitions on political activity came under constitutional attack in several cases in the mid-1960’s. In *Fort v. Civil Service Commission of the County of Alameda*, 61 Cal. 2d 331, 338 (1964), the California Supreme Court ruled that “restrictions imposed by a governmental entity” on its officers and employees cannot be “broader than are required to preserve the efficiency and integrity of its public service.” In *Kinnear v. City and County of San Francisco*, 61 Cal. 2d 341, 343 (1964), the court established a general proposition that in upholding charter provisions regulating political activity of public officers and employees, a “compelling need to restrict the fundamental right” to participate in political activity must be shown. Finally, in *Bagley v. Washington Township Hospital District*, 65 Cal. 2d 499 (1966), the court established a three-part rule for dealing with the constitutionality of restraints on the

political activities of public officials and employees. “[W]e hold that a governmental agency which would require a waiver of constitutional rights as a condition of public employment must demonstrate: (1) that the political restraints rationally relate to the enhancement of the public service, (2) that the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights, and (3) that no alternatives less subversive of constitutional rights are available.” *Id.* at 501-02.

In the wake of these cases, the state legislature enacted Government Code section 3203 which provides that “[e]xcept as otherwise provided in this chapter, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a state or local agency.” Cal. Stats. 1976, ch. 1422 2. Surviving the legislative “narrowing” of the restrictions were provisions set forth in Government Code section 3205, which regulates the solicitation of political campaign contributions by public officers and employees.<sup>2</sup>

In response to the California Supreme Court’s rulings in the 1960’s cases discussed above, and in reaction to the 1976 changes in state law, the City sponsored a ballot measure in 1979 to change Charter sections 31 and 134. Following passage of Proposition C in 1979 by 60% of the electorate, Charter section 31’s prohibitions against officers and employees became applicable only “during regular hours of employment.” Section 134 of the Charter was radically amended, by the ballot measure including striking the prohibitions against soliciting political contributions. Rather than amend this section to mirror the provisions of state law (which is what the Ethics Commission is now proposing), the proponents of Proposition C sought to eliminate any “mirroring” provisions “because why have two sets of regulations meant to regulate the same thing.” Argument in Favor of Proposition C (1979). See Attachment A (copy of Proposition C as presented to the voters in 1979). Unfortunately, there is no legislative history in the archives of the City shedding light on the legislative objectives behind the ballot measure. The files of the City Clerk contain no reports to the City Council of any kind and the records of the City Attorney contain no request for legal advice on this issue.

At the present time, restrictions on soliciting political campaign contributions exist only at the state level. There are no local laws regulating in this area. Tasked with the responsibility of reviewing existing governmental ethics laws and proposing changes to such laws (San Diego Municipal Code section 26.0414(g)), the Ethics Commission has included in the proposed Ordinance a number of provisions, including one addressing solicitation of City officials and employees, in a manner consistent with state law.

## ANALYSIS

The key provision of the state law solicitation scheme is contained in section 3205 of the Government Code. Section 3205(a) states that:

An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

Section 3205 is found in Title 1, Division 4, Chapter 9.5 of the Government Code. Chapter 9.5 does not define the term, “officers.” It is clear only that “[t]his chapter

applies to *all* officers and employees of a state or local agency.” Cal. Gov’t Code 3202 (emphasis added). Published case law and Attorney General Opinions do not specifically address the definition of “officer” for purposes of section 3205.

The San Diego Ethics Commission has no authority to enforce the above state law provision and thus the Commission has proposed to incorporate the substance of this law into the Ordinance. Currently, section 27.3571 of the draft Ordinance provides, at subsection (a), that:

It is unlawful for any City official to solicit, directly or indirectly, a political contribution from any other City official or City employee with knowledge that the person from whom the contribution is solicited is a City official or City employee.<sup>3</sup>

Comments made at recent Rules Committee meetings have prompted an investigation as to whether uncompensated members of City boards and commissions should be considered “officers” under section 3205 of the Government Code and “City officials” under the San Diego Ethics Ordinance.

#### **A. Solicitation of Employees and Officers - Statewide Concern or Municipal Affair**

The history of pervasive City regulation of political activity (prior to 1979) changing to very limited regulation (after 1979) compels inquiry into the larger question of whether or not the City has a right to regulate in this area free of state control, and whether the state has preempted the City’s ability to regulate. The California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Unless preempted by state legislation on matters of statewide concern, the laws of a charter city will prevail over inconsistent state laws. Cal. Const. art. XI, 5(a). The home rule provision authorizes a charter city to exercise plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations. *Bishop v. San Jose*, 1 Cal. 3d 56, 61 (1969).

