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AGENDA ITEM NO. 1

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

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

THROUGH: Terry M. Brechtel, City Manager

COPIES: Yolanda Ledesma, City Clerk; File

SUBJECT: Ordinance accepting recommendation of Ethics Review Board regarding SAPD Captain William C. Smith

DATE: December 18, 2003

SUMMARY AND RECOMMENDATIONS

This Ordinance accepts the opinion of the Ethics Review Board issued pursuant to Part H, Section 8 of the City of San Antonio Code of Ethics. In its opinion, the Ethics Review Board found that SAPD Captain William C. Smith violated Part B, Section 3(a)(2) of the City Ethics Code by accepting tickets to Spurs games from Dailey Wells Communications, a city contractor. Further, the Board recommended that Captain Smith attend a course in continuing ethics education offered by the City Attorney's Office. Ethics Review Board Opinion is **Attachment 1**.

BACKGROUND INFORMATION

Daily Wells Communications is a contractor with the City of San Antonio in connection with a contract with MA/Com. MA/Com contracted with the City to provide a radio service system for uniformed and emergency personnel. The overall value of the MA/Com contract is approximately \$49 million. Dailey Wells contracted directly with the City to provide installation services for the radio system provided by MA/Com. San Antonio Police Department Captain William C. Smith and San Antonio Fire Department Assistant Chief Alan Boozikee are members of the city's evaluation team assigned to assess the performance of the equipment provided and installed under the MA/Com and Dailey Wells contracts.

On May 22, 2003, San Antonio Police Assistant Chief Tyrone Powers filed an ethics complaint against Captain William C. Smith. In the complaint, Assistant Chief Tyrone Powers alleged that Capt. Smith accepted the invitation of Dailey Wells Communications on more than one occasion to attend Spurs games at its Terrace Box at the SBC Center. Specifically, Assistant Chief Powers alleged a violation of Ethics Rule Part B, Section 3(a)(2).

Part B, Section 3(a)(2)¹ provided:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of \$100 or less at any occurrence:

(A) any individual or business entity doing or seeking to do business with the City; or

(B) any registered lobbyist or public relations firm.

The Ethics Review Board held a hearing on July 8, 2003 and heard testimony from Assistant Chief Powers, Capt. Smith and William Wood, Assistant City Attorney. After considering the testimony, the complaint and Capt. Smith's sworn response, the Ethics Review Board concluded that Capt. Smith had accepted the invitation of Daily Wells to attend a Spurs game on May 19, 2003 in that corporation's Terrace Box. Capt. Smith had also accepted other invitations from Daily Wells since 2000. By Capt. Smith's estimate, he received tickets from Dailey Wells worth \$750 in 2000, \$1000 in 2001, and "less than \$1,000" in 2002.

The Ethics Review Board concluded that the value of the tickets was more than nominal and that Daily Wells Communications was a corporation that was doing business with the City of San Antonio. Based on a preponderance of the evidence, the Ethics Review Board found Capt. Smith had accepted the basketball tickets from Daily Wells in violation of Part B, Section 3(a)(2) of the Ethics Code.

The board noted, though, that there was no evidence whatsoever that Capt. Smith was ever influenced in the performance of his official duties for the City of San Antonio as a result of his attendance at these events. The board also observed that Capt. Smith had reported the gifts on his yearly financial disclosure form and that he ceased accepting invitations from Daily Wells when directed by his supervisor. Further, the board said that it believed Capt. Smith acted under a misunderstanding of the application of the Ethics Code.

Accordingly, the Ethics Review Board recommended that Capt. Smith attend the City Attorney's Office continuing education course in ethics. Capt. Smith attended this training on September 4, 2003.

Pursuant to Part H, Section 8(b), the Board's opinion and recommendation for sanctions are forwarded to the Council for action. The Council may accept, reject, modify or recommit the matter to the Board for further proceedings.

¹ The complaint was reviewed under the May 2001 version of the Ethics Code, which was in effect at the time of the alleged violations. The gift provisions of the Ethics Code were amended by City Council on May 29, 2003, by Ordinance No. 97711.

POLICY ANALYSIS

The objective of the Ethics Code is to impose standards of conduct upon the officials and employees of the City of San Antonio to not only prevent the existence of conflicts of interest, but also to "minimiz[e] the risk of any appearance of impropriety." Ethics Code Part A, Section 1 (Statement of Purpose). The Ethics Review Board reasoned that even where there is no improper influence, the acceptance of gifts from those doing or seeking to do business with the City has the potential to create the appearance of influence. The board further noted that it may also unconsciously affect the recipient's ability to carry out his or her responsibilities to the City in an objective and impartial manner.

The Board concluded that Capt. Smith had not been improperly influenced in his responsibilities to the city. It also found that Capt. Smith had misunderstood the application of the gift provision of the Ethics Code. The Board recommended that he be required to attend ethics training. It further noted that the Mayor's Committee on Integrity and Trust in Local Government had recently recommended that all City personnel attend ethics training on a yearly basis.

