

**Resolution No. 2007-11**  
**Contested Election Legal Fees and Costs**

**WHEREAS**, the Town of Edgewood conducted a municipal election in March 2004; and

**WHEREAS**, Robert Stearley was declared the winner of the election and issued a certificate of election; and

**WHEREAS**, the election results were challenged by Howard Calkins and following a District Court trial the election was determined to be a tie; and

**WHEREAS**, the District Court decision was appealed by Mayor Stearley, however, the lower court decision was upheld by the New Mexico Court of Appeals; and

**WHEREAS**, Mayor Stearley and Howard Calkins agreed to a game of chance wherein Howard Calkins drew the high card and was sworn in as Mayor; and

**WHEREAS**, the Town of Edgewood received conflicting advice from the New Mexico Municipal League (NMML) regarding payment of legal fees and costs associated with this contested election; and

**WHEREAS**, the Town of Edgewood paid Mayor Stearley's legal fees and costs throughout the District Court case (\$25,954.36), but not for the appeal; and

**WHEREAS**, Mayor Calkins' incurred legal fees and costs, including the appeal, totaling \$30,988.07;

**WHEREAS**, legal procedures exist that would allow the Town to seek reimbursement of money paid to Mayor Stearley, but the law also appears to allow other remedial action to correct any alleged problems with the Council's original decision to pay Mayor Stearley's legal expenses;

**WHEREAS**, by email dated January 3, 2007 the NMML General Counsel suggested that the Town of Edgewood should not have paid Mayor Stearley's legal fees and costs; and

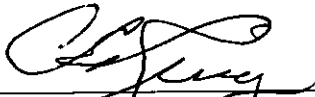
**WHEREAS**, Mayor Calkins' attorney issued an opinion dated January 20, 2007 asserting that it would not be a violation of the anti-donation clause contained in the New Mexico State Constitution for the Town of Edgewood to pay Mayor Calkins' legal fees and costs; and

**WHEREAS**, the Edgewood Town Council (except Councilor Hill) heard a presentation from the Town's attorney regarding the merits of both arguments at their March 7, 2007 regular meeting and then tabled a decision pending a full council;

**NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:**


1. It is not in the Town of Edgewood's best interest to attempt to recover legal fees and costs from former Mayor Robert Stearley.
2. The contestants served a public purpose. If not for the litigation, errors in the election would not have been discovered and corrected.
3. In the interest of fairness, the Town Administrator is authorized to issue a warrant in the amount of twenty four thousand eight hundred sixty six and 82/100 dollars (\$24,866.82) payable to Mayor Calkins. This amount being equal to expenses incurred by the Town of Edgewood to defend Mayor Stearley.

**PASSED, APPROVED AND ADOPTED THIS 21<sup>ST</sup> DAY OF March, 2007.**

  
\_\_\_\_\_

Honorable Chuck Ring, Mayor Pro Tem

**ATTEST:**

  
\_\_\_\_\_

Jeff Condrey, Town Administrator



## TOWN OF EDGEWOOD

1911 Historic Route 66  
P.O. Box 3610, Edgewood, NM 87015  
Phone (505) 286-4518 Fax (505) 286-4519

*Where the Mountains Meet the Plains*

December 21, 2006

Mr. William F. Fulginiti, Executive Director  
New Mexico Municipal League  
PO Box 846  
Santa Fe, NM 87504-0846

Dear Bill:

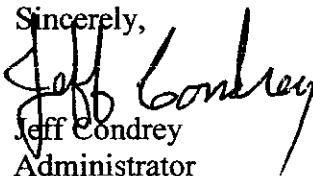
As you requested, this letter summarizes our telephone conversation yesterday regarding a question posed by Councilor Ring concerning attorney fees and costs associated with the disputed Mayoral election in the Town of Edgewood.

Following the March 2004 election, Mr. Robert R. Stearley was declared the winner for the Mayor's seat and was issued a certificate of election. Mr. Howard Calkins challenged the election results and District Court Judge Hall ruled that the election was in fact a tie. The Town paid Mayor Stearley's legal fees and costs in the amount of \$25,954.36. Mr. Calkins incurred expenses of \$24,866.82 to this point. Mayor Stearley chose to appeal the decision. The Town and Mayor Stearley agreed the appeal would be at his own expense. Mr. Calkins then incurred an additional expense of \$6,121.25. The Court of Appeals upheld the lower court ruling; Mr. Calkins won a card game of chance and was sworn in as Mayor.

Mayor Calkins believes it is only fair that the Town of Edgewood reimburse all his attorney fees and costs. The Town's legal counsel has no problem with expenses during the appeal, but is concerned that paying Mayor Calkins' expenses for the initial challenge may raise an anti-donation issue. **At least one member of the Town Council would like a second opinion.**

A response from the League before the January 3, 2007 regular Town Council meeting would be appreciated.

Sincerely,

  
Jeff Condrey  
Administrator

Cc: Mayor & Councilor's

Mayor:  
Howard Calkins

Councilors:  
Glenn Felton  
Brad Hill  
Chuck Ring  
Rita L. Simmons

Administrator:  
Jeff Condrey

Judge:  
Municipal:  
Wm. H. White

Community  
Planning &  
Development  
Manager:  
Karen Mahalick

Parks &  
Recreation  
Director:  
Stacey Boyne

**LAW OFFICES OF DENNIS K. WALLIN  
POST OFFICE BOX 696  
MORIARTY, NEW MEXICO 87035  
505/ 832-6363**

DATE: December 31, 2004

RE: Legal Services Rendered (Calkins v. Stearly)

