

TIME CERTAIN
ITEM NO. 5(6)
4:00PM

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE
INTERDEPARTMENTAL CORRESPONDENCE**

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Terry M. Brechtel, City Manager

SUBJECT: Amendments to the City of San Antonio Ethics Code

DATE: October 30, 2003

Summary and Recommendation

Ordinance Number 88874, passed and approved on November 19, 1998, adopted a new Code of Ethics for the City of San Antonio. The Code was first amended by Ordinance Number 90313, passed and approved on August 19, 1999. The Code was again amended by Ordinance Number 93998, which was passed and approved on May 24, 2001. On May 29, 2003, the City Council further amended the Ethics Code based on recommended proposals made by the Mayor's Committee on Integrity and Trust in Local Government. Additional amendments were proposed and adopted by City Council on that date as well by Ordinance No. 97711.

Background

On October 23, 2003, Mayor Edward D. Garza convened the Mayor's Committee on Integrity and Trust in Local Government. The Committee was charged with providing specific recommendations to correct weaknesses in the Ethics Code, with the "goal of strengthening a culture of service, integrity, trust and accountability." From October 2002 through January 2003, the Committee interviewed city staff, current and former city officials, members of the business community and citizen groups. On January 29, 2003, the Committee issued its report, which included its specific recommendations for revisions to the Ethics Code. On January 30, 2003, the Committee presented its report to the City Council.

On May 7, 2003, the Governance Committee reviewed the proposed recommendations to the Ethics Code and proposed additional amendments and revisions. On May 29, 2003, the City Council amended the Ethics Code based on recommended proposals made by the Mayor's Integrity Committee. Additional amendments were proposed and adopted by City Council on that date as well.

Proposed Amendment of the Definition of "Municipal Question"

At the May 29, 2003 meeting, the Council decided to defer consideration of the Integrity Committee's recommendation regarding the definition of "municipal question" within the lobbying provisions of the Ethics Code. The matter was referred back to the Council Governance Committee for further review.

Under the Ethics Code, individuals engaged in lobbying activities before the City are required to register. Lobbying is defined in part as an effort to influence or persuade an official to take or refrain from official action on any municipal question. The term "municipal question" in the current code is defined to specifically exclude zoning matters. The Integrity Committee recommended that the definition of "municipal question" be amended to remove that exclusion:

Part E, Section 1(j) (Lobbyists)

Proposed Amendment by the Mayor's Integrity Committee (Jan. 29, 2003)

Municipal question means a public policy issue of a discretionary nature pending or impending before city council or any board or commission, including, but not limited to, proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts. The term "municipal question" does not include the day-to-day application, administration, or execution of existing city programs and policies ~~such as permitting, platting, and zoning matters~~ (other than the amendment, modification or revision of the City of San Antonio Unified Development Code). It also does not include a matter that may be approved administratively without consideration by a Board or Commission. The term "municipal question" does include all discretionary matters before the Board of Adjustment, the Planning Commission and the Zoning Commission and all advisory committees and subcommittees thereof.

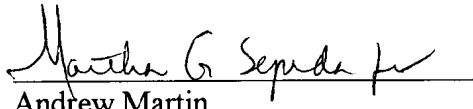
On September 3, 2003, the Council Governance Committee requested that the Ethics Review Board review the recommendations of the Mayor's Integrity Committee. Attached to this memorandum is a letter from Arthur Downey, Jr, Chairman of the Ethics Review Board, stating the board's position on the proposed amendment.

The Ethics Review Board concurs with the Integrity Committee that the exclusion of zoning matters be eliminated from the definition of "municipal question." The board has proposed its own version of the definition of "municipal question" and additional changes to other related provisions to clarify the application of the regulation. These proposals are set forth in the board's memorandum.

Members of the Ethics Review Board Code Revision subcommittee have conferred with General William McBride, U.S.A.F. (ret'd) of the Mayor's Integrity Committee. Both bodies are in agreement with the Ethics Review Board's proposed amendments to the lobbying provisions of the Ethics Code.

Financial Impact

This Ordinance has no financial impact.