The City Attorney's Office now forwards the Ethics Review Board's opinion for consideration by the City Council. As noted above, Captain Smith on his own initiative has completed the recommended training. Therefore, if the Council accepts the recommendations of the Ethics Review Board, then it may also find that he has already complied with the direction.

FISCAL IMPACT

There is no fiscal impact associated with this Ordinance.

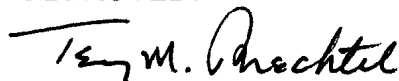
COORDINATION

The City Attorney's Office has coordinated this item with the City Clerk's Office and the Ethics Review Board.



ANDREW MARTIN
City Attorney

APPROVED:



TERRY M. BRECHTEL
City Manager

IN THE MATTER OF:

§ BEFORE THE ETHICS REVIEW BOARD

WILLIAM C. SMITH

§ OF THE CITY OF SAN ANTONIO, TEXAS

**OPINION OF THE
ETHICS REVIEW BOARD**

On the 8th day of July 2003, the Ethics Review Board of the City of San Antonio consisting of Acting Chair Benjamin Youngblood, Ethics Review Board Chair Arthur Downey, Reynaldo L. Diaz, Jr., David De La Garza, August Stephen Johnson, Elizabeth Melson, Loren Wood, Steven G. Gengenbacher, and Edgar Zepeda, convened to consider the complaint filed under the Code of Ethics of the City of San Antonio against San Antonio Police Department Captain William C. Smith. The complaint was filed by Assistant Chief Tyrone Powers on May 22, 2003.

Allegation of the Complaint

In the complaint, Assistant Chief Tyrone Powers alleged that SAPD Captain William C. Smith accepted the invitation of Dailey Wells Communications on more than one occasion to attend Spurs games at its Terrace Box at the SBC Center. Dailey Wells is a contractor with the City of San Antonio in connection with a contract with MA/Com for \$49 million. Specifically, Assistant Chief Powers alleged a violation of Ethics Code Part B, Section 3(a)(2).

Appearances

The following individuals appeared and testified before the Board on the 8th day of July, 2003:

Assistant Chief Tyrone Powers, complainant

Captain William C. Smith, respondent

William Wood, Acting Deputy City Attorney, Division of Developmental Services

Ethics Code

Part B, Section 3(a)(2) of the Ethics Code, as it provided on the dates of the alleged violations, stated:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of \$100 or less at any occurrence from:

- (A) any individual or business entity doing or seeking to do business with the City; or
- (B) any registered lobbyist or public relations firm.

Findings of Fact

After considering the sworn complaint, the response, the testimony given under oath at the hearing and the exhibits submitted at the hearing, the Ethics Review Board makes the following findings of fact based upon the preponderance of the evidence:

- 1) That Capt. William C. Smith is an employee of the City of San Antonio through the San Antonio Police Department and is accordingly subject to the Ethics Code of the City of San Antonio.
- 2) That Capt. William C. Smith did accept the invitation of Dailey Wells Communications to attend a Spurs game on May 19, 2003 in that corporation's Terrace Box;
- 3) That Capt. Smith accepted other invitations of Dailey Wells to accept Spurs tickets in the calendar years 2000 and 2001.
- 4) That Capt. Smith acknowledged the receipt of such gifts by disclosing on his financial disclosure forms that he had received gifts valued at \$750 from Dailey Wells Communications in the Year 2000, gifts valued at an estimated value of \$1000 in the Year 2001 and gifts "less than \$1000 in NBA tickets" during Year 2002.
- 5) Capt. Smith testified that he attended the games, sometimes taking his wife.
- 6) Capt. Smith also testified that other city personnel had attended Spurs games at the invitation of Dailey Wells Communications.
- 7) The value of the Spurs tickets was more than nominal.
- 8) Acting Deputy City Attorney William Wood testified that Dailey Wells is under contract with the City of San Antonio in connection with a larger contract with MA/Com. MA/Com contracted with the City to provide a radio service system for uniformed and emergency personal. The value of the

contract is \$49 million. Dailey Wells has contracted directly with the City to provide support services in connection with the MA/Com contract.

- 9) Capt. Smith, as a member of the San Antonio Police Department, is a member of the City/County team assigned to evaluate the performance of the equipment provided and installed pursuant to these contracts.
- 10) There was no evidence of undue influence or that Capt. Smith acted in any manner other than in the best interests of the City in connection with his responsibilities concerning the installation of the radio system.

Conclusions of Law

Based on a preponderance of the evidence, the Ethics Review Board makes the following conclusions of law:

- 1) That Dailey Wells Communications is an entity doing business with the City as that term is used in Part B, Section 2(a) of the Ethics Code.
- 2) That at the time of the alleged violations, Part B, Section 2(a) of the Ethics Code prohibits any City official or employee from accepting gifts of more than nominal value from any entity doing or seeking to do business with the City.
- 3) That Capt. Smith, in violation of Part B, Section 2(a), did accept gifts with greater than nominal value in the form of admission to Spurs games at the invitation of Dailey Wells Communications.

