

**FILED**

Clerk of the Superior Court

**JAN 08 2009**

By: D. MUNSHOWER, Deputy

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
EAST COUNTY DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Case No.: GIE-012239
ex. rel. JOHN B. LINDEN,	)	DECISION AND ORDER OF THE COURT UPON
	)	PLAINTIFF'S MOTION FOR AN AWARD OF
Plaintiff,	)	REASONABLE ATTORNEY'S FEES AND
	)	COSTS; DEFENDANT'S MOTION TO TAX
Vs.	)	COSTS; DEFENDANT'S OPPOSITION TO THE
	)	IMPOSITION OF AN ORDER OF RESTITUTION
	)	
JOEL SCALZITTI,	)	
	)	
Defendant.	)	

The above-entitled matters came on regularly before the Court for determination of these post trial issues. Defendant SCALZITTI has requested that the Court not only rule upon the various issues presented but also prepare and file a Statement of Decision in ruling upon these post trial motions and issues.



1 The Helix Water District responded to the Court's request for an accounting of funds paid to  
2 SCALZITTI during his holding of office on the Board of Directors. The accounting provided to the Court  
3 establishes that SCALZITTI received compensation from the Water District in the total amount of  
4 \$51,636.84. This amount is the total of \$30,300.00 in per diem payments; \$7,381.37 for attendance at  
5 conferences as a member of the District's Board; \$389.86 for mileage reimbursements; \$1,928.88 for  
6 miscellaneous expenses paid by the District; \$330.51 for installation of computer by Cox Communication  
7 and, \$11,206.22 for Health and Life Insurance premiums paid by the District on behalf of SCALZITTI.

8 The Defendant does not dispute the accounting.

9 Defendant argues that the Court is without legal authority or inherent power to issue an Order of  
10 Reimbursement/Restitution. Factually, Defendant argues that he attended all meetings of the Board and  
11 conferences for which he was paid a per diem. All other expenses paid by the District were reasonably  
12 incurred by Defendant in the performance of his responsibilities as a member of the Board and for which  
13 he was legitimately reimbursed by the District upon the submission of proof of the expenses.

14 Defendant argues that under Code of Civil Procedure section 809 the sole and exclusive  
15 remedies provided by statute in an *in quo warranto* action are the ouster from office, payment of costs,  
16 and the imposition of a fine of up to \$5,000.00. In support of this proposition Defendant cites the Court to  
17 the decision in *Havemeyer v. Superior Court (1890) 84 Cal. 327*. This Court is persuaded that the  
18 *Havemeyer* Court decision establishes that, prior to the enactment of Code of Civil Procedure section  
19 1021.5, the only action which may be taken by the Court upon the finding of guilty in an *in quo warranto*  
20 action is that which is specifically provided within the terms of Section 809 of the Code of Civil Procedure.  
21 This conclusion is supported by the determination of the Court of Appeal in a later decision in the case of  
22 *Black v. Bailey (1916) 30 Cal.App. 581*. In the *Black* case, (an *in quo warranto* action), the Court of  
23 Appeal reversed the trial court's order requiring the ousted office holder to repay salary received.

24 This Court, therefore acknowledges that it is without legal precedent and/or authority to impose a  
25 condition of Reimbursement/Restitution.

1           **RULING: THE COURT RECEIVES THE ACCOUNTING OF THE HELIX WATER DISTRICT**  
2 **BUT DECLINES TO ISSUE AN ORDER OF REIMBURSEMENT/RESTITUTION OF THE SUMS**  
3 **STATED.**

4  
5 **Defendant's Motion to Tax Costs:**

6           The Defendant objects to the claim by LINDEN to recover the sum of \$1,964.47 for the cost of the  
7 trial transcripts as well as the sum of \$100.00 for the bond premium. Defendant's objection to the cost of  
8 the bond is that there has been no documentation of this expense by the Plaintiff. Defendant objects to  
9 the cost of the trial transcripts as an unnecessary expense. Defendant asserts that the transcripts may  
10 well have been of assistance and beneficial, but nothing to establish that the transcripts were necessary  
11 has been presented by LINDEN. LINDEN, however, argues that the production of the transcripts was  
12 made necessary by the interruption of the trial and examination of witnesses as well as in the preparation  
13 of the Plaintiff's Motion for Judgment, a brief which was requested of the Plaintiff by the Defendant.

14           It is generally considered to be the rule that trial transcripts not ordered by the trial court are not  
15 allowable as costs. (See Code of Civil Procedure section 1033.5(b)(5)).

16           The Court did request copies of the transcripts that had been prepared at the request of Plaintiff's  
17 counsel. These transcripts were necessary to the Court's preparation for the balance of the evidentiary  
18 proceedings as well as helpful to the Court in the preparation of its Statement of Decision as requested by  
19 Defendant's counsel. These transcripts were certainly necessary in the proper preparation of counsel for  
20 the balance of the evidentiary proceedings as well as the Plaintiff's Brief in support of the Plaintiff's Motion  
21 for Judgment.

22           The Court concludes, based upon the foregoing, that the preparation of the trial transcripts was a  
23 legitimate and necessary expense in the prosecution of this action. The bond premium is also a legitimate  
24 expense.

25  
**RULING: DEFENDANT'S MOTION TO TAX COSTS IS DENIED.**

1  
2 Plaintiff's Motion for an Award of Attorney's Fees:

3 Counsel for the Defendant raises the previous argument that section 809 is specific and exclusive  
4 with regard to penalties to be imposed and costs awarded. Counsel asserts that the "costs" referred to in  
5 section 809 do not include an award of attorney's fees but simply the costs of litigation. Counsel for the  
6 Defendant also argues that since the action *in quo warranto* is exclusive to the State of California and the  
7 State is a public entity, attorney's fees cannot be awarded to the Plaintiff.

