



# CITY OF OXNARD

## MEMORANDUM

March 21, 1975

CONFIDENTIAL

To: City Council

From: City Attorney

SUBJECT: Reimbursement for Actual and Necessary Expenses of Councilmen

In the City of South San Francisco it was the practice to pay councilmen \$50 per month and the mayor \$75 per month as reimbursement for miscellaneous unitemized expenses incurred in the performance of their official duties. These flat sums were paid in addition to any itemized expenses for which individual officers would file particular claims. There was no ordinance or resolution fixing these amounts or providing for their payment.

A taxpayer challenged this procedure, and the appellate court held in Albright vs. South San Francisco (citation not yet available) that in the absence of a valid ordinance or resolution, a flat expense allowance to the extent that in any one month it exceeds amounts actually expended for a verifiable municipal purpose is the equivalent of a gift of public funds in contravention of Section 25, Article XIII, of the California Constitution.

While Section 36514.5 of the Government Code provides that city councilmen may be reimbursed for actual and necessary expenditures incurred in the performance of official duties, other sections of the Government Code (37201-37205) required the filing of demands and the auditing of demands. Further, councilmen were not employees whose claims for expenses were exempted from the demand requirements by Section 905 of the Government Code. The court added that to audit is to examine and verify.

With a lump sum payment, the specifics of where, when and purpose do not appear in the demands. The court pointed out that the questions arise, such as: Are the expenses the same when a councilman is ill or on vacation? What portion is automobile expense or availability? If compensable, does availability of a compact represent the same expenditure as a medium or luxury automobile? Were coffee breaks or meals with interested citizens related to specific municipal affairs?

The court distinguished the situation in South San Francisco from that of the City of Riverside in the case of Porter vs. City of Riverside, 261 CA2d 832, 68 CR 313. The charter of Riverside provided that councilmen should receive no salary, but that they should receive reimbursement for council authorized traveling and other expenses when on official duty. In addition each member was to receive such amount as may be fixed by ordinance for out of pocket expenditures and costs imposed upon him in serving as a city councilman. Pursuant to this provision three ordinances were adopted over a period of 12 years, setting the allowance at \$200, \$250 and \$350 per month.

The court held in the Riverside case that every presumption is in favor of the constitutionality of the legislative act, and its action will be upheld unless it is beyond its powers or its judgment or discretion is being fraudulently or corruptly exercised. When the right to enact a law depends upon the existence of a fact, the passage of the act implies, and the conclusive presumption is, that the legislature performed its duty and ascertained the existence of the fact before enacting and approving the law, a decision which the courts have no right to question or review.

The City of South San Francisco did not have a resolution or ordinance establishing the fact that the lump sum payment was the reasonable equivalent of the actual and necessary expenses.

Oxnard presently pays each councilman \$137.48 per month in reimbursement for his unitemized expenses. In addition the Mayor receives an extra \$100 per month. Apparently these sums have been established and adjusted over the years by council motion in approving a budget appropriation.

The court in the South San Francisco case did say that had an ordinance existed fixing the sums to be paid in lieu of itemized expenses and providing for their payment, it would have constituted a legislative determination that these amounts were actually and necessarily expended each month -- a determination with which a court could not interfere or substitute its own judgment for that of the legislative body. Presumably according to the court, the same weight would be given to a resolution as to an ordinance.

It would appear that the council would be reasonably protected if it would adopt a resolution determining the sum to be paid each month as the amount actually and necessarily expended and in lieu of itemizing these expenses.

If you will let me or the City Manager know your wishes the enclosed resolution will be presented to Council on April 1. It should be noted that this resolution attempts to establish retroactively the