

October 5, 2020

VIA E-MAIL Johnson, Kellie <KJohnson3@oaklandca.gov>

Oakland Public Ethics Commission
One Frank Ogawa Plaza
City Hall
Oakland, CA 94612

Re: Complaint against Andrew Haydel

Dear Public Ethics Commissioners:

I humbly ask the Commission to reduce the proposed fine in this matter to the originally agreed upon \$2,000 fine or less. I say "humbly" because the fault in this matter is really mine and not my client's. I had reviewed the Oakland municipal code section on Legal expense funds discussed below and advised Mr. Haydel that he could contribute to Ms. McElhaney's Legal Defense Fund. The email containing that advice is attached to this letter.

I reached the conclusion that I conveyed to Mr. Haydel on the basis of Section 3.12.170 A which specifically says that "Contributions received by or made to the legal expense fund shall not be subject to the contribution limitations of Article III of this Act." Both the monetary limitations on contributions (Section 3.12.050) and the prohibition on contributions by contractors with the City (Section 3.12.140) are contained in Article III. I submit to you that a reasonable interpretation is that the broad statement in Section 3.12.170 applied to both sections.

Section 3.12140 which prohibits contributions from contractors with the City beginning when negotiations commence and for 180 days after the contract is awarded does include the language "or committee controlled by such elected City Official." Whether this language prevails over the more general language in 3.12.170 has not specifically been addressed by the Commission.

In very general terms, I said this to the Commission when I appeared before you in March of this year. I also said that I did not believe you would agree with me. Indeed, the Commission reached a different conclusion than I did in the Matter of Cypress Security (14-26), although this specific issue was not raised. I was not aware of that decision when I gave Mr .Haydel advice about this issue.

I would note that in the Cypress Security matter, the contributions by a contractor covered by Section 3.12.140 totaled \$1,000 and the fine was \$600. I believe this was in part

because Cypress Security relied on the advice of the campaign manager for the committee controlled by Rebecca Kaplan.

On the basis that Mr. Haydel relied on my advice – whether correct or incorrect – and on the precedent of the Cypress Security matter, I ask that the fine be reduced to \$2,000 or less.

"3.12.170 - Legal expense funds.

A. An elected City Official or candidate may receive contributions for a separate legal expense fund, for deposit into a separate account, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or elected City Official's legal defense to any civil, criminal, or administrative action or actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or elected City Official's governmental activities and duties. Contributions to the legal expense fund must be earmarked by the contributor for contribution to the fund at the time the contribution is made. All funds contributed to an elected City Official or candidate for legal expense fund must be deposited into the elected City Official's appropriate campaign bank account prior to being deposited into the legal expense fund. The legal expense fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account, which shall be established only for the legal expense fund.

B. Contributions received by or made to the legal expense fund shall not be subject to the contribution limitations of Article III of this Act."

Very truly yours,

WENDEL ROSEN LLP

R. Zachary Wasserman

Zack Wasserman

From: Zack Wasserman
Sent: Saturday, August 18, 2018 11:50 AM
To: 'Drew Haydel'; Todd A. Williams
Subject: RE: Please help Lynette celebrate her 50th Birthday

Drew – You can contribute to this legal defense fund and there is (for better or worse) no limit.

From: Drew Haydel [mailto:████████████████████]
Sent: Friday, August 17, 2018 10:11 AM
To: Todd A. Williams; Zack Wasserman
Subject: FW: Please help Lynette celebrate her 50th Birthday

Can Lane donate to this? How much?

Drew
O: 650-838-0100
M: 415-341-2464

From: Mimi Rohr
Sent: Friday, August 17, 2018 9:18 AM
To: Gregory McConnell
Subject: Please help Lynette celebrate her 50th Birthday

Dear Friends,

Please see the attached invitation to support Lynette on her 50th Birthday, Thursday, August 23. She continues to try to eliminate her Legal Defense Fund Debt. I am helping her as are several of our friends. I hope you will as well.

Greg

Gregory McConnell
President and CEO
The McConnell Group
300 Frank H. Ogawa Plaza, Suite 460
Oakland CA, 94612

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