---

11/9/2004	Review depositions in preparation of Pre-Trial Order	1.0
11/10/2004	Review file; work on Pre-Trial Order	2.75
11/12/2004	Work on Pre-Trial Order; review Motion for Summary Judgment; telephone conferences with Tom Briones	2.0
11/22/2004	Review Motion briefs; telephone conferences with Tom Briones	1.0
11/29/2004	Telephone conference with Howard Calkins; conference with Tom Briones; telephone conferences with David Henderson and Robert Tangora; review arguments	1.75
12/13/2004	Preparation for trial; review deposition testimony; telephone conferences with Tom Briones; telephone conferences with Robert Tangora	2.0
12/15/2004	Telephone conferences with Robert Tangora; legal research issue of interloctory appeals; telephone conferences with witnesses	1.5
12/16/2004	Telephone conference with Raymond Dennis; Telephone conference with Tim Oden; telephone conference with client	.75
12/16/2004	Hearing by conference call on Interloctory appeal	.5
12/16/2004	Preparation for trial	1.75
12/17/2004	Preparation for trial; telephone conferences with witnesses; telephone conference with client; legal research	3.5
12/18/2004	Office conference with Tom Briones and client; preparation for trial	4.0
12/19/2004	Preparation for trial	4.5
12/20/2004	Attend Trial	10.0

12/22/2004	Work on Requested Findings of Fact and Conclusions of Law	2.0
12/30/2004	Finalize Requested Findings of Fact and Conclusions of Law; correspondence to Judge Hall; and correspondence to Court request filing	2.0
<b>TOTAL HOURS:</b>		<b>41.0</b>
41.0 hours at \$135.00 per hour		\$5,535.00
PLUS New Mexico Gross Receipts Tax		\$352.86
PLUS Legal Expenses Advanced:		\$555.00
Tim Oden	Witness Fee	\$75.00
Madelyn Hastings	Witness Fee	\$75.00
Kenneth Arnett	Witness Fee	\$75.00
Cynthia Arnett	Witness Fee	\$75.00
Chris Hill	Witness Fee	\$75.00
Ralph Middleton	Witness Fee	\$75.00
Ray Sandy	Service Fees	\$105.00
<b>BALANCE DUE BY CLIENT:</b>		<b>\$6,442.86</b>

HOWARD CALKINS 11-90  
6 MOUNTAINAIR RD. 281-4326  
P.O. BOX 388  
EDGEWOOD, NM 87015

95-219 620  
1070  
1600413858

3145

Date 1-27-05

Pay to the  
Order of

Morris K Walker, Att \$6442.<sup>86</sup>/<sub>100</sub>  
Six thousand four hundred forty two <sup>86</sup>/<sub>100</sub>



Wells Fargo Bank, N.A.  
901 Route 66  
Moriarty, NM 87035  
wellsfargo.com

© 1999 WELLS FARGO BANK

Legal fees paid up through dec 31 Howard Calkins  
⑆10700219211600413858⑈ 03145

The Law Offices Of Thomas R. Briones, P.A.  
263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:

*Howard Calkins*

November 08, 2004

Invoice # 11958

Professional Services

	<u>Amount</u>
6/3/2004 Prepared and taking deposition of Mike Hoy. (Dennis Wallin).	540.00
8/28/2004 Review election documents provided by Karen Alarid, Town Clerk. (Dennis Wallin).	270.00
9/2/2004 Telephone conferences with Kenneth Arnett, David Henderson, Robert Tangora's office regarding rescheduling Deposition. (Dennis Wallin).	135.00
9/7/2004 Preparation and filing of First Amended Notice to Take Depositions Duces Tecum of Kenneth Arnett. (Dennis Wallin).	67.50
9/14/2004 Phone conference with Howard Calkins regarding update. (Dennis Wallin).	33.75
10/12/2004 Preparation and taking deposition of Madelyn Hastings. (Dennis Wallin).	405.00
Preparation and taking deposition of Cynthia Arnett. (Dennis Wallin).	202.50
10/13/2004 Preparation and taking deposition of Karen Alarid. (Dennis Wallin).	776.25
10/18/2004 Phone conferences with Robert Tangora regarding scheduling deposition of Tim Oden. (Dennis Wallin)	67.50
Phone conference with Tim Oden. (Dennis Wallin).	67.50
Review documents provided by Tim Oden as regards Town of Edgewood limits. (Dennis Wallin).	135.00
10/27/2004 Review file and preparation for deposition of Tim Oden; prepare Tim Oden for deposition. (Dennis Wallin).	33.75

	<u>Amount</u>
10/27/2004 Phone conference with Tim Oden as regards preparation for deposition. (Dennis Wallin)	33.75
Phone conference with Tim Oden at the conclusion of deposition. (Dennis Wallin)	33.75
	<hr/>
For professional services rendered	\$2,801.25
Additional Charges :	
10/27/2004 Legal expenses advanced: Deposition Costs for Kenneth Arnett.	127.28
Legal expenses advanced: Deposition Costs for Madelyn Hastings and Cynthia Arnett.	541.45
Legal expenses advanced: Deposition Costs for Karen Alarid.	1,041.25
	<hr/>
Total costs	\$1,709.98
New Mexico 6.0625%	\$169.83
	<hr/>
Total amount of this bill	\$4,681.06
	<hr/>
Balance due	<u>\$4,681.06</u>

*Includes some of  
Tom Briones time*



LAW OFFICES OF  
DENNIS K. WALLIN, PC

November 28, 2006

Howard Calkins  
Post Office Box 388  
Edgewood, New Mexico 87015

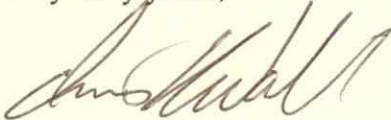
Re: Calkins v. Stearley

Dear Howard:

For your information, you have paid the amount of \$16,099.64 to the Law Offices of Dennis K. Wallin, P.C. in attorney's fees for representation in the case of Calkins v. Stearley. Of that amount, \$9,978.39 was for legal representation prior to the appeal.

If you have any questions or need additional information, please feel free to contact this office.