Andrew Martin
City Attorney

APPROVED:


Terry M. Brechtel
City Manager

City of San Antonio Ethics Review Board

To: City Council

From: Ethics Review Board

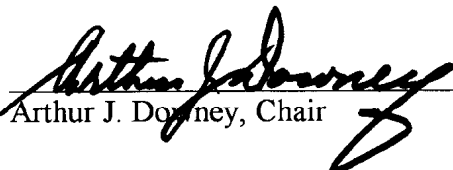
Re: Amendments to the City Ethics Code

Date: September 30, 2003

On September 3, 2003, the City Council Governance Committee considered an amendment to Part E, Section 1(j) of the City Ethics Code as proposed by the Mayor's Committee on Integrity and Trust in Local Government. The Governance Committee requested review of the proposed amendment by the City's Ethics Review Board and additional drafting to clarify application of the proposed amendment. On September 16, 2003 and September 30, 2003, the Ethics Review Board convened and considered the Integrity Committee's proposed amendment and proposed revisions by the City Attorney's Office. Attached is a summary of the recommendations of the Mayor's Integrity Committee and the Ethics Review Board.

The Ethics Board recommends that the Ethics Review Board's wording be adopted in order to strengthen and clarify these sections of the Code. The Board appreciates the opportunity to comment on this proposed revision and believes that it should have the same opportunity in the future. Although Council has asked for our comments and/or recommendations on changes to the Code in the past, this has not always been the case.

The Board believes that several of the most recent modifications made in May to the Gift provisions of the Code by Council unfortunately appear to have been made with the purpose of providing "loop-holes," a means of technical compliance, but which violates the spirit of the Code nonetheless. The Board was not offered the opportunity to comment on these changes before Council adopted them. Confidence in City government cannot be enhanced if the public perceives that adherence to the Spirit of the Code is unimportant. The Board is happy to meet with the Governance Committee to discuss our concerns.


Arthur J. Downey, Chair

City of San Antonio Ethics Code

Part E, Section 1(j) (Lobbyists)

Proposed Amendment by the Mayor's Integrity Committee (Jan. 29, 2003)

Municipal question means a public policy issue of a discretionary nature pending or impending before city council or any board or commission, including, but not limited to, proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts. The term "municipal question" does not include the day-to-day application, administration, or execution of existing city programs and policies ~~such as permitting, platting, and zoning matters~~ (other than the amendment, modification or revision of the City of San Antonio Unified Development Code). It also does not include a matter that may be approved administratively without consideration by a Board or Commission. The term "municipal question" does include all discretionary matters before the Board of Adjustment, the Planning Commission and the Zoning Commission and all advisory committees and subcommittees thereof.

City of San Antonio Ethics Code

Part E, Section 1(j) (Lobbyists)

Proposed Revisions by Ethics Review Board

Municipal question means a public policy issue of a discretionary nature pending or impending before city council or any board or commission, including, but not limited to, proposed action, or proposals for action, in the form of ordinances, resolutions, motions, recommendations, reports, regulations, policies, nominations, appointments, sanctions, and bids, including the adoption of specifications, awards, grants, or contracts. The term "municipal question" does not include the day-to-day application, administration, or execution of existing city programs, and policies, ~~such as permitting, platting, and zoning matters~~ (other than the amendment, modification or revision of the City of San Antonio Unified Development Code). ~~It also does not include ordinances, resolutions, or practices, including a~~ matters that may be approved administratively without consideration by a board, a commission, or the City Council. The term "municipal question" includes all discretionary matters before the Board of Adjustment, the Planning Commission and the Zoning Commission and all advisory committees and subcommittees thereof.

City of San Antonio Ethics Code

Part E, Section 1(c) (Lobbyists)

Proposed Revisions by Ethics Review Board

Compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with lobbying services rendered, or to be rendered, including reimbursement of expenses incurred in lobbying. **"Compensation" for professional services that does not primarily require contact or advocacy with public officials does not constitute "compensation in connection with lobbying services" for purposes of this section, if contact with public officials is incidental to the primary purpose of the employment.**

Compensation does not include a payment made to any individual regularly employed by a person if (1) the payment ordinarily would be made regardless of whether the individual engaged in lobbying activities and (2) lobbying activities are not part of the individual's regular responsibilities to the person making the payment. Compensation does not include the financial gain that a person may realize as a result of the determination of a municipal question, unless that gain is in the form of a contingent fee. **add paragraph break to improve clarity**

If a lobbyist engages in both lobbying activities and other activities on behalf of a person, compensation for lobbying includes all amounts received from that person, if, for the purpose of evading the obligations imposed under Part E (Lobbyists), the lobbyist has structured the receipt of compensation in a way that unreasonably minimizes the value of the lobbying activities. Compensation which has not yet been received is considered to be received on the date that it is earned, if that date is ascertainable; otherwise, it is received on the date on which the contract or agreement for compensation is made, or on the date lobbying commences, whichever is first. Compensation does not include any amounts previously reported under Section 5 of Part E (Activity Reports).

