

MEMORANDUM OF LAW

DATE: March 27, 1991

TO: Deputy Mayor Bob Filner

FROM: City Attorney

SUBJECT: Clarification of Campaign Control Ordinance
Requirements Placing Limits of \$250 on
Contributions Per Election

Your memorandum of February 27, 1991, to City Attorney John Witt asking for an interpretation of the local elections code has been referred to me for response. You ask five (5) separate questions, as follows:

1. Whether it is permissible for a City Council candidate to raise money for his or her general election campaign prior to the primary election?
2. Whether a candidate may accept a check for \$500 if he or she credits \$250 toward the general election - and not spend it until after the primary?
3. What, if any, additional restrictions or reporting requirements are placed on these contributions?
4. If there is no general election (as a result of one candidate winning the primary election with greater than 50 percent of the vote), what uses are permitted for the contributions previously raised for that election?
5. May they be used for future campaigns?

ANSWERS

1. Under local law, it is permissible to conduct campaign fundraising for a general election before the primary election is held.
2. Under local law, a candidate may not accept a \$500 check without evidence that the contributor intended \$250 to be for the primary election, and the other \$250 for the general election.
3. Other campaign contribution restrictions and reporting requirements are set forth in the Political Reform Act of 1974 (codified at Government Code sections 81000 et seq.) as explained in the FPPC's 1990 Information Manual A for Local Officers and their Campaign Committees, as well as in the San Diego Municipal Election Campaign Control Ordinance (San Diego Municipal Code ("SDMC") section 27.2901 et seq.).
4. Permitted uses of campaign funds are set forth in SDMC section 27.2924 and Government Code sections 89510

through 89521.

5. Pending final resolution of *Service Employees v. Fair Political Practices*, 747 F. Supp. 580 (E.D. Cal. 1990), campaign funds may be used to fund future campaigns, unless these campaign funds have become "surplus" funds and thus limited in their use by Government Code section 89519.

ANALYSIS

Although you ask for an interpretation of only local, as opposed to state, elections law, answers to a few of your questions necessarily require examination of some state law, in particular, the Political Reform Act of 1974 (codified at Government Code section 81000 et seq.).

The first two questions, however, may be answered solely by local law, in particular, the San Diego Municipal Election Campaign Control Ordinance ("Ordinance") located at San Diego Municipal Code section 27.2901 et seq.

To answer your first question requires analysis of SDMC section 27.2941(a) which reads as follows:

No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing

such candidate, to exceed two hundred and fifty dollars (\$250) emphasis added.

The term "election" is defined in the Ordinance as follows:

"Election" shall mean any primary, general or special election held in the City of San Diego, including an initiative, referendum or recall election. The primary and general or special elections are separate elections for purposes of this Division. Emphasis added.

SDMC section 27.2903(g).

Reading these two sections together, the primary and general elections are separate elections and \$250 may be solicited and accepted from a single contributor for each of these two

elections. The Ordinance nowhere requires that fundraising for general elections begins only after a primary election is over. Therefore, to answer your first question, a candidate may raise money for a general election before the primary is over. However, to avoid problems with the prohibition against "soliciting" funds in excess of the \$250 limit, the solicitor should make clear that the request is only for \$250 per election. This view is consistent with the view expressed in District Attorney Opinion No. 77-11, issued September 23, 1977, analyzing a related issue under the San Diego Ordinance. (Copy of District Attorney Opinion No. 77-11 is attached.)

Although purportedly a mere restatement of the first question, your second question raises a different issue: namely, whether a candidate may accept a check for \$500, if he or she credits \$250 for the general election and does not spend it until after the primary election. The answer will depend on the factual circumstances surrounding acceptance of the \$500 check. SDMC section 27.2941(a) clearly prohibits acceptance of more than \$250 from a single contributor per election. For example, if the check showed on its face that \$250 was contributed for the primary election and \$250 was contributed for the general, that would indicate that the contributor intended to comply with the contribution limit. Likewise, a letter signed by the contributor accompanying the \$500 check clearly indicating that \$250 was intended to be for the primary election and \$250 was intended to be for the general election would indicate that the contributor intended to comply with the limit.¹

1. Obviously, an accounting mechanism would have to be established to ensure that these monies were maintained separately and that the \$250 intended for the general election not be spent on the primary election.