Very truly yours,



DENNIS K. WALLIN  
Attorney at Law

DKW/de

1401 ABRAHAMES ROAD WEST, SUITE D  
POST OFFICE BOX 696  
MORIARTY, NEW MEXICO 87035  
505/ 832-6363      505/ 832-2206 FACSIMILE

Date Entry#	Matter	Client	Task Explanation	Law Type	Hours	Rate	Total
May 12/2006 0013 3660		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Review file; prepare Reply Brief		1.50	175.00	262.50
Feb 20/2006 0013 3197		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Travel to and from Santa Fe to file Briefs		2.00	45.00	90.00
Feb 19/2006 0013 3196		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Finalize Brief; prepare for filing next day		4.00	175.00	700.00
Feb 18/2006 0013 3195		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Brief; Legal Research		4.00	175.00	700.00
Feb 17/2006 0013 3194		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Brief		6.00	175.00	1050.00
Jan 29/2006 0013 3130		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Brief		1.00	175.00	175.00
Jan 28/2006 0013 3129		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Brief		1.00	175.00	175.00
Oct 31/2005 0013 2294		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Research for Appeal; Continue Review of Record Proper		6.00	175.00	1050.00
Oct 30/2005 0013 2293		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Review Record Proper for Appeal		1.50	175.00	262.50
Aug 15/2005 0013 1826		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Review Assignment to Calender; Telephone Conference with Tangora		0.50	175.00	87.50
May 31/2005 0013 1345		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Filing Fee - Docketing Statement		0.00	0.00	125.00
May 31/2005 0013 1253		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Finalize and file Docketing Statement with the Court of Appeals		2.00	175.00	350.00
May 26/2005 0013 1344		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		RE: Appeal- Telephone Conference with Tangora; Work on Docketing Statement		2.50	175.00	437.50
May 25/2005 0013 1343		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Docketing Statement		1.00	175.00	175.00
May 24/2005 0013 1342		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Work on Docketing Statement		0.50	175.00	87.50
May 23/2005 0013 1341		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Legal Research Docketing Statement; review and analysis of Docketing Statement by Robert Tangora; commence working on Docketing Statement		1.00	175.00	175.00
May 4/2005 0013 1252		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		RE: Appeal- Telephone Conference with Tangora;		0.25	175.00	43.75
Apr 29/2005 0013 1064		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Review Correspondence from Robert Tangora; Telephone Conference with Robert Tangora		0.50	175.00	87.50
Jan 3/2005 0013 97		CALKINS, HOWARD	CALKINS v. STEARLY CONTEST OF ELECTION	misc			
	BW		Telephone Conference with David Henderson RE: Appeal. Review Town of Edgewood's Findings Of Fact and Conclusions of Law		0.50	175.00	87.50

REPORT SELECTIONS  
Report:  
Layout Template:  
Requested by:  
Finished:  
Date Range:  
Matters:

Time Listing  
All  
ADMIN  
Tuesday, November 28, 2006 at 09:23:45 AM  
ALL DATES  
All

\$ 6121.25

12/14/06

Brines

\$ 14,888.43

14,888.43

**THE LAW OFFICES OF THOMAS R. BRIONES, P.A.**

Attorney & Counselor At Law  
4263 Montgomery Boulevard NE  
Suite I-140  
Albuquerque, New Mexico 87109  
Telephone: 505-246-0120  
Facsimile: 505-246-0121  
E-mail: [thomasrbriones@qwest.net](mailto:thomasrbriones@qwest.net)

October 19, 2006

Howard Calkins  
P.O. Box 388  
Edgewood, NM 87015

RE: *Calkins v. Stearley*  
CV 2004 00661

Dear Mr. Calkins;

With this letter please find enclosed copies of all of the invoices recovered from our computer database in the above referenced matter. I do not know if this reflects a true and accurate accounting of all the invoices provided to you; this is the best that could be retrieved. Our database stores records for a limited time. I hope this is helpful to you.

Very truly yours,



Thomas R. Briones  
Attorney at Law

TRB/sb

enclosures

THOMAS R. BRIONES

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

May 27, 2004

In Reference To: Mayoral Election

Invoice # 11783

Professional Services

	<u>Amount</u>
5/3/2004 Phone conversation with Dennis Wallin re: discussed status of case, attorneys who are involved, where we go from here, and divided up work to be done; Review Order Granting Unopposed Motion of Town of Edgewood to Intervene; Letter to Howard Calkins enclosing Order.	40.50
5/4/2004 Review Requests for Hearing and Notice of Hearing for a trial on the Merit.	13.50
5/11/2004 Letter to Judge Hall requesting a quick trial setting in this matter.	27.00
5/19/2004 Review and analysis of Rule 16 (B) Scheduling Order, Non-Jury (.1); Letter to Howard Calkins enclosing the above; Review Robert Tangora's Notice of Unavailability and Amended Notice of Unavailability; Letter to Howard Calkins enclosing the above.	54.00
For professional services rendered	<u>\$135.00</u>
Additional Charges :	
5/15/2004 Copying cost and Postage	14.65
Total costs	<u>\$14.65</u>
NM Fees 5.8125%	\$7.85
Total amount of this bill	<u>\$157.50</u>
Previous balance	\$367.49
5/10/2004 Payment - thank you. Check No. 1009	(\$367.49)

Howard Calkins

Page 2

Total payments and adjustments

Amount  
(\$367.49)

Balance due

\$157.50

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

June 30, 2004

In Reference To: Mayoral Election

Invoice # 11807

Professional Services

	<u>Amount</u>
6/2/2004 Prepared outline of questions for deposition of Karen Alarid and Mike Hoy.	135.00
6/3/2004 Phone conversation with Dennis Wallin re: informed me of how depositions of Mike Hoy went.	27.00
	<hr/>
For professional services rendered	\$162.00
NM Fees 5.8125%	\$9.42
	<hr/>
Total amount of this bill	\$171.42
Previous balance	\$157.50
6/15/2004 Payment - thank you. Check No. 1011	(\$157.50)
	<hr/>
Total payments and adjustments	(\$157.50)
	<hr/>
Balance due	<u>\$171.42</u>

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

July 28, 2004

In Reference To: Mayoral Election

Invoice # 11841

Professional Services

	<u>Amount</u>
7/20/2004 Conference with Dennis Wallin re: informed of results of election, discussed where to go with suit, divied up work activities.	27.00
7/27/2004 Review and analysis of deposition of Mike Hoy; Letter to all counsel re: scheduling of deposition.	162.00
	<hr/>
For professional services rendered	\$189.00
Additional Charges :	
7/28/2004 Copying cost	1.25
Postage	1.48
	<hr/>
Total costs	\$2.73
New Mexico 6.0625%	\$11.46
	<hr/>
Total amount of this bill	\$203.19
Previous balance	\$171.42
	<hr/>
7/19/2004 Payment - thank you. Check No. 1001	(\$171.42)
	<hr/>
Total payments and adjustments	(\$171.42)