City of San Antonio Ethics Code

Part E, Section 1(c) (Lobbyists)

Proposed Revisions by Ethics Review Board

(a) **Expenditure** means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or anything of value, including a contract, promise, or agreement to make an expenditure, regardless of whether such contract, promise, or agreement is legally enforceable.

Expenditure does not include an amount paid to any individual regularly employed by a person if (1) the amounts paid to the individual are ordinarily paid regardless of whether the individual engages in lobbying activities and (2) lobbying activities are not part of the individual's regular responsibilities to the person making the payment. The date on which an expenditure is incurred is determined according to generally accepted accounting principles. The term "expenditure" does not include the cost of photocopying city documents, if those costs are the only expenditures made by the person in question on lobbying activities. **The term "expenditure" also does not include the cost of photocopying documents, or creating other informational**

material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family or members of their household.

City of San Antonio Ethics Code
Part E, Section 3(h) (Lobbyists - Exceptions)
Proposed Revisions by Ethics Review Board

SECTION 3 EXCEPTIONS

The following persons are not required to register under Section 4 of Part E (Registration) or file an activity report under Section 5 of Part E (Activity Reports):

(h) **Individual.** An individual who engages in lobbying but who neither receives compensation nor expends monies for lobbying with respect to any client. **The term "expends" does not include the cost of photocopying documents, or creating other informational material by individuals who communicate with public officials to express personal opinions on behalf of themselves, their family or members of their household.**

AN ORDINANCE **74830**
OF THE CITY COUNCIL OF THE CITY OF SAN
ANTONIO RE-APPOINTING MUNICIPAL COURT
JUDGES AND MAGISTRATES.

* * * *

WHEREAS, the City of San Antonio is required by the Government Code, Section 30.084 (b) to provide by Charter for the appointment or election of municipal judges; and

WHEREAS, the Charter, Section 113 and 116, provides that the City Council, by majority vote, shall appoint the judges of the municipal courts; and

WHEREAS, by interpretation of the constitution, statutes and the City Charter, the Attorney General of Texas has ruled that the term served by a municipal judge is to be limited to two (2) years, unless otherwise provided; and

WHEREAS, the City Council of the City of San Antonio has provided for a two (2) year term in Ordinance No.73698, passed and approved May 23, 1991; and

WHEREAS, the City Council Municipal Court Committee met on November 18 and 21, 1991, to consider which Municipal Court Judges and Magistrates are to be re-appointed to the next term, ending in September of 1993; and

WHEREAS, the City Council has absolute discretion in making these appointments for the Municipal Courts; and

WHEREAS, during its meetings, the Committee considered the service of the individuals in their present office and their capacity to work within the parameters of the new system developed for the courts; and

WHEREAS, in addition to these re-appointments, the committee is recommending that the City Council authorize the recruitment and subsequent selection of qualified and interested individuals to the fill the vacancies that remain; and

WHEREAS, the importance of this issue requires that City Council action take effect immediately so as to facilitate the necessary transition for the Courts; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. That the following persons are hereby re-appointed to the listed positions:

1. Albert Peña,, Jr., Presiding Judge
2. Michael O'Quinn, Judge
3. Juventino Guerra, Magistrate (judge)

Such full-time re-appointments shall provide for all authority and benefits as the City Council has otherwise established, and that the individuals now hold and receive.

SECTION 2. That the following persons are hereby re-appointed to the position of Part-Time Magistrate (judge):

Homer Walls
Gloria Cabrera
Reynolds Cate
Regina Cusack
Ramiro Estrada, Jr.
Roger Segura
John Smith
Rudolph Willman, Jr.

Such part-time appointments shall provide for all authority and benefits as the City Council has otherwise established, and that the individuals now hold and receive.

