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DATE: May 30, 2003
TO: Mayor Dick Murphy
FROM: City Attorney
SUBJECT: Potential Conflict of Interest Related to Fiscal Year 2004 Funding
Recommendations for Special Promotional Programs (Item 606 on Council
Docket for June 2, 2003)

MEMORANDUM OF LAW

INTRODUCTION

You have asked our Office to determine whether a conflict of interest would be created by your participation in and voting on an upcoming Council decision involving funding for arts, culture, and economic development organizations. The question arises because three organizations that are recommended for funding as a part of that decision have given you reportable gifts in the last twelve months.

QUESTION PRESENTED

Are you disqualified from participating in an upcoming Council decision involving arts, culture, and economic development funding as a result of having received gifts in the past twelve months from the three organizations recommended for funding?

SHORT ANSWER

No. Because the gifts from the organizations are not of sufficient value to create disqualifying "financial interests" for purposes of conflict of interest analysis, you are not disqualified from participating in this decision.

BACKGROUND

Item 606 on the June 2, 2003 City Council docket is a budget item which includes funding for arts, culture, and economic development organizations. The relevant portion of the docket item is entitled "Fiscal Year 2004 Budget Review - Special Promotional Programs (Transient Occupancy Tax)." Victoria Saunders of the Arts and Culture Commission has confirmed that three of the organizations recommended for funding as a part of this item are The Old Globe Theater, the San Diego Convention and Visitors Bureau [CONVIS], and the San Diego Opera. You have received the following gifts from those organizations in the past twelve months: (1) tickets to The Old Globe Theater worth approximately \$100; (2) a personalized plaque/trophy from CONVIS worth approximately \$250; and (3) tickets to the San Diego Opera worth approximately \$300.

ANALYSIS

I. Political Reform Act of 1974

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000 – 91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code § 81001.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of six economic interests delineated in California Government Code section 87103. Those six interests are investments in business entities, interests in real property, income received in the previous twelve months, positions in business entities, and gifts received in the previous twelve months. In order for an official to have a financial interest in the donor of a gift, the gift or gifts received from that donor in the twelve months prior to the decision must be worth an aggregate of \$340 or more. Cal. Code Regs. tit. 2, § 18703.4.

You are a public official within the meaning of the Act, and the Council decision regarding the funding allocations in Item 606 are governmental decisions within the meaning of the Act. However, from the facts provided, it does not appear that you have any financial interest in The Old Globe Theater, CONVIS, or San Diego Opera as donors of gifts to you, because the gifts you received from those organizations in the relevant time period are not worth \$340 or more.¹

Therefore, you have no economic interest in the three organizations in question that would be disqualifying under California Government Code section 87103, and you are not disqualified under the Act from participating in discussions and voting on Item 606.

¹

18942(a)(2).

II. Council Policy 000-4

Council Policy 000-4 states in pertinent part:

No elected official, officer, appointee or employee of the City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence or judgment or action in the performance of such duties.

Under this policy, when an official has an interest in a matter, whether that interest is financial or personal, it is within the official's own discretion to determine if that interest in a matter makes participation in a decision on that matter "incompatible with the proper discharge of his official duties." If you determine that your participation in the decision on the funding allocations in Item 606 would be inappropriate under Council Policy 000-4, you may choose to abstain from participating in the item. It should be emphasized, however, that this result is not required under the law, and is a matter for your own discretion.

CONCLUSION

You have no financial interest that would be potentially affected by decisions on the arts, culture, and economic development funding allocations in Item 606 for June 2, 2003, because none of the organizations seeking funding as a part of that decision have given you gifts of \$340 or more in the last twelve months. Therefore, your participation in the discussion and votes on Item 606 related to the funding allocations does not present a conflict of interest. If you have any further questions, please feel free to contact me.

CASEY GWINN, City Attorney

By

Lisa

A. Foster

Deputy City Attorney