Howard Calkins

Page 2

Amount

Balance due

\$203.19

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

November 01, 2004

In Reference To: Mayoral Election

Invoice # 11934

Professional Services

	<u>Amount</u>
10/5/2004 Prepared Witness List.	54.00
10/6/2004 Prepared for Deposition of Kenneth Arnett; Prepared Exhibit List ; Continued preparing Witness List; Phone conversation with Dennis Wallin re: discussed questions to ask Mr. Arnett, and additions to Witness and Exhibit List; Finalize Exhibit and Witness Lists.	189.00
10/7/2004 Finalize Exhibit's and Witness Lists; Continued preparing for Deposition of Kenneth Arnett; Travel to and from Moriarty; Appearance at Deposition of Kenneth Arnett.	351.00
10/8/2004 Review Stearley's Exhibit's List and Witness List; Letter to Howard Calkins enclosing the above.	54.00
10/11/2004 Letter to all attorneys of record enclosing copies of court-endorsed Witness and Exhibit Lists, with copies to Dennis Wallin and Howard Calkins.	13.50
10/12/2004 Phone conversations with Dennis Wallin re; discussed depositions of county clerk, surveyor and Ms. Hastings.	27.00
10/13/2004 Review and analysis of Tangora's Stipulated Motion and Order for an Extension of Time for Parties to File Motions for Summary Judgment; Phone conversation with Tangora's office to give my approval to his Motion and Order.	27.00
10/15/2004 E-mails exchanged with Dennis Wallin re: Tim Oden; Phone conversation with Tangora's office re: discussed contact information for Tim Oden.	40.50
10/21/2004 Phone conversation with Robert Tangora re: has decided not to depose clerk for Santa Fe Company; E-mail to Dennis Wallin re; informed him of above, discussed deposition preparation for Tim Oden.	54.00

Howard Calkins

Page 2

	<u>Amount</u>
10/25/2004 Review and analysis of Stearley's Exhibit List and Witness List; Review and analysis of Stearley's Supplemental Witness List; Review letter from David Henderson re; additional questions for Mike Hoy; Phone conversation with Dennis Wallin re: discussed deposition of Tim Oden and Santa Fe County Clerk.	67.50
10/27/2004 Review and analysis of deposition of Karen Alarid.	67.50
10/28/2004 Prepared for deposition of Tim Oden; Travel to and from Santa Fe; Appearance at deposition of our expert witness, Tim Oden; Review deposition of Karen Alarid.	540.00
Continue review and analysis of deposition of Karen Alarid.	50.00
For professional services rendered	<u>\$1,535.00</u>
Additional Charges :	
10/13/2004 Fax	12.00
10/15/2004 Copying cost and Postage.	23.75
Long distance charges	4.20
10/31/2004 Fax	8.50
Total costs	<u>\$48.45</u>
Interest on overdue balance	\$8.50
New Mexico 6.0625%	\$93.06
Total amount of this bill	<u>\$1,685.01</u>
Previous balance	\$2.00
Balance due	<u><u>\$1,687.01</u></u>

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

November 30, 2004

In Reference To: Mayoral Election

Invoice # 11968

Professional Services

	<u>Amount</u>
11/2/2004 Continued review and analysis of deposition of Karen Alarid; E-mail Dennis Wallin re: opinion as to whether we should depose County Clerk.	135.00
11/9/2004 Prepared Motion for Summary Judgment.	378.00
11/10/2004 Continued preparing Motion for Summary Judgment and Brief in Support; Review and analysis and revise Dennis Wallin's proposed Pre-Trial Order.	715.50
11/11/2004 Continued preparing Motion for Summary Judgment; Phone conversations with Dennis Wallin re: discussed Pre-Trial Conference; Phone conversation with Robert Tangora re: discussed Pre-Trial Conference; Prepared for Pre-Trial Conference.	891.00
11/12/2004 Finalize Motion for Summary Judgment and Brief in Support; Travel to and from Santa Fe; Appearance at Pre-trial Conference before Judge Hall.	783.00
11/15/2004 Faxec letter to Dennis Wallin re; enclosing contestee's motion for summary judgment; Review and analysis of contestee's motion for summary judgment; Letter to Howard Calkins enclosing copy of contestee's motion for summary judgment.	108.00
11/16/2004 Phone conversation with Howard Calkins re; discussed trial's trailing docket Stearley's Motion for Summary Judgment and possible settlement scenarios; Phone conversation with Cathy with Mountain View Telegraph re; questons about status of case; Legal research cases, statutes and arguments put forth in Stearley's Motion for Summary Judgment; Phone conversation with David Henderson re; discussed all pending Motion for Summary Judgments as they might apply to town.	297.00
11/17/2004 Continued legal research and analysis of Stearley's Motion for Summary Judgment.	162.00