Clearly, the state legislature has sought to make the solicitation of public officers and employees a statewide concern. The first sentence of the state law addressing such solicitation reads: “The Legislature finds that political activities of public employees are of significant statewide concern.” Cal. Gov’t Code 3201. However, merely because the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative as to whether it is a municipal affair. *Bishop*, 1 Cal. 3d at 63.

In exercising the judicial function of deciding whether a matter is a municipal affair or of statewide concern, the courts will of course give great weight to the purpose of the Legislature in enacting general laws which disclose an intent to preempt the field to the exclusion of local regulation, and it may well occur that in some cases the factors which influenced the Legislature to adopt the general laws may likewise lead the courts to the conclusion that the matter is of statewide rather than merely local concern. However, the fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, nor does it impair the constitutional authority of a home rule city or county to enact and enforce its own regulations to the exclusion of general laws if the subject is held by the courts to be a municipal affair rather than of statewide concern; stated otherwise, the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide

concern.

*Bishop*, 1 Cal. 3d at 63 (citations omitted).

The home rule provision of the Constitution also implicitly recognizes state legislative supremacy over matters which are not municipal affairs and are, instead, “statewide concerns.” *California Federal Savings and Loan Association v. City of Los Angeles*, 54 Cal. 3d 1 (1991). Though the California Constitution allows charter cities to provide for the conduct of its elections (Cal. Const. art. XI, 5(b)), when the integrity of the election process is implicated, it becomes a statewide concern. “Purity of all elections is a matter of statewide concern, not just a municipal affair.” 35 Cal. Att’y Gen. 230, 231 (1960). For example, “[f]ew could deny that the state has a legitimate interest in prohibiting and penalizing bribery of voters. The regulation of such conduct is certainly a matter of state concern and not merely a municipal affair.” *Id.* In a 1992 landmark case, the California Supreme Court made clear the point that “the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern.” *Johnson v. Bradley*, 4 Cal. 4th 389, 409 (1992).

It seems to be well settled and not a subject of academic or legal debate that campaign contribution solicitation restrictions imposed on officers and employees of local agencies do, in fact, implicate a statewide concern regarding the integrity of the electoral process and the free exercise of first amendment rights in the political process. This subject goes beyond the procedural aspects of the electoral process protected as a municipal affair under article XI of the California Constitution from intrusion by the state legislature. It is commonly accepted that the purpose and intent of regulating solicitation of public officials and employees for political contributions is intended to protect against the creation of an environment conducive to subjecting City officials and employees to undue pressure and threats of repercussion. Therefore, as a matter of statewide concern applicable to charter cities, the solicitation restrictions in section 3205 may not be “undone” by local ordinance.

While the City may choose not to locally regulate in this area, the City may not enact a regulation in conflict with section 3205. A local law conflicts with state law within the meaning of article XI, section 7 of the state constitution if it either (1) duplicates, (2) contradicts, or (3) enters a field which has been fully occupied by state law, whether expressly or by legislative implication. *People ex rel. Deukemejian v. County of Mendocino*, 36 Cal. 3d 476, 484 (1984); *Candid Enterprises, Inc. v. Grossmont Union High School District*, 39 Cal. 3d 878, 885 (1985).

The regulation proposed in section 27.3571 of the Ordinance affecting solicitation employees and officers does not conflict with state law, does not duplicate state law<sup>4</sup> and does not infringe upon a subject which the legislature or the courts have deemed to be fully occupied by state law or exclusively a subject for state regulation. What remains, therefore, is a determination of whether an uncompensated board or commission member is an “officer” as that term is used in section 3205 of the Government Code and section 27.3571 of the Ordinance.

## **B. Case Law Interpretations of the Term “Officer”**

Published court decisions going back at least a century and a half have focused on interpreting the meaning of the term “public officer.” In *Vaughn v. English*, 8 Cal. 39 (1857), a

clerk of the Secretary of State sought classification as a public officer. The court held that “[o]fficers are public or private, and it is said that every man is a public officer, who hath any duty concerning the public, and he is not the less a public officer, where his authority is confined to narrow limits, because it is the duty of his office and the nature of that duty which makes him a public officer, and not the extent of his authority.” *Id* at 42.

