

To: The Elections Commission, City of San Jose

Cc: Lee Price, City Clerk, Lisa Herrick, Senior Deputy City Attorney

From: Erica Cosgrove, Member of the Elections Commission

Date: April 12, 2010

Re: Summary of Discussion by Blue Ribbon Task Force on Ethics from 2004 of the Question of Nonprofits and Lobbying

The Blue Ribbon Task Force heard from various groups with expertise and opinions on this issue when it met in 2004-2005. I have summarized the main issues they discussed, in particular as it seems relevant to the issue before the Elections Commission. The first group they heard from can be described as those with some expertise in ethics and local government. The second group was those from the nonprofit community. The third was comprised of those representing the business community in San Jose. The final excerpt summarized here is from the City Clerk, concerning staff resources.

ETHICS AND LOCAL GOVERNMENT

In a meeting of the Blue Ribbon Task Force on Ethics on April 7, 2004, JoAnne Speers of the Institute for Local Self-Government pointed to the State's definition of lobbyists, which is based on the number of contacts and on receiving compensation from a client. This raised the question of whether the rules should apply to those who work for non-profits.

Ms. Speers' conclusion was that if you are paid to advocate for your organization, you should be treated like a lobbyist.¹

Judy Nadler of the Markkula Center Applied Ethics at Santa Clara University argued a regulated paid lobbyist advocating on behalf of another party should be treated differently than someone advocating on behalf of their own organization. She felt that someone arguing for a position because of their passion regarding that issue is different from someone representing a client.

JoAnne Speers reminded the Task Force that the City already has a definition of lobbyists, and needed to consider whether or not to expand it. She agreed that being compensated is important, but number of contacts may also be a factor worth considering, since the public should know who is advocating legislative positions.

NONPROFITS

At an April meeting, Patricia Gardner of Silicon Valley Council of Nonprofits made a distinction between lobbying and advocacy. She stated that 501(c)3 organizations are already closely regulated by the tax code, which includes a substantial test and an expenditure test. The substantial test states that non-profits cannot lobby, while the expenditure test defines the threshold. (She passed out documents showing language.) She does not want something new created because she feels that non-profits already have a lot of requirements. She would be opposed to donor disclosure requirements because she believes it is the right of the donor to be anonymous.

BUSINESS COMMUNITY

At a later meeting on April 29th, the Panel heard from a panel of developers, attorneys, and business leaders (Joe Head of Summerhill Homes, Andy Faber of Berliner, Cohen law firm, Sean Morley of Morley Brothers, Joan Gallo of Hopkins & Carly, etc.) Their concerns were mostly with lobbying regarding land use issues and when pressed on the question of nonprofits as lobbyists, most seemed to feel it was not an important issue for the city. Mr. Morley however felt that the definition of a lobbyist should not be limited to those who are paid to lobby but should include everyone from neighborhood groups to nonprofits and to anyone who attempts to influence legislation.

Mr. Head stated that he did not see a strong reason to treat nonprofits and neighborhood groups as lobbyists since it is obvious which side they're on and the need for regulation is greater when you do not know which side of an issue a group is on. He did not feel that interest groups have unduly influenced officials in SJ. Tom Saggau mentioned that if fees for lobbyists were imposed, they should only be for those who derive some sort of financial gain.

CITY CLERK

Regarding the additional work for city staff if nonprofits were required to register as lobbyists, City Clerk, Lee wrote a memo to the Blue Ribbon Task Force on Ethics on March 21, 2005:

Finally, as we continue to work to implement and monitor the lobbyist regulations, I feel it is imperative to note that the activities are as much work as anticipated, if not more. As mentioned, 80 hours of staff time went into implementation, but monitoring the program, auditing the reports, verifying that the correct fees are being collected, completing the database, not to mention planning and conducting the mandatory training session and working with the vendor to implement on-line filing, is a considerable workload. I am short on staff resources and these tasks compete with many others on my own plate. Having said that, we will continue to track our time as directed by the City Council to ensure that we are recovering our costs and I will report out periodically to keep the Task Force and the City Council up-to-date on our progress.

ⁱ Blue Ribbon Task Force on Ethics Ordinance Page 3 Meeting Notes – April 7, 2004