8 Addressing these two arguments it is important to note that the cases and propositions of the  
9 cases cited by Defendant all are dependent upon legal analysis and precedent that is prior to the addition  
10 of Code of Civil Procedure section 1021.5.

11 It is also worthy of note that the following section, section 810, uses "costs" in conjunction with the  
12 phrase "expenses" in very much a collective sense. Such language when construed in a reasonable  
13 manner as affecting both section 809 and 810 includes not only actual costs of litigation but attorney's  
14 fees as well. Certainly if a relator is to be liable for the costs and expenses of the failure of the action, it  
15 stands to reason that the successful relator is entitled to collect costs and expenses in victory.

16 It is this Court's view, however that such a construction of statutes is unnecessary in that the  
17 present *in quo warranto* action is exactly the type of action for which Code of Civil Procedure section  
18 1021.5 was enacted. It cannot be gainsaid that there are a significant number of actions which pertain to  
19 the public interest that the Attorney General of this State does not have the resources to pursue. In the  
20 case at bar the issuance of a Leave To Sue authorization by the Attorney General (Opinion of the Attorney  
21 General Number 02-306 dated May 10, 2002) is based upon the demonstration of the existence of a  
22 substantial question of fact or law of sufficient public interest to warrant the granting of leave to sue *in quo*  
23 *warranto*. In the final words of the Opinion: "Rather, both the public and the District have an interest in a  
24 judicial resolution of this matter. Accordingly, the application for leave to sue *in quo warranto* is  
25 GRANTED." (Opinion of the Attorney General, Number 02-306, May 10, 2002). It is difficult to perceive a  
matter of more substantial public interest than the legitimacy of the democratic elective process. It is,

1 therefore, without question that the authorization of LINDEN to proceed in the name of the People of the  
2 State of California was based upon a substantial issue of public interest and the resolution of which will  
3 result in a substantial public benefit.

4 To paraphrase President John F. Kennedy, the deception of one voter in a democracy impairs the  
5 security of all.

6 In sum, it is appropriate to award attorney's fees to the successful private relator in an *in quo*  
7 *warranto* action. The Supreme Court in the case of *People of the State of California ex rel. Seal Beach*  
8 *Police Officers Association v. City of Seal Beach* (1984) 36 Cal.3d 591 at page 602 states in a matter of  
9 fact way, almost in passing, in an *in quo warranto* action:

10 "We are satisfied that relators' action meets the requirement of section  
11 1021.5 of the Code of Civil Procedure. (*Baggett v. Gates* (1982) 32  
12 *Cal.3d 126, 142-143 . . .*). They are therefore entitled to recover  
13 attorney fees." [Emphasis added].

14 It is also quite clear that prior to the enactment of Code of Civil Procedure section 1021.5 the  
15 Supreme Court concluded that it was and is within the inherent power and equitable authority of the  
16 California courts to award attorney's fees under a "Private Attorney General" theory to litigants who  
17 successfully pursue "Public Interest" litigation in which an important constitutional right is vindicated. (See  
18 *Serrano v. Priest* (1977) 20 Cal.3d 25 [Serrano III]; cited in *Woodland Hills Residents Association, Inc. v.*  
19 *City Council of Los Angeles* (1979) 23, Cal.3d 917, 924-925).

20 In conclusion the successful relator in an *in quo warranto* action may be awarded attorney's fees  
21 under the provisions of Code of Civil Procedure section 1021.5.

22 This conclusion is not end of the analysis with regard to the request for attorney's fees by  
23 LINDEN. The trial court must make the specific finding required by the statute that the action has resulted  
24 in the enforcement of an important right affecting the public interest. Additionally, it is the responsibility of  
25 the trial court to determine the reasonableness of the attorney's fees requested by the successful relator.

1 The Court finds that this action brought by LINDEN as relator on behalf of the People of the State  
2 of California pursuant to a Leave to Sue authorization from the Attorney General is an authorization to  
3 proceed in the capacity of a private attorney general. The Court also finds that the resolution of this  
4 matter has conferred a substantial public benefit upon the general public and, in particular, a significant  
5 and substantial public benefit to the public served by the Helix Water District. The Court also finds that in  
6 the vindication of an important public and constitutional right the financial burden imposed upon the  
7 relator LINDEN was out of proportion to his individual or personal stake in the matter.

8 As to the reasonableness of the fees requested by LINDEN, the Court has determined that upon  
9 an analysis of the complexity of the issues presented, the investigation and preparation for the Leave to  
10 Sue letter, the preparation and presentation of the legal and factual issues, the expertise required of  
11 counsel, and the skill and dedication of counsel to this matter that a reasonable award of attorney's fees  
12 is in the amount of \$75,000.00. The Court recognizes that this is significantly less than that requested  
13 and documented, but the Court is also cognizant of the need for an equitable balance which needs be  
14 struck between the result achieved and the significant impact such an award will have on SCALZITTI, the  
15 individual.

16 **RULING: RELATOR LINDEN'S MOTION FOR ATTORNEY'S FEES IS GRANTED IN THE SUM**  
17 **OF \$75,000.00 TO BE PAID BY THE DEFENDANT SCALZITTI.**

18  
19 **ORDER UPON DETERMINATION**

20 Counsel for the relator LINDEN is Ordered and Directed to prepare and submit to the Court an  
21 Order in conformity with the Court's Rulings in this matter as set forth above.

22 IT IS SO ORDERED.

23 DATED: January 8, 2003.

24  
25   
WILLIAM J. HOWATT, JR., Judge