While *Vaughn* established a fairly broad definition of officer, subsequent decisions continued to make the nature of the duties a determinative factor. In *Willmon v. Powell*, 91 Cal. App. 1 (1928), the court examined the authority of a municipal housing commission to issue bonds. Respondents in the case contended that the housing commission was a not a public entity, but was instead a privately controlled body. The court disagreed:

Incidental to their claim that the municipal housing commission is a privately controlled body, respondents contend that the members thereof are not officers of the city. They point to section 5 of the [Los Angeles] charter, which lists the officers of the city, and does not include the members of the municipal housing commission in the stated list. Nevertheless, the charter in another section does in terms provide for the commission and for the appointment of its members. The question of their legal status, as officers or not, should be tested by their duties and functions, rather than by their designation in direct terms as officers. If their duties and functions are those of public officers, that fact is sufficient to establish their legal status as such officers.

In *Willmon*, the court observed that the housing commission had the power to compel the attendance of witnesses in proceedings and investigations before it, and the power to administer oaths. The court described these as “official powers.” *Willmon* relied, in part, on *Coulter v. Pool*, 187 Cal. 181 (1921), which held that “the most general characteristic of a public officer, which distinguishes him from a mere employee, is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.” *Coulter*, 187 Cal. at 187.

The ruling in *Coulter* was followed a few years later in *Spreckels v. Graham*, 194 Cal. 516 (1924). In *Spreckels*, the California Supreme Court fashioned a two-pronged rule to determine whether a person is a public officer:

It is difficult, perhaps impossible, to frame a definition of public office or public officer which will be sufficiently accurate, both as to its inclusion and its exclusion, to meet the requirements of all cases. But two elements now seem to be almost universally regarded as essential thereto. First, a tenure of office “which is not transient, occasional or incidental,” but is of such a nature that the office itself is an entity in which incumbents succeed one another and which does not cease to exist with the termination of incumbency, and, second, the delegation to the officer of some portion of the sovereign functions of government, either legislative, executive, or judicial.

*Id.* at 530.

The *Coulter* and *Spreckels* decisions were revisited much more recently in a case involving a board created by the County of San Diego. In *Dibb v. County of San Diego*, 8

Cal. 4th 1200 (1994), a taxpayer objected to members of the county-created Citizens Law Enforcement Review Board [CLERB] being classified as “county officers.” The *Dibb* court acknowledged that the ordinance creating CLERB specified that CLERB was designed to “advise and make recommendations to the board of supervisors,” and was to be “advisory only.” *Id.* at 1205.

The “advisory” nature of the board raised the question of whether its members were truly public officials. The plaintiff in *Dibb* argued that in order for members of CLERB to “qualify as public officials, there must be a ‘delegation to the officer of some portion of the sovereign functions of government either legislative, executive, or judicial.’” *Id.*, citing *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978). The *Dibb* court recognized that the plaintiff was using language from the two-pronged test set forth in *Spreckels*. The *Dibb* court applied the test and determined that the board members were indeed public officials:

In other words, a public officer (or a county officer) is one who, inter alia, is delegated a public duty to exercise a part of the governmental functions of the political unit for which he, as agent, is acting. That test is plainly met here. The members of the CLERB are delegated the duty to hold hearings, administer oaths and issue subpoenas, all in order to investigate, on behalf of the board of supervisors, complaints about the official conduct of employees of the county sheriff's and probation departments. Whether this authorization of investigative power is denominated a delegation of “some portion of the sovereign functions of government” or a delegation of “part of the governmental functions” of the county, the affirmative showing required by our cases is met. Accordingly, we conclude that members of the CLERB possess the essential attributes of county officers: They are appointed under the law for a fixed term of office and are delegated a public duty to investigate specified citizen complaints against county sheriff and probation department employees, and to make recommendations to the board of supervisors.

*Dibb*, 8 Cal. 4th at 1212 (citations omitted).

### **C. Opinions of the California Attorney General Interpreting the Term “Officer”**

In 62 Op. Cal. Att’y Gen 325 (1979), the Attorney General determined that members of a Mendocino County Planning Commission were “officers” for the purpose of a requirement to take an oath under article XX, section 3 of the California Constitution. The opinion set forth a generalized rule that “if the boards and commissions do not exercise any sovereign power or governmental function, and are purely advisory in nature, they do not constitute offices, and their members are not public officers.” *Id.* at 328. After determining that “[t]he duties of planning commissions are extensive and unquestionably involve governmental functions,” the Attorney General stated “[w]e have no hesitancy in concluding that the County Planning Commission constitutes a public office.” *Id.* at 331.