	<u>Amount</u>
11/18/2004 Continued legal research of case law and arguments in Stearley's Motion for Summary Judgment; Review deposition of Karen Alarid and Mike Hoy re; examples of violation of election code.	108.00
11/19/2004 Review all exhibits for examples of clerk and precinct board, misconduct and continued legal research.	81.00
11/21/2004 Continued preparing Response to Motion for Summary Judgment.	135.00
11/22/2004 Continued preparing and finalizing Response to Stearley's Motion for Summary Judgment; Review and analysis of Stearley's portion of Pre-trial Order; Review and analysis of Stearley's Response to our Motion for Summary Judgment; Letters to Dennis Wallin and Howard Calkins enclosing Stearley's pleadings.	1,161.00
11/23/2004 Phone conversation with Dennis Wallin re; discussed Tangora's proposed portion of Pre-trial Report; Legal research cases and arguments in Tangora's Response to our Motion for Summary Judgment.	81.00
11/24/2004 Prepared Reply Brief in Support of our Motion for Summary Judgment.	67.50
11/27/2004 Review and analysis of David Henderson's proposed portion of the Pre-Trial Order; Prepared Reply to our Motion for Summary Judgment.	270.00
11/29/2004 Continued preparation of Reply Brief in Support of our Motion for Summary Judgment.	297.00
11/30/2004 Finalize Reply in Support of our Motion for Summary Judgment; Letter to opposing counsel enclosing copy of Reply; Letter to court-clerk enclosing our Motion for Summary Judgment, Response by Stearley and Reply along with filing instructions; Review and analysis of Contestee's Reply to Contestant's Response to Motion for Summary Judgment; Review and analysis of Reply of Intervenor, Town of Edgewood, In Partial Support of Contestee's Motion for Summary Judgment.	283.50
For professional services rendered	<u>\$5,953.50</u>
Additional Charges :	
11/9/2004 LexisNexis Legal Research	33.00
11/12/2004 Copying cost at Albuquerque Legal.	60.55
Postage at USPS.	10.01
11/15/2004 Copying cost and postage	155.12
Fax	85.50
11/22/2004 Postage at USPS	7.93
11/30/2004 Copying cost and postage.	26.98

Howard Calkins

Page 3

	<u>Amount</u>
11/30/2004 Fax	41.00
Total costs	<u>\$420.09</u>
New Mexico 6.0625%	\$360.93
Total amount of this bill	<u>\$6,734.52</u>
Previous balance	\$1,687.01
11/3/2004 Credit	(\$10.25)
11/16/2004 Payment - thank you. Check No. 3101	(\$1,675.87)
11/16/2004 Credit	(\$0.89)
Total payments and adjustments	<u>(\$1,687.01)</u>
Balance due	<u><u>\$6,734.52</u></u>

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

December 30, 2004

In Reference To: Mayoral Election

Invoice # 11992

Professional Services

	<u>Amount</u>
12/1/2004 Prepared for Motion for Summary Judgment Hearing; Phone conversation Dennis Wallin re; discussed arguments for Motion for Summary Judgment Hearing.	108.00
12/2/2004 Continued preparing for court; Travel to and from Santa fe; Appearance at Motion for Summary Judgment Hearing.	675.00
12/3/2004 Prepared Order Denying Motion for Summary Judgment; Phone conversation with Kevin Beane, reporter re; discussed the Motion for Summary Judgment Hearing; Prepared for conference with Dennis Wallin and Howard Calkins.	108.00
12/5/2004 Conference with Howard Calkins and Dennis Wallin re; discussed trial strategies.	162.00
12/6/2004 Review and analysis and revision of Dennis Wallin's proposed Modified Pre-trial Order; Letter to Judge Hall enclosing Order Denying Motion for Summary Judgment for his review and signature.	67.50
12/7/2004 Finalize Amended Pre-trial Order; Review E-mail from David Henderson re: comments and approval of Amended Pre-Trial Order; Phone conversation with Robert Tangora re: is going to add and subtract witnesses, is thinking ab out filing for an Interlocutory Appeal of Judge Hall's decision on the Motion for Summary Judgment; Phone conversation with Kevin Bean, reporter, re: interview about case; Phone conversation with Ms. Sulte, reporter re; interview about case; Review and analysis of Robert Tangora's Amended Witness List; and proposed changes to his portion of the Pre-trial Order.	175.50
12/8/2004 Review and analysis of Petition for Interlocutory Appeal from Robert Tangora; Phone conversation with Robert Tangora re: he is adding three more witnesses to his Witness List, we objected.	67.50
Research Defendant's Witness List for their phone numbers; Called and left messages to discuss mayoral election with witnesses.	91.00

	<u>Amount</u>
12/9/2004 Prepared Residency questions for trial witnesses.	54.00
12/13/2004 Review and analysis of Robert Tangora's third Supplemental Witness List; Phone conversation with Dennis Wallin re; discussed trial preparations and interlocutory appear; Prepared for trial.	135.00
12/15/2004 Continued legal research re: questions for residency; Review and analysis of Tangora's fourth Supplemental Witness List.	94.50
12/16/2004 Phone conversations to witnesses (Debuck, Cindy Nee, Joe Nee, David Nee, Charles Nilson) re: residency and for whom they voted. Left messages for other possible witnesses on Tangora's List. Phone conversations with Dennis Wallin re: status of phone conversations.	161.00
Research of residency of witnesses on Tangora's Witness list.	21.00
Continued preparing for trial.	270.00
Continued preparing for trail.	472.50
12/18/2004 Conference with Dennis Wallin and Howard Calkins and Tim Oden re: prepared for trial.	405.00
12/19/2004 Continued preparing for trial.	420.00
12/20/2004 Appearance at Trial in Santa Fe before Judge Hall; Travel to and from Santa Fe.	1,215.00
12/21/2004 Letter to all counsel and to client enclosing court-endorsed copies of Judge Hall's Order Denying Stearley's Motion for Interlocutory Appeal.	20.25
12/22/2004 Letter from Robert Tangora re: informing us that Stearley has decided to appeal the trial judge's decision.	13.50
12/27/2004 Review and analysis of Dennis Wallin's proposed Findings of Facts and Conclusions of Law; Revised the above.	54.00
12/28/2004 Continued revising Findings of Fact and Conclusions of Law; E-mail the above to Dennis Wallin, along with notes.	94.50
12/29/2004 Phone conversation with Dennis Wallin re: discussed draft of Findings of Fact and Conclusions of Law.	27.00
For professional services rendered	<u>\$4,911.75</u>
Additional Charges :	
12/6/2004 Copying cost at Albq. Legal.	4.22
12/15/2004 LexisNexis Legal Research on Internet.	47.75
12/20/2004 Parking Fee at Court.	15.00



Howard Calkins

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	<u>Amount</u>
12/28/2004 Fax	19.50
Copying cost and Cost.	12.12
Total costs	<u>\$98.59</u>
New Mexico 6.0625%	\$297.77
Total amount of this bill	<u>\$5,308.11</u>
Previous balance	\$6,734.52
12/15/2004 Payment - thank you. Check No. 3117	<u>(\$6,734.52)</u>
Total payments and adjustments	<u>(\$6,734.52)</u>
Balance due	<u><u>\$5,308.11</u></u>

Please pay within 10 days of receipt.