On the other hand, acceptance of a \$500 check without the types of clear written intentions described above would raise substantial questions about whether the contributor and candidate or campaign treasurer violated the contribution limits. Although not explicitly required by the Ordinance, it would behoove the candidate and campaign treasurer to provide some proof of the nature of the transaction showing that the \$500 check was indeed intended for separate elections. Otherwise, disclosure of receipt of the \$500 check on the required reporting forms would establish a facial violation of the Ordinance.

You next ask what, if any, additional restrictions or reporting requirements are placed on these contributions. This question is so overbroad as to be unanswerable except in the most general terms. First, to assist you I attach a copy of the

entire Ordinance. Second, I refer you to the Fair Political Practices Commission ("FPPC") 1990 Information Manual A, containing the campaign provisions of the Political Reform Act for (among others) local officers and their controlled committees. A copy may be obtained either from the City Clerk or from the FPPC directly by telephoning their Technical Assistance Division at (916) 322-5662. We do note, however, that the Ordinance requires campaign statements to be filed in the same time and same manner as required by the Political Reform Act (SDMC section 27.2931).

Also, the Ordinance requires candidates and their committees to maintain records pertaining to their campaign checking account and to make those records available for inspection by a public officer on demand.

You next ask what uses are permitted for contributions previously raised if the candidate prevails in the primary and there is no general election.²

2. A similar question arises if the candidate loses in the primary election. A good discussion of the restrictions on remaining campaign funds, including any raised for the general election, is contained in the attached copy of FPPC "Informal Assistance" letter dated February 15 1991.

As a corollary, you ask whether they can be used to fund future campaigns. The Ordinance specifies that, after all campaign debts are paid, the remaining monies may be paid to the candidate or committee for any "lawful purpose." SDMC section 27.2924. This local provision must be read, however, in light of state law governing permissible uses of campaign funds. (Government Code sections 89510 through 89521 and FPPC regulations adopted pursuant thereto.) A copy of Government Code sections 89510 through 89521 as amended in 1990 are attached for your convenience.

A recent FPPC Bulletin contains a good general description of these statutes as follows:

In general, these laws require that any expenditure of campaign funds must be reasonably related to a political, legislative, or governmental purpose. If a particular expenditure of campaign funds may result in a substantial personal benefit to an elected officer, the expenditure must be directly related to a political, legislative, or governmental

purpose. An expenditure of campaign funds which results in a direct personal benefit of more than \$100 to a candidate or elected officer is deemed to constitute a substantial personal benefit. Section 89513 provides specific guidance with respect to certain common expenditures. For example, subdivision (d) of Section 89513 provides that campaign funds may not be used for campaign, business, or casual clothing except for specialty clothing that is not suitable for every day use. Other provisions provide specific guidance regarding the use of campaign funds for the purchase or lease of a vehicle, for the lease of real property, or the purchase or lease of any appliance or equipment.

FPPC Bulletin, Vol. 17, No. 3, at 5 (1991).

We highlight some of the more significant provisions. Government Code section 89510(b) declares that contributions held in campaign accounts are held in trust for campaign expenses or expenses associated with holding that office. Government Code section 89512 states what kind of expenditures are within the lawful execution of the trust imposed by section 89510, as follows:

Section 89512. Expenditures within lawful execution of trust

An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose.

Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental

purpose.

Government Code section 89513 specifies the lawful uses of campaign funds up until they are declared "surplus" campaign funds.

Government Code section 89519 sets forth permitted uses of "surplus campaign funds." Note that once campaign funds become "surplus" they may not be used to finance future campaigns. Pending final resolution of a case involving Proposition 73, these funds may, however, be transferred to a new account for a future candidacy to another office at any time before the funds become "surplus" funds. To assist you in understanding this complex area of law, we attach a recent "Informal Assistance" letter issued by the FPPC dated February 15, 1991, explaining these provisions.

The United States District Court, Eastern District of California, invalidated the transfer prohibitions of Government Code section 85304 (adopted by the people as part of Proposition 73, June, 1988) in *Service Employees v. Fair Political Practices*, 747 F. Supp. 580 (E.D. Cal. 1990). The FPPC is appealing this decision.

We hope this assists you.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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Attachments

ML-91-25