That opinion also notes that “compensation by the public agency is not a prerequisite to a determination that one holds a public office.” *Id.* at 330 n.2, citing 28 Op. Cal. Att’y Gen. 46, 48 (1956). In that Opinion, the Attorney General concluded that privately employed elevator and boiler inspectors were public officers when they performed certain acts on behalf of a public agency.

In 1993, the Attorney General was asked to determine whether a public utilities

commissioner was truly holding public office. 76 Op. Cal. Att’y Gen. 157 (1993). The Opinion examined a number of past cases and Opinions and concluded that “at a minimum, an ‘office’ must be created by or authorized by some law and the incumbent must be clothed with some portion of the sovereign powers of the state.” *Id.* at 160. With regard to the “officer” status of the commissioner, the Opinion concluded that such a determination presented a substantial question of fact and law, and granted leave to sue. *Id.* at 162.

The status of a planning commissioner as an “officeholder” came up again in 82 Op. Cal. Att’y Gen. 68 (1999). In that Opinion, the Attorney General noted that because the “planning commission is responsible for the preparation and implementation of the City’s general plan,” it had assumed a governmental function. The Opinion observed that “we have also found that a city planning commissioner holds an office for the purposes of the prohibition [of holding incompatible public offices].”

#### **D. San Diego City Charter Use of the Term “Officer”**

Sections of the San Diego City Charter applicable to boards and commissions identify these bodies as having terms of “office.” Section 43 of the City Charter, entitled “Advisory Boards and Committees,” states in part, “the City Council may by ordinance create and establish advisory boards. Such boards shall be advisory to the Mayor, Council or City Manager as may be designated by ordinance. All members of such boards shall be appointed by the Mayor with Council confirmation, and the terms of *office* of such members may extend beyond the elective term of the appointing Mayor.” (emphasis added.) Charter section 41, concerning Commissions, also uses the word “office”: “The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the *office* being filled.” (emphasis added.) Such language suggests that members of boards and commissions created by authority of the City Charter, at a minimum, satisfy the first prong of the *Spreckels* test because the appointments constitute a tenure of office “which is not transient, occasional or incidental,” but is of such a nature that the office itself is an entity in which incumbents succeed one another and which does not cease to exist with the termination of incumbency.

#### **E. City Attorney Opinions Interpreting Officer Status**

In a January 13, 1944, letter to the Mayor, the City Attorney responded to the question of whether a member of a War Transportation Commission was a “city officer” within the meaning of Charter section 94. The City Attorney concluded that the member was not a city officer because members of that commission were not invested with any “administrative, executive or governmental functions.” 1944 City Att’y MOL 7. Their duties are “restricted to the giving of advice and making recommendations to the City Council.” *Id.* This interpretation is consistent with the legal analysis of the Attorney General in the opinions described above under section C of this Opinion, the California Supreme Court in the *Spreckels* decision, and the Fourth District Court of Appeal in the *Dibb* case.

#### **F. Definitions of the Term “Officer” in State Statutes**

Although Government Code section 3205 and its neighboring sections do not define the term “officer,” the Political Reform Act does define the term “public official.” At section 82048 of the Government Code, “public official” is defined to mean “every member, officer, employee

or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government.”

The California Code of Regulations provides an enhanced definition of “public officials,” in part, focusing on “members” of a governmental entity. It states, in part:

For purposes of Government Code section 82048, which defines “public official,” . . . the following definitions apply:

- (1) “Member” shall include, but not be limited to, *salaried or unsalaried* members of committees, boards or commissions with decisionmaking authority. A committee, board or commission possesses decisionmaking authority whenever:
  - (A) It may make a final governmental decision;
  - (B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
  - (C) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Cal. Code Regs. tit. 2, 18701(a) (emphasis added).

The City uses the test described above to determine whether members of a particular City board or commission should be designated as public officials and thus subject to the reporting and disqualification requirements of the Political Reform Act. Attached to this Opinion is a list derived from records kept by the City Clerk, identifying City boards and commissions whose members are considered public officials, and a list of those bodies considered purely advisory and whose members are not considered public officials.