Opinion of the Ethics Review Board

The Ethics Review Board has concluded that Capt. Smith violated the City's Ethics Code in accepting admission to the Spurs games at the invitation of Dailey Wells. The Board notes that there was no evidence whatsoever that Capt. Smith was ever influenced in the performance of his official duties for the City of San Antonio as a result of his attendance at these events. The Ethics Code, though, strictly prohibited Capt. Smith's acceptance of these gifts regardless.

The objective of the Ethics Code is to impose standards of conduct upon the officials and employees of the City to not only prevent the existence of conflicts of interest, but also to "minimiz[e] the risk of any appearance of impropriety." Ethics Code Part A, Section 1 (Statement of Purpose). Even where there is no improper influence,

acceptance of gifts by those doing or seeking to do business with the City has the strong potential to create the appearance of under-handed dealing. It may also unconsciously affect the recipient's ability to carry out his or his responsibilities to the City in an objective and impartial manner.

The Board also notes that evidence at the hearing strongly indicated that other city officials and employees have accepted invitations for entertainment from entities doing business with the City. This indicates that Capt. Smith's actions are not isolated events, but rather are part of a larger, systemic problem concerning other City personnel. Accordingly, the Board will continue its investigation on this issue.

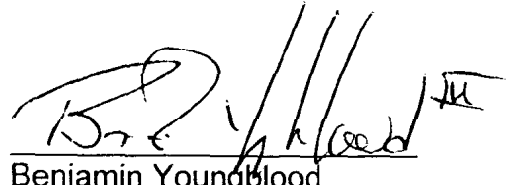
The Board concluded that there was no evidence that Capt. Smith had been influenced in his official duties by the gifts from Dailey Wells Communications. Capt. Smith misinterpreted the Ethics Code as permitting gifts so long as the value of each gift did not exceed \$100. The Ethics Code, as it was written in the time frame relevant to this inquiry, limited City personnel to accepting only gifts of nominal value. The \$100 limit applied only to the acceptance of meals.¹

In considering the issue of sanctions, the Board believes that Capt. Smith acted under a misunderstanding of the application of the Ethics Code and with a lack of sensitivity for the potential of the appearance of impropriety. The Board notes with approval that Capt. Smith reported the receipt of the tickets on his annual financial disclosure. In addition Capt. Smith immediately ceased attending Spurs games when

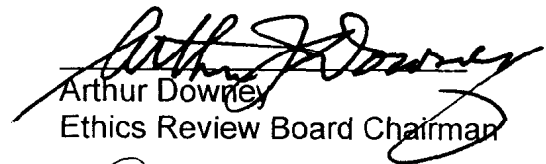
¹ The Board also notes that the Ethics Code was amended on May 29, 2003. Specifically, Part B, Section 3, the gift provision, was amended to allow the acceptance of entertainment up to a value of \$500 in a calendar year.

the behavior was questioned. Accordingly, the Board recommends only that Capt. Smith attend the City's Ethics Code course to be offered next in August 2003.²

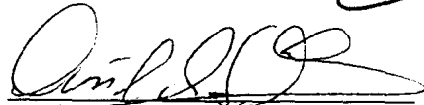
Signed the 21st day of July, 2003.



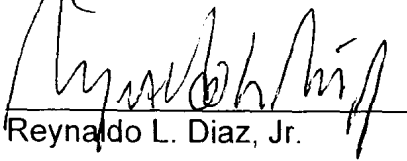
Benjamin Youngblood
Acting Chairman



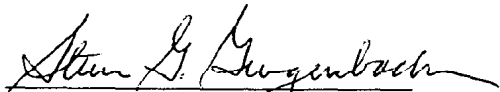
Arthur Downey
Ethics Review Board Chairman




David De La Garza



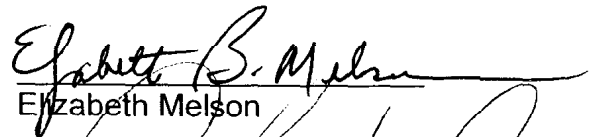
Reynaldo L. Diaz, Jr.



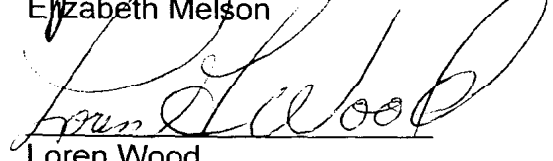
Steven G. Gengenbacher



August Stephen Johnson



Elizabeth Melson



Loren Wood

Edgar Zepeda

² The Board notes that the Mayor's Committee on Integrity and Trust In Local Government recently recommended that all City personnel attend ethics training on a yearly basis.