Thank you.

The Law Offices Of Thomas R. Briones, P.A.  
4263 Montgomery Blvd., NE  
Suite I-140  
Albuquerque, NM 87109

Invoice submitted to:  
Howard Calkins  
P.O. Box 388  
Edgewood NM 87015

February 01, 2005

In Reference To: Mayoral Election

Invoice # 12042

Professional Services

	<u>Amount</u>
12/30/2004 Phone conversation with Dennis Wallin re: Tangora called with a settlement offer to have a new election to discuss whether could agree to offer legally.	27.00
1/3/2005 Phone conversation with Dennis Wallin re: discussed Howard's thoughts on Tangora's suggestion of a new election, question of Howard's fees will be brought up at next council meeting, talked about status of appeal; Phone conversation with Cathy Stuart, reporter, re: she had questions re: cross-appeal.	54.00
1/5/2005 Review and analysis of attorney, David Henderson's proposed Findings of Fact and Conclusions of Law; Phone conversation with Cathy Shuite re: answered questions regarding any appeal on case; Phone conversation with Dennis Wallin re: discussed status of case, informed me of council meeting tonight.	81.00
For professional services rendered	<u>\$162.00</u>
Additional Charges :	
12/31/2004 Copying cost at Albuquerque Legal for Poster Board.	60.00
LexisNexis Legal Research.	26.25
Total costs	<u>\$86.25</u>
NM Tax 6.75%	\$10.94
Total amount of this bill	<u>\$259.19</u>
Previous balance	\$5,308.11
2/1/2005 Payment - thank you	(\$5,308.11)

Howard Calkins

Page 2

Total payments and adjustments

Amount  
((\$5,308.11)

Balance due

\$259.19

Please pay within 10 days of receipt.

Thank you.

LAW OFFICES OF  
DENNIS K. WALLIN, PC

January 20, 2007

Mayor Howard Calkins  
Town of Edgewood  
P.O. Box 3610  
Edgewood, New Mexico 87015

**Re: Propriety of the Town paying attorney fees resulting from challenged  
vote count for mayor**

Dear Mayor Calkins:

You have asked me to render an opinion regarding the above question related to the contested election in the March 2, 2004 mayoral race in the Town of Edgewood. You have provided me with Randy Van Vleck's opinion letter dated January 3, 2007.

While Mr. Van Vleck correctly stated the general proposition that a municipality is responsible for defending the actions of its employees and agents, I do not believe Mr. Van Vleck addressed the pertinent question. He does not address the question of whether it is within the power of the municipality to reimburse or pay for the attorney fees of the prevailing party in a successfully contested election. This question involves the constitutional issue related to what is commonly known as the "anti-donation" clause. (Article IX, Section 14). I believe the Town Attorney, David Henderson, gave the town the proper advice over a year ago. My memory is that he advised that it was in the Town's interest to determine the true winner of the election and that the Town could upon the conclusion of the litigation decide to reimburse the fees incurred by the contestants.

The anti-donation clause is meant to prevent the use of public monies being spent to benefit an individual or entity where there is no consideration to the public. In this election contest there is clearly a benefit to the citizens of Edgewood in litigating the outcome of the election to determine the rightful winner. As it turned out, both yourself and Mr. Stearly received the same number of legal votes and, by law, the outcome was decided by a game of chance. If not for the litigation, the error in the election would never have been corrected, which would have been a disservice to the citizens of Edgewood.

1401 ABRAHAMES ROAD WEST, SUITE D  
POST OFFICE BOX 696  
MORIARTY, NEW MEXICO 87035  
505/ 832-6363 505/ 832-2206 FACSIMILE

January 3, 2007

Q-04-09.1

Jeff Condrey, Town Administrator  
Town of Edgewood  
P. O. Box 3610  
Edgewood, NM 87015

Dear Mr. Condrey:

This letter is in response to your request for an opinion from the General Counsel concerning the propriety of reimbursing the litigation expenses of the two individuals who were parties to the recently concluded contest of the March 2004 general municipal election.

As I understand the situation, the Town canvassing Board certified that Robert Sterley was the winner of the election by a single vote. Sterley was issued the certificate of election and assumed the office of Mayor of the Town. Howard Calkins, the former Mayor and apparent loser of the election filed a lawsuit contesting the results of the election and the issuance of the certificate of election. This suit was filed, according to statute, against Mr. Sterley. The Town intervened in the lawsuit.

As a general proposition, a body politic is responsible for defending its actions and the actions of its employees and other agents (such as precinct workers). It is not responsible for defending the actions of others. In this situation, the Town would be responsible for defending the actions of its precinct board and canvassing board with respect to the conduct of the election. Therefore, since Mr. Calkins was challenging the results of the action of the Town, he should bear the costs of this challenge. If the Town hired its own lawyer (after it intervened in the suit) to protect its interests; those costs should be borne by the Town and Mr. Sterley's attorney's fees in seeking to hold on to the office should be borne by Mr. Sterley. On the other hand, if the Town hired Mr. Sterley's attorney to represent its interests at the trial court, the Town should only pay that portion of the fees related to defending the decision of the canvassing board. In other words, if the Town and Mr. Sterley were both represented by the same attorney, the Town should pay for that portion of the fees where the attorney was arguing that the vote should be as the canvassing board certified, and that portion of the representation seeking to add votes to

Sterley's total, or to diminish Calkins' vote total should be the responsibility of Mr. Sterley.

Finally, as to the appeal, once the District Court made its decision, it seems that the Town's interest in furthering the litigation was ended. The Town had a decision on how to handle the remaining functions of the election, and any decision to appeal or cross appeal was in the discretion of the individual candidate, and the corresponding cost of such an appeal should so be borne by the individual.

I hope this provides you with sufficient information in order to make informed decisions on these issues. If you have any questions, please feel free to contact me.

