

MEMORANDUM OF LAW

DATE: May 18, 1998

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: May an Incumbent Councilmember Who Is Not Seeking Re-election Due to Term Limits Continue to Raise Funds?

BACKGROUND

In January 1998, U.S. District Court Judge Lawrence Karlton ruled that Proposition 208, which had, among other things, set strict time limits on campaign fundraising, is unenforceable. *California Prolife Council Political Action Committee v. Scully*, No. S-96-1965, 989 F. Supp.1282,1998 WL 7173 (E.D. Cal. Jan. 6, 1998). In light of the *Scully* decision, you have asked several questions about this City's campaign fundraising laws as they apply to an officeholder who is in his or her last term of office due to term limit laws.

QUESTIONS PRESENTED

1. May a City Councilmember who will not be seeking re-election due to term limits continue to raise funds, subject to the \$250 campaign contribution limits, during his or her current and final term in office?
2. May these funds be used for "officeholding" purposes?
3. If these funds are not "campaign funds," but may be used for officeholding purposes, are they "gifts?" If so, what limits apply?
4. Are there any restrictions on how such funds can be spent?
5. May such funds be used for future campaigns?
6. What, if any, additional restrictions or reporting requirements are placed on these

contributions?

SHORT ANSWERS

1. No. A Councilmember who will not be seeking re-election due to the City's term limits, who carries no campaign debt from prior elections, and who is not seeking election to another office may not continue to raise funds for any purpose.
2. No. Since fundraising is prohibited under the facts presented, both state and local law prohibit fundraising for officeholder purposes. However, excess campaign funds may still be used for officeholder expenses as long as those expenses are reasonably related to legitimate legislative or governmental purposes.
3. The answers to questions one and two render this question moot.
4. The answers to questions one and two render this question moot. However, an officeholder who already has excess campaign funds may use those funds while in office so long as those expenses are reasonably related to legitimate legislative or governmental purposes.
5. The answers to questions one and two render this question moot.
6. The answers to questions one and two render this question moot.

ANALYSIS

Proposition 208 was an initiative adopted by California voters in November 1996 that amended the California Political Reform Act [PRA]. In January 1998, U.S. District Court Judge Lawrence Karlton ruled Proposition 208 unenforceable because several of its key provisions were unconstitutional. *Id.* Among other things, Proposition 208 had set strict time limits on campaign fundraising both before and after an election. It had also created “officeholder accounts” and rules governing the funding and use of those accounts.

The San Diego Election Campaign Control Ordinance [ECCO], although discussed in the *Scully* case, was not touched by the ruling. ECCO remains in effect. As discussed below, although it sets no time limits on fundraising, ECCO prohibits fundraising that is not tied to a specific election. ECCO also does not recognize “officeholder accounts.”

ECCO Prohibits Campaign Fundraising Except in Relation to a Specific Election

ECCO specifically limits contributions to \$250 per contributor, *per election*. San Diego Municipal Code [SDMC] 27.2941(a). ECCO recognizes three types of elections: primary, general, and special. SDMC 27.2903(g). ECCO prohibits campaign fund raising except in relation to a *prospective specific election* or, within certain time limits, to a *specific past election* for purposes of retiring campaign debt. City Att’y MOL 98-10 (Apr. 21, 1998) (copy attached). To quote from the recent MOL, “if there is no campaign debt to be paid off and no election looming, then no campaign contributions may be solicited or accepted.” *Id.* at page 6.

Under the facts presented, an officeholder is subject to the City's term limits and is in his or her last term of office. There were no facts presented about whether there is any debt left over from prior campaigns. We assume there is none. There also were no facts presented to indicate whether the officeholder intends to run for another City office. We assume there are no such plans. The officeholder will not be seeking re-election because of the City Charter's term limits. San Diego Charter 12. Assuming that the officeholder has no debt left over from a previous campaign, has not filed to seek another City office, and is prohibited from running for the term-limited seat, then fundraising is prohibited for any purpose.

ECCO Prohibits Fundraising for “Officeholder Purposes”

Officeholder accounts were created by Proposition 208. Significantly, funds raised for officeholder accounts were not considered campaign funds and, within certain limits, Proposition 208 specifically permitted fundraising for those accounts. Since the *Scully* decision, the Fair Political Practices Commission [FPPC], the state agency charged with administering and interpreting the PRA and Proposition 208's amendments to it, has prohibited fundraising for officeholder accounts. Memorandum to Interested Persons from James M. Hall, Chairman, FPPC, January 21, 1998, at page 3. Expenditures may still be made from officeholder accounts that were created lawfully while Proposition 208 was still in force. *Id.* As it did before the adoption of Proposition 208, state law also allows excess campaign funds to be used for officeholder expenses, so long as the expenses are reasonably related to a legislative or governmental purpose. Cal. Gov't Code 89512.

ECCO does not recognize officeholder accounts. Because the City's laws are silent on the issue, the City relied on state law for rules governing fund raising for, and expenditures from, officeholder accounts. City Att'y MOL No. 96-53 (Dec. 16, 1996). Since the *Scully* decision, “there is no longer any provision under ECCO or the Political Reform Act for incumbents to raise funds for any purpose other than a specific election campaign for which they have organized and declared.” City Att'y MOL No. 98-10 (Apr. 21, 1998) (emphasis omitted). That is, there is no authority under either state or local law to raise funds for officeholder accounts. If an officeholder happens to have excess campaign funds left over from a prior election, those funds may still be used for officeholder expenses. Cal. Gov't Code 89512. But no new fundraising may occur for that purpose.

Remaining Questions are Rendered Moot by Answers to Questions 1 and 2

The last four questions in your memorandum assume that an officeholder may lawfully engage in fundraising even though he or she is subject to the City's term limits, is in his or her last term of office, has no plans to run for another office, and has no campaign debt from prior elections. Because that assumption is incorrect for the reasons discussed above, those four questions are moot.

CONCLUSION

Under ECCO, an officeholder may raise funds only for a specific election, that is, for a primary, general, or special election. An officeholder who is in his or her last term of office

under the City Charter's term limits, may not raise funds unless that officeholder is doing so to retire debt from prior campaigns or has declared formally for another office. Since the *Scully* decision, the officeholder may not raise new funds for officeholder expenses, even though excess campaign monies, or monies sitting in existing officeholder accounts raised before the *Scully* decision was issued, may be used for that purpose. The other questions in this memorandum are rendered moot by the answers to the first two questions.

CASEY GWINN, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

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Attachment

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