

CHARLES B. WALKER
Executive Director
City of San Diego Ethics Commission
1010 Second Avenue, Suite 1530, San Diego, CA 92101
(619) 533-3476

Complainant

BEFORE THE CITY OF SAN DIEGO

ETHICS COMMISSION

In the Matter of)	Case No. C02-03
)	
Byron Wear)	STIPULATION, DECISION
)	AND ORDER
)	
Respondent.)	
_____)	

THE PARTIES STIPULATE AS FOLLOWS:

1. Complainant Charles B. Walker is the Executive Director of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, campaign finance as set forth in the City's Campaign Control Ordinance [ECCO].

2. Byron Wear [Councilmember Wear] is a member of the San Diego City Council and serves as the representative for District 2. He was first elected to serve District 2 in December 1995, and has served in that capacity continuously to the present. In March 2000, Councilmember Wear was a mayoral candidate for the City of San Diego.

3. The "Wear for Mayor" committee [Committee] is a campaign committee (Committee Identification No. 99-0570) established to support Councilmember Wear's candidacy for mayor in the March 2000 primary election. The committee has not yet been terminated. At all relevant times herein, the committee was controlled by Councilmember Wear within the meaning of the California

Political Reform Act, California Government Code section 82016.

4. Councilmember Wear is referred to herein as "Respondent."

5. This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

6. This Stipulation resolves all factual and legal issues raised in this matter by the Ethics Commission without the necessity of holding an administrative hearing to determine the Respondent's liability.

7. The Respondent understands and knowingly and voluntarily waives any and all procedural rights under the SDMC, including, but not limited to, a determination of probable cause, the issuance and receipt of an administrative complaint, the right to appear personally in any administrative hearing held in this matter, the right to confront and cross-examine witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the Ethics Commission or an impartial hearing officer hear this matter.

8. The Respondent acknowledges that this Stipulation is not binding upon any other law enforcement or government agency and does not preclude the Ethics Commission from referring this matter to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matter.

9. The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. The Respondent further agrees that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics Commission becomes necessary, no member of the Ethics Commission or its staff shall be disqualified because of prior consideration of this Stipulation.

Summary of Law and Facts

10. The purpose and intent of the City Council in enacting ECCO was to "place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in

municipal elections," to "prohibit contributions by organizations in order to develop a broader base of political efficacy within the community," and to "avoid the corruption or the appearance of corruption brought about when candidates for elective office accept large campaign contributions." Accordingly, ECCO sets forth a \$250.00 campaign contribution limit on the total amount any candidate or committee may receive from a person during a single election (SDMC section 27.2941), and prohibits candidates or committees from accepting contributions from organizations (SDMC section 27.2947).

11. SDMC section 27.2903 generally defines a "contribution" as any payment, loan, forgiveness of a loan, forgiveness of a debt, expenditure made at the behest of a candidate, granting of discounts, or transfer of anything of value. In particular, section 27.2903 states that a "contribution" includes:

forgiveness of a debt or other obligation to pay for goods or services rendered, or reduction of the amount of a debt or other obligation to pay for goods or services rendered resulting from a settlement of a claim disputed by the *candidate* or *committee*, unless it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute.

12. SDMC section 27.2945(d) requires that candidates pay vendors for goods and services in full no later than ninety calendar days after receipt of an invoice, or after the last calendar day of the month in which the goods were delivered or the services were rendered.

13. In accordance with the Ethics Commission's investigative and enforcement procedures as set forth at SDMC sections 26.0420 et seq., the Complainant conducted a preliminary review following the receipt of a formal complaint alleging violations of ECCO by the Respondent. The Complainant concluded that a formal investigation was warranted and, following approval by the Ethics Commission, proceeded to conduct a formal investigation. As a result of the investigation, the Complainant concluded that the Committee had incurred debt from two vendors which remained unpaid for more than ninety days. In addition, the Complainant concluded that, at the Respondent's request, one vendor reduced a debt to the Committee from \$9,000 to \$2,000, thereby making an organizational contribution to the Committee in the amount of \$7,000.

COUNTS 1 THROUGH 2

[Violation of SDMC Section 27.2945(d)]

14. During and after the Respondent's campaign for mayor in the March 2000 primary election, he received goods and/or services from two vendors: Non-Partisan Candidate Evaluation Council (Count 1); and Andrea Todd (Count 2). The Respondent did not pay for the goods/services provided by these vendors within ninety days of receiving invoices from them, or within ninety days after the last calendar day of the month in which the goods/services were provided, as required by San Diego Municipal Code section 27.2945(d).

COUNTS 3 and 4

[Violation of SDMC Sections 27.2941 and 27.2947]

15. During the Respondent's campaign for mayor in the March 2000 primary election, he received goods and/or services from Non-Partisan Candidate Evaluation Council for which the originally negotiated price was \$10,000. The Respondent originally paid \$1,000 to this vendor, and subsequently asked the vendor to settle the remaining \$9,000 debt for \$2,000. The vendor agreed to the Respondent's request, and the Respondent paid an additional \$2,000 to settle the account in full. Accordingly, the Respondent accepted a \$7,000 contribution from the Non-Partisan Candidate Evaluation Council (Count 3), in violation of the \$250 contribution limit set forth in ECCO (SDMC section 27.2941). The Respondent also accepted an organizational contribution (Count 4) in violation of SDMC section 27.2947.

STIPULATIONS AND ORDER

FACTORS IN MITIGATION

16. The Respondent has cooperated fully with Ethics Commission staff in assisting with the investigation.

17. The exact meaning of the provisions of ECCO at issue has never been interpreted by any formal opinion of the City Clerk, the City Attorney or the Ethics Commission.

18. The debt for the Wear for Mayor Campaign was first incurred prior to the establishment of the Ethics Commission, although the extension of debt at issue occurred after the Ethics Commission

established jurisdiction to enforce ECCO in July 2001.

19. Notwithstanding the language in Section 27.2903 of ECCO which allows for a reduction in vendor debt only when it is "clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute," the Respondent appears to have been operating under the erroneous assumptions that: (a) Only a reduction in debt made for political purposes qualifies as an illegal campaign contribution, and, (b) It is permissible for a candidate to request a reduction in debt based on perceived fair market value, and for a vendor to exercise business judgment to accept a lesser amount.

ADMISSION OF VIOLATIONS

20. The Respondent admits to one count (Count 1) of carrying vendor debt in excess of ninety (90) days in violation of San Diego Municipal Code section 27.2945(d).

21. The Respondent admits to one count (Count 3) of accepting a campaign contribution in excess of the contribution limit set forth in San Diego Municipal Code section 27.2941.

DISMISSAL OF VIOLATIONS

22. In recognition of the Respondent's cooperation with the