Very truly yours,

Randall D. Van Vleck  
General Counsel

## MEMORANDUM

TO: Town Council, Town of Edgewood  
FROM: David Henderson, Town Attorney  
DATE: March 6, 2007  
RE: Analysis of anti-donation clause in connection with request to reimburse Mayor Calkins' attorney fees from the election contest.

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As you know, I have undertaken to look at New Mexico cases discussing the anti-donation clause in order to facilitate your decision on the request to reimburse Mayor Calkins for some or all of his attorney fees. As you read this memorandum, you need to keep one point in mind. The anti-donation clause cases in New Mexico are mostly older cases and seem based on fine, *ad hoc* distinctions made by different courts between the facts of different cases. There does not appear to be a single recognized test that can easily be applied to predict future outcomes. In this case more than others, it is therefore difficult to predict whether a court would agree with:

- Or
- Mr. Wallis' basic perspective that we may reimburse the Mayor:
  - The implications of Mr. Van Fleck's opinion – since we never should have paid Mayor Staley's fees to begin with, by seeming implication, we should not pay Mayor Calkins' fees either.

What I can provide is a discussion of how the different cases would be used to support either basic position. I hope this will assist your evaluation of the underlying legal foundations for or against a particular decision.

### 1. The Anti-donation clause.

Article IX, Section 14 of the New Mexico Constitution provides:

“Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation....”

The most recent New Mexico judicial opinion on this Constitutional rule makes the following observations:

- “Our Supreme Court has defined ‘donation’ in Article IX, Section 14 as ‘a gift, an allocation or appropriation of something of value, without

consideration to a person, association or public or private corporation.' *Village of Deming v. Hosdreg Co.*, 62 N.M. 18, 28, 303 P.2d 920, 926-27 (1956) (internal quotation marks omitted)."

- "Any 'aid to private enterprise' must have the character of a donation 'in substance and effect' in order to violate the anti-donation clause. *See id.* at 28, 303 P.2d at 927 (internal quotation marks omitted)."

And

- "Consideration for the allocation can be a defining element. *See Treloar v. County of Chaves*, 2001-NMCA-074, ¶ 32, 130 N.M. 794, 32 P.3d 803 (holding that because 'severance pay is deemed to be in the nature of wages that have been earned,' such pay was in return for consideration and not in violation of the anti-donation clause); *see also Battaglini v. Town of Red River*, 100 N.M. 287, 289-90, 669 P.2d 1082, 1084-85 (1983) (holding that anti-donation clause was not violated where compensation paid to sign owners for removal of their signs was 'just compensation' in that sign owners at the time had no duty to remove their signs)."

*State ex rel. Office of the State Enigneer v. Lewis*, 2007 -NMCA- 008, ¶ 49, 150 P.3d 375.

## 2. Support for Mr. Wallin's position:

Mr. Wallin basically argues that the payment of Mr. Calkins attorney fees serves a public interest by making sure the candidate legally entitled to hold office is able to defend that right by filing a lawsuit, at least when that candidate ultimately prevails.

Generally, placing the cost of litigation on the candidate would favor wealthy candidates and might discourage less wealthy candidates from running for office or enforcing their rights in Court.

In this vein, it might also be suggested that by enforcing their own rights, candidates ensure the will of the voters are respected, and thus furthers an important public interest.

Additionally, in this case the economic hardship of doing nothing is amplified to the extent of the Council's prior payment of Mr. Stearley's legal expenses in the same proceedings.

Whether or not we should have paid Mr. Stearley's fees, or would choose not to do so in similar situations in the future, this situation creates apparent unfairness in the Town's



treatment of the two candidates, even though it was the Town's policy to stay neutral as to which candidate was legally entitled to hold the office of Mayor.

Leveling the resources by reimbursing Mayor Calkins, it could be argued, is a preferable remedy for any civil wrong to Mr. Calkins or the public created by the Town's payment of Mr. Stearley's legal expenses than would be possible in legal proceedings by the Town aimed at recovering the money paid to Mr. Stearley's benefit, even though the case law allows such proceedings. See *State ex rel. Callaway v. Axtell*, 74 N.M. 339, 393 P.2d 451(1964) (where state money was used together with matching federal funds to pay seller of feed furnished to farmers and ranchers in emergency, and statute appropriating state funds for such purpose was subsequently held unconstitutional as donation of public funds, state could recover amounts so paid, notwithstanding good faith of payment and receipt).

The later course of action likely would appear unfair to Mayor Stearley, who accepted the money in good faith. Such a perception on the part of a significant portion of the public undoubtedly would cause divisiveness and controversy within the community. Additionally, the Town should not lightly initiate such highly charged legal proceedings if alternatives exist, because litigation wastes Town resources at the expense of other important issues.

There is some authority for the proposition that in remedying legal wrongs, a governmental entity may take steps to benefit those wronged without violating the anti-donation clause. See *State ex rel. New Mexico Water Quality Control Comm'n v. City of Hobbs*, 86 N.M. 444, 525 P.2d 371 (1974) (when City was liable for negligence in operation of its sewage treatment plant, trial court's order that City install water lines, hookups, and meter connections to affected property owners in the area, remedy for civil wrong did not constitute anti-donation clause violation).

Finally, to the extent the idea of "consideration" may be relevant to the issue, it might be argued that payment of a successful candidate's legal expenses, at least to the extent to match payments made to the unsuccessful candidate, also serves as a form of compensation and an inducement for the successful candidate's *continued* public service. Cf. *Sena v. Trujillo*, 46 N.M. 361, 129 P.2d 329 (1942) (statute that provided for pensions to public employees could not be applied to former Supreme Court Clerk, who completed public career prior to enactment of statute, because under such circumstances, as this was unrelated to the proper public purpose of pensions to "induce long-continued and faithful service" by public employee). One unsettled question is whether the "consideration" needs to be more substantial than the consideration needed to uphold any contract – however, were the courts to require some more exacting inquiry it clearly would interfere with a public entity's ability to enter into enforceable contracts.

