

MEMORANDUM OF LAW

DATE: March 13, 1995

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Application of Continuing Violations Ordinance to
Extensions of Vendor Credit/Effect of Ex Post Facto
Doctrines

This is in response to your memorandum of January 19, 1995, in which you ask for a City Attorney opinion as to the effect of new San Diego Municipal Code ("SDMC") section 27.2946, entitled "Continuing Violations," on new SDMC section 27.2945, entitled "Extensions of Vendor Credit." These sections were adopted as part of recent amendments to the San Diego Municipal Election Campaign Control Ordinance ("Campaign Control Ordinance").

Attached to your memorandum was a list of several candidates with outstanding debts. We do not purport to analyze the law as applied to those particular people or circumstances in this memorandum. Rather, we address only the general legal issue of the applicable statute of limitations for violations of the Municipal Code and the effect of an ordinance making some of those violations "continuing offenses."

QUESTIONS PRESENTED

1. What is the statute of limitations for filing a complaint for violations of the San Diego Municipal Code, including SDMC section 27.2945?
2. Does SDMC section 27.2946, which makes certain outstanding campaign debts "continuing violations" of law, constitute a prohibited ex post facto law?

SHORT ANSWER

1. With minor exceptions, the normal limitations period for prosecuting violations of the Municipal Code, including SDMC section 27.2945, which limits campaign vendor debt in City elections, is one year. Cal. Penal Code Section 801. The usual statute of limitations does not bar prosecutions of crimes that are considered "continuing offenses."
2. SDMC section 27.2946, declaring that certain campaign debts are "continuing violations of law," has the effect of extending the time for which someone may be prosecuted for incurring campaign vendor debt in City elections in violation of SDMC section 27.2945. SDMC section

27.2946 is merely in the nature of a law that extends the limitations period before the original period has run and, therefore, it does not constitute an invalid ex post facto law.

BACKGROUND

You ask about the effect of new SDMC section 27.2946 on SDMC section 27.2945. SDMC section 27.2946 states that each day a campaign debt remains unpaid within the time required by SDMC section 27.2945 constitutes a separate violation. Although not explicit in your memorandum, your inquiry raises an issue about applicable time limitations on prosecuting violations of the Municipal Code, including SDMC section 27.2945 governing certain types of campaign debt. It also raises the issue of whether SDMC section 27.2946 constitutes a prohibited ex post facto law.

ANALYSIS

I. History of City's Campaign Control Ordinance as Pertains to Extensions of Credit

The original Campaign Control Ordinance, located at SDMC sections 27.2901 through 27.2975, was enacted in 1973.F

It was adopted by Ordinance 0-11034 N.S. on April 10, 1973.

Several portions of the Campaign Control Ordinance had been amended from time to time between 1973 and 1994, the date of the amendments at issue in this memorandum. However, those amendments are not relevant to this discussion and will not be discussed here.

On July 11, 1994, two

sections of the Campaign Control Ordinance pertaining to campaign debt, along with several other sections, were amended. San Diego City Ordinance No. 0-18086 N.S. Recitals in the 1994 amending ordinance indicate that one of its main purposes was to clarify existing law to facilitate enforcement of the City's campaign finance laws. The amendments became effective thirty (30) days after their passage, that is, on August 10, 1994.

Both before and after the 1994 amendments, the Campaign Control Ordinance contained provisions prohibiting extensions of credit, commonly known as campaign finance "debt limits." Before the 1994 amendments, the relevant portion read: "Extensions of credit for a period of more than thirty (30) days are prohibited. Extensions of credit for more than two hundred fifty dollars (\$250) are prohibited."

Former SDMC Section 27.2941(b). This

prohibition against extensions of credit was reenacted in relevant part in the 1994 amendments as SDMC section 27.2945(d), which now reads:

A candidate or committee that accepts goods or services for political purposes on credit under section 27.2945(a), shall pay for those goods or services in full no later than ninety (90) calendar days after receipt of a bill or invoice and in no event later

than ninety (90) days after the last day of the month in which the goods were delivered or the services were rendered."

Also as part of the 1994 amendments, new SDMC section 27.2946 governing "continuing violations" was added. This section reads as follows:

A candidate or committee treasurer violates SDMC Section 27.2945(b), (c), or (d) whenever the candidate or committee treasurer fails to pay any rent or for goods or services in full within the time periods set forth in Section 27.2945. Each and every day any obligation remains partially or wholly unpaid after the time periods set forth in Section 27.2945 constitutes a separate violation.

There was no equivalent provision in the Campaign Control Ordinance before the 1994 amendments.

II. Statute of Limitations and Prosecutions Under Extensions of Credit Language

With minor exceptions not applicable here, violations of the San Diego Municipal Code constitute misdemeanors. SDMC Section 12.1201. The statute of limitations for filing a complaint on a misdemeanor is one year from the date of commission of the crime. Cal. Penal Code Section 801. The usual statute of limitations does not bar prosecution of crimes that are considered continuing offenses. See, e.g., *People v. Curry*, 69 Cal. App. 501 (1924) (crime of failing to support minor children is a continuing offense and prosecution is not barred by the one-year statute of limitations).

Violations of SDMC section 27.2945 constitute misdemeanors and as such would be subject to California Penal Code section 801, unless they would be considered to be "continuing offenses." To remove any doubt, the 1994 amendments expressly stated in SDMC section 27.2946 that each and every day a debt goes unpaid in violation of SDMC section 27.2945 constitutes a separate offense, that is, constitutes a "continuing offense."

III. Ex Post Facto Doctrines and the Validity of "Continuing Violation" Language

The addition of SDMC section 27.2946 has the effect of extending the time for which someone may be prosecuted for incurring campaign vendor debt in City elections. This raises a serious legal issue, namely, whether such a law violates ex post facto doctrines. "An ex post facto law is a retrospective law applying to crimes committed before its enactment that by its necessary operation and in relation to the offense, or its consequences, alters the situation of the accused to his disadvantage." 17 Cal. Jur. 3d (Rev.) Part 1, Section 9. Ex post

facto laws are prohibited by both the federal and state constitutions.

Generally, laws that merely change forms of procedure, that do not alter the situation of the accused substantially to his or her disadvantage, and that do not deprive the accused or any defense or vested right, do not violate the constitutional prohibitions. *Id.* Also, a law that merely extends the limitations period before the original period has run is not a prohibited ex post facto law. *People v. Masry*, 179 Cal. App. 3d 1149 (1986).

We believe that SDMC section 27.2946 is in the nature of a law that merely extends the limitations period. Therefore, under the principles enunciated by the court in the Masry case, new SDMC section 27.2946 is not a prohibited ex post facto law, provided that the original limitations period has not run.

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By

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cc Bill Newsome

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