

MEMORANDUM OF LAW

DATE: January 27, 1998

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Committee Status of Convention and Visitors Bureau for
Publication of Three Ads

QUESTIONS PRESENTED

1. By purchasing three advertisements in the San Diego Union-Tribune, regarding an expanded Convention Center, has the San Diego Convention and Visitors Bureau (ConVis) become a “committee” within the meaning of the San Diego Municipal Election Campaign Control Ordinance (ECCO), and therefore required to open a committee bank account?

2. If the answer to the first question is “yes,” is ConVis also a “committee” according to the Political Reform Act, with campaign disclosure filing requirements?

SHORT ANSWER

We cannot fully answer either question, as they are primarily fact driven. Any further investigation into this matter is more appropriately undertaken by the Public Integrity Unit in the Criminal Division of the City Attorney’s Office. Our opinions with regard to the law are set forth below.

ANALYSIS

I.

San Diego Municipal Election Campaign Control Ordinance

A. Definitions.

“Committee” is defined in the ECCO as “any *person* or combination of persons who for *political purposes* directly or indirectly : . . . (2) makes *expenditures* totaling five hundred dollars (\$500) or more in a calendar year.” San Diego Municipal Code [SDMC] 27.2903(d) (emphasis added).

“Person” is defined as “any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, or any other organization or group of persons acting in concert.” SDMC 27.2903(m).

“Political purpose” means “the purpose of influencing or attempting to influence the action of the voters . . . for or against the qualification of a City *measure* for the ballot.” SDMC 27.2903(n) (emphasis added).

“Measure” is “any City Charter amendment or proposition which is : . . . (2) submitted or to *intended be submitted to a popular vote at a City election by the procedure of initiative or referendum whether or not it qualifies for the ballot.*” SDMC 27.2903(k) (emphasis added).

“Expenditure” is defined as “a payment . . . or an enforceable promise to make a payment, *unless it is clear from the circumstances that it is not made for political purposes.* An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.” SDMC 27.2903(i) (emphasis added).

B. Application of the ECCO.

1. Is ConVis a Committee?

ConVis is clearly a person or combination of persons. ConVis bought advertisements in the Union-Tribune pertaining to expansion of the Convention Center. Referendum petitions for Ordinance No. 18443, pertaining to the Convention Center expansion, were circulated in this City. Petitions began circulating on November 26, 1997, the day after adoption of the ordinance, and were filed in the Clerk’s office on December 26, 1997. All of the ads appeared after circulation of the petitions began. Two of the ads bear the following message:

Former City Council member Bruce Henderson is circulating a referendum petition regarding expansion of the San Diego Convention Center. We respect Mr. Henderson’s right to petition city government. However, the Convention Center and its long- delayed expansion are critically important for San Diego’s economy, jobs and tax base. We urge consideration of the

following facts:

(Advertisements, San Diego Union-Tribune, December 7, 1997, at A48, December 9, 1997, at B8.)

Purchase of the advertisements meets the definition of "expenditure," unless it is clear from the circumstances that the ads were *not* made for political purposes. A political purpose includes attempting to influence voters' actions for or against the qualification of a City measure for the ballot. Measures include matters intended to be placed on a ballot by a referendum procedure, whether or not the matter qualifies for the ballot. Even though the referendum had not yet qualified for the ballot when the advertisements were published, the critical determination is whether the ads would be an attempt to influence voter action on a city measure. If they were made for political purposes, ConVis is a committee. If they were educational in nature, and not an attempt to influence how voters acted, they would not be a committee. The Civil Division of this Office is not in a position to render an opinion in that regard.

2. Does ConVis have to open a campaign checking account?

If a committee receives \$500 or more in contributions, it is required to establish a campaign checking account in a local financial institution that provides checking account services. SDMC 27.2921. The term "contribution" is defined in SDMC 27.2903(e). Because of its length, the definition will not be repeated here. Instead, a copy of the definition is attached. If ConVis is a committee under the ECCO, more information would be needed about whether ConVis received contributions for these advertisements to determine whether ConVis is required to open a campaign checking account.

3. Does ConVis have to file campaign disclosure forms?

Under the ECCO, committees are required to file campaign statements in the time and manner required under state law, the Political Reform Act (PRA) of 1974, as amended. SDMC 27.2931. Again, the answer to this question depends on whether ConVis is a committee; if it is, ConVis must file the required statements.

II.

Political Reform Act

A. Definitions.

"Committee" is defined in the PRA as "any person or combination of persons who directly or indirectly does any of the following : . . . (b) makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year." Cal. Gov't Code 82013.

"Independent expenditure" means "an *expenditure* made by any person in connection with a communication which *expressly advocate . . . the qualification, passage or defeat of a*

clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.” Cal. Gov’t Code 82031 (emphasis added).

“Measure” is defined as “any constitutional amendment or other proposition . . . *which is submitted or intended to be submitted* to a popular vote at an election by initiative, referendum or recall *procedure whether or not it qualifies for the ballot.*” Cal. Gov’t Code 82043 (emphasis added).

An “expenditure” is “any monetary or nonmonetary *payment made for political purposes.* A payment is made for political purposes if it is: (1) For the purpose of influencing or attempting to influence the action of the voters *for or against* . . . the qualification or passage of any measure” Tit. 2 Cal. Code of Regs. 18225(a) (emphasis added).

“Expenditure” also means “any monetary or nonmonetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which *expressly advocate* the . . . qualification, passage or defeat of a *clearly identified ballot measure.*” Tit. 2 Cal. Code of Regs. 18225(b) (emphasis added). For purposes of that definition, “clearly identified” means in relevant part: “[a] measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.” Id. Also for purposes of the definition, a communication “expressly advocates” the qualification, passage or defeat of a measure “if it contains express words of advocacy such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot,’ ‘vote against,’ ‘defeat,’ ‘reject,’ ‘sign petitions for’ or *otherwise refers to a clearly identified . . . measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.*” Id. (emphasis added).

B. Application of PRA.

A committee that has received \$1000 or more in contributions in a calendar year is required to file a statement of organization within ten days after it qualifies as a committee. Cal. Gov’t Code 84101. The committee may also have other reporting requirements. See, e.g., Cal. Gov’t Code 84200 and 84202.3.

For the reasons discussed, it is not clear whether ConVis is a committee under the PRA. If it is concluded that ConVis received \$1000 or more in contributions and was attempting to influence the qualification of the referendum for a ballot, it would be a committee and required to file the necessary statements or other reports. If, on the other hand, the ads were determined to be educational and not an attempt to influence voters’ actions, ConVis would not be a committee.

CONCLUSION

The answers to the questions you pose are very fact specific. It is unclear to us whether sufficient facts are present to conclude one way or the other. Any further investigation into this matter is more appropriately undertaken by the Public Integrity Unit in the Criminal Division of

the City Attorney's Office.

CASEY GWINN, City Attorney

By

Cristie C. McGuire
Deputy City Attorney

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Attachment

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