In any event, a party attempting to justify payment of Mr. Calkins' fees could point to all the above factors in trying to establish that the reimbursement was not "in substance and effect" a donation. Instead, it would be argued it was a payment of public money made the public interest:

- The public interest in fair and valid elections, it would be argued, is advanced in this case by reimbursing the legal expenses of a candidate the Town placed at an economic disadvantage in the litigation in the first place but whom ultimately prevailed.
- Moreover, it is a form of compensation to this candidate for his public service and an inducement for him to continue in public service.
- Finally, it avoids the negative impact on the community of creating a negative form of fairness by attempting to recover the prior payments to the other candidate, which that candidate accepted in good faith and because he believed he also was entitled to hold office in what ultimately was a tie election.

### 3. Support for Mr. Van Vleck's position.

An opponent of this argument would stress (1) Mr. Calkins was not involved in litigation because of his official acts; (2) he made a private decision to first run for reelection and then seek to overturn the initial results of that election by suing the other candidate; (3) the sole public interest was in a procedurally fair election, not in who held office; and therefore (4) the payment of money to Mr. Calkins now is a gift to him without any real consideration to the public.

As Mr. Van Vleck's letter points out, State law, like the Town's ordinances, require a Town to defend the *acts* of its elected officials, but in this case neither candidate's *official conduct* was at issue. Rather, the issue was whether the *results of the election* were valid, and thus it could be asserted that the candidates were advancing their private interests in contesting the election in court. The Town should only pay for that portion of the litigation that was necessary to advance the Town's interests, as distinct from the interests of the candidates.

If an action were brought to challenge a payment made by the Town, unless the court perceives the payment of money to a candidate served a legitimate public purpose, the payment will be prohibited:

Compare:

- *Hutcheson v. Atherton*, 44 N.M. 144, 99 P.2d 462 (1940) (money proposed to be used to build an auditorium together with the "New Mexico Fourth Centennial

Coronado Corporation" violated anti-donation clause, because the program directed payment of money to a corporation, "to be used by such corporation in discharging an obligation assumed by it, thereby relieving it of the expenditure of its own funds, to the extent of the aid advanced by the county.")

with

- *Village of Deming v. The Hosdreg Co., Inc.*, 62 N.M. 18, 303 P.2d 920 (1956) (statute authorizing municipality to issue revenue bonds for the purpose of acquiring or constructing industrial buildings for sale or lease to industries wishing to locate within proximity of municipality does not violate constitutional provision prohibiting municipality from making any donation to or in aid of any private corporation, despite fact that corporations would receive tax benefits and favorable lease provisions).

Many cases that have struck down particular statutes or programs appeared to be instances in which the State was giving money away without consideration to a particular group of people, and there was no principled stopping point to prohibit other such particular benefits being applied to any conceivable group of people.

See, e.g.:

- *State ex rel. Mecham v. Hannah*, 63 N.M. 110, 314 P.2d 714 (1957) (act making appropriations to State Board of Finance for federal-state cooperative agreement for the roughage drought feed program' violates section of the constitution providing that the state shall not directly or indirectly make any donation to or in aid of any person);
- *Chronis v. State ex rel. Rodriguez*, 100 N.M. 342, 670 P.2d 953 (1983) (section of Liquor Control Act that gave reductions in tax credits to liquor industry violated anti-donation clause);
- *Harrington v. Atteberry*, 21 N.M. 50, 153 P. 1041(1916) (law held unconstitutional that required the board of county commissioners in each county to appropriate not less than \$500 annually to fund a regularly organized and incorporated county fair, which sum was to be applied towards paying premiums on the agricultural, horticultural, arts and livestock exhibits), *overruled in part by State ex rel. City of Albuquerque v. Lavender*, 69 N.M. 220, 365 P.2d 652 (1961) (statute requiring the State to pay in certain cases "nonbetterment" costs of utility relocations made necessary by highway improvements did not violate the anti-donation clause).

For example, as the Court stated in *Sena v. Trujillo*, 46 N.M. 361, 129 P.2d 329 (1942), while pensions are a permitted form of compensation for services performed by public employees *after* the pension statute has been enacted, to extend those benefits to a person who retired before becoming eligible is a different matter altogether:

"[I]t is not enough that we can say that a public purpose is being served when we *donate* to those who have performed for the state a valuable public service over a period of 30 consecutive years. The constitution makes no distinction as between 'donations', whether they be for a good cause or a questionable one. It prohibits them all \* \* \*."

(Emphasis added.)

### Summary

The cases probably seem somewhat inconsistent, because in fact they probably are. There are also questions that these cases have not addressed that would be important to a court's determination of this issue.

One example, mentioned above, is whether "consideration" means something different in this constitutional context than it does in an ordinary contract setting.

Another example: it is a widely accepted idea in our society that individuals advancing their own interests can in some situations also serve to advance the common interests of society as a whole. This idea arguably underlies our economic system, our political system, and our governmental system of checks and balances.

Mr. Van Vleck's position appears based on the notion that in this case the mayoral candidates were advancing only their individual interests in campaigning for office. Mr. Wallin argued that, to the contrary, by advancing their own interests, the candidates in this case were also advancing the public interest. An unanswered question in this area of the law is what deference a reviewing court should pay to a municipalities determination of these underlying facts – will it give us the benefit of the doubt, or will it make a decision on its own, irrespective of the Council's reasoning and conclusions?

These inconsistencies and unanswered questions make it difficult to predict how a court would view a decision by the Town to grant Mayor Calkins' request. If the court, whether or not it gave some deference to the Town's decision, ultimately were convinced that the Town was (a) promoting the public interest in fair elections; (b) leveling the playing field in this case as a remedy for any impropriety in the previous payments to Mayor Stearley rather than

seeking to reclaim the money paid to him; and (c) providing compensation and consideration for the continued public service of the successful candidate, it could uphold the payment.

On the other hand, if the court viewed the payment as a donation of public money to defray the costs of a course of action undertaken by the Mayor to benefit his own interests, and which did not substantially benefit the public interest, it could strike the payment down. For example, payments to farmers hurt by a drought easily could be considered to advance the public interest in minimizing economic dislocation and disruption of the agricultural industry. Under existing law, however, such a public program would be illegal. *State ex rel. Mecham v. Hannah, supra.*