SECTION 3. Appointees shall serve for a term ending September 1, 1993.

SECTION 4. All persons presently holding an appointed position as Judge or Magistrate who have not been listed in this ordinance are not re-appointed to their office, and those positions are hereby declared to be vacant upon the effective date of this ordinance.

SECTION 5. The City Council hereby directs the City Manager to provide for all those persons not re-appointed, such benefits as these individuals might receive if they were otherwise departing employees of the City of San Antonio. In addition to the benefits which such individuals might have accrued, the City Manager is authorized to provide and pay a sum equal to one extra pay period's regular pay to each departing full-time employee.

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SECTION 6. The City Council hereby authorizes the recruitment of interested and qualified individuals to fill the vacancies hereby created.

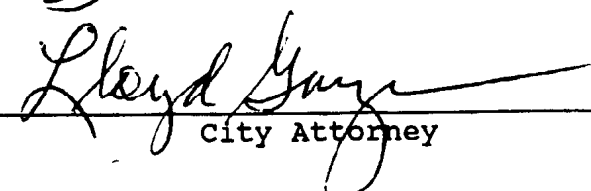
SECTION 7. Because of the need to maintain public confidence in the Municipal Court, facilitate the transaction to new court policies, commence the search for new individuals to fill the vacancies, and comply with term limits for judges as established by the Constitution and in the City Code, and in order to preserve and protect public health, safety, and welfare through efficient enforcement of laws within the jurisdiction of the court, an emergency is declared so that upon receipt of eight affirmative votes, this ordinance shall be effective immediately upon passage, otherwise, after the expiration of ten days.

PASSED AND APPROVED this 26th day of November, 1991.

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

91-50

TF:amt
12/19/91

24.

AN ORDINANCE **74984**

APPOINTING MUNICIPAL COURT JUDGES.

* * * * *

WHEREAS, there currently exist a number of vacancies in the Office of Municipal Court Judge; and

WHEREAS, the City has received applications from those seeking appointment to these positions, has screened the applications, and the City Council Municipal Courts subcommittee has conducted interviews of selected candidates; and

WHEREAS, Municipal Court judges are elected (appointed) by a majority vote of the City Council, and serve for a two year term; and

WHEREAS, the entire Council has reviewed the qualifications of the applicants, has heard recommendations and advice from its subcommittee, and now wishes to vote to appoint judges to fill the positions which are vacant; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

That the following individuals are hereby appointed to the positions as listed:

<u>Stella Kyle</u>	, Municipal Court Judge
<u>Brigid Sheridan</u>	, Municipal Court Judge
<u>Roger Segura</u>	, Municipal Court Judge
<u>Homer Walls</u>	, Municipal Court Judge
<u>Russell Mitchell</u>	, Municipal Court Judge (Magistrate)
<u>Kirk Sherman</u>	, Municipal Court Judge (Magistrate)
<u>Gabriel Quintanilla</u>	, Municipal Court Judge (Magistrate)

SECTION 2. The above appointments shall be effective January 1, 1992, and the appointees shall serve for the remainder of the present term which ends on September 1, 1993 or until such time thereafter as their successor in office is appointed.

SECTION 3. Each of the above judges' salary shall be at a rate of \$ 51,885.00 per year, payable in twenty-six equal increments on the same days as City employees are paid.

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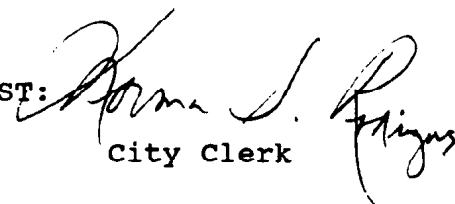
SECTION 4. All of the above judges shall serve as full-time judges. Only six full time positions as called for in the current budget are vacant. Therefore, one of the existing part-time judge positions as called for in the budget, which is also currently vacant, is hereby converted to a full-time position.

SECTION 5. This ordinance does not require additional appropriations, as sufficient funding exists in the current Municipal Court budget to cover these positions.

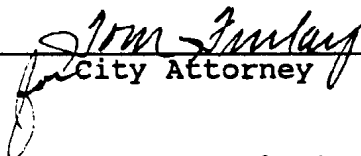
PASSED AND APPROVED this 19th day of December, 1991.


M A Y O R

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

91-55