## **G. Applicability to City Boards & Commissions**

One way to determine if a particular board or commission is comprised of “officers” is to apply the *Spreckels* two-pronged test. First, is the tenure of office “not transient, occasional or incidental?” For many of the City’s boards and commissions including all of those created under the authority of City Charter sections 41 and 43(a), the answer is clearly in the affirmative. Appointments are made for defined terms, and members are replaced when their terms expire. Second, and most importantly, is the City delegating to the board or commission “some portion of the sovereign functions of government, either legislative, executive, or judicial”? Assistance in answering this question can be gained from looking to title 2, section 18701(a) of the

California Code of Regulations. As indicated above, if a particular board or commission (a) makes a final governmental decision; (b) compels or prevents a governmental decision; or (c) makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency, then the second prong of the *Spreckels* test has been met.

Fortunately, these questions have already been analyzed and answered with regard to the City's boards and commissions. Local conflict of interest codes separate decision-making bodies from those that are purely advisory. The Political Reform Act contains provisions requiring local agencies to identify decision-making bodies that exist within the agency. In particular, Government Code section 87302 requires that a conflict of interest code be in force for all positions (other than the "statutory filers" subject to Government Code section 87200) which "involve the making or participation in the making of decisions which may foreseeably have a material affect on any financial interest." The Political Reform Act also mandates a bi-annual review of every conflict of interest code. Prior to July 1 of every even-numbered year, each body subject to a conflict of interest code is required to review its code and submit to the code reviewing body (i.e., the City Council) either an amended conflict of interest code or a written statement indicating that no changes to the code are necessary. Cal. Gov't Code 87306.5.

When the City creates a board with decision-making authority, the ordinance creating the board includes a requirement that a conflict of interest code be adopted for that board. No such requirement is made for a board presumed to be purely advisory. Nevertheless, the City Clerk, on its own initiative and in consultation with the City Attorney, reviews all purely advisory boards, commissions, and task forces approximately every two years to determine if their recommendations are, over an extended period of time, regularly approved without significant amendment or modification by the City. If an advisory board's recommendations have a history of being so approved, then a conflict of interest code is proposed for that board for adoption by the City Council.

Members of City boards that are, and remain, "purely advisory" are not considered public officials subject to the Political Reform Act, do not have a conflict of interest code, and are not required to file annual statements of economic interest. The proposed Ethics Ordinance will not apply to these individuals. Pursuant to the Ethics Commission's enabling ordinance, the Commission's jurisdiction over boards and commission extends only to those boards and commissions whose members are required to file a statement of economic interests. San Diego Municipal Code 26.0413(a). The proposed Ethics Ordinance, therefore, applies only to those boards and commissions whose members are public officials subject to the Political Reform Act.

As a note of caution, a board or commission initially deemed by the City as being "purely advisory" may evolve into a decision-making body subject to the Political Reform Act. Such an evolution typically depends on whether the body has made substantive recommendations over an extended period of time that have been regularly approved without significant amendment or modification by the City. Thus, while a board may be formed merely to advise the Manager, City Council, or some other legislative body of the City, if it, in fact, has developed a history of decision-making, it may be considered to have assumed a governmental function of the City. This issue is periodically re-evaluated by the City because the Political Reform Act requires conflict of interest codes to be updated every other year.

## **CONCLUSION**

Government Code section 3205 and the Chapter it is contained within do not contain a definition of the term "officer." No court has squarely analyzed whether the limitations on solicitation of political contributions contained in section 3205 of the Government Code apply to uncompensated appointees to local boards and commissions. However, a well settled and consistent thread of logic runs through the law interpreting the meaning of the term "public

officer.” This leads our Office to render advice on this topic with confidence.

An individual’s status as a public “officer” or “official” turns not upon whether they are compensated or not, but rather on the appointment or assumption of an officially sanctioned “office” and the character of the public duties being exercised by the individual who has assumed that office. If a board or commission is delegated the duty of exercising a part of the administrative, legislative, or executive functions of the City, and if the tenure of office is not “transient, occasional, or incidental,” then members of that body will be considered public officers for purposes of Government Code section 3205(a) and 3205(b). As of the date of publication of this Opinion, this includes the members of those boards and commissions designated as public officials on Attachment B. The jurisdiction of the Ethics Commission and the application of the ethics regulations in the Ordinance is proposed to apply to “City officials,” a term defined in the ordinance to include only those individuals who would qualify as a public official under state law.

submitted,

Respectfully

/ S /

CASEY

GWINN

City Attorney

RAD:jab  
Attachment A& B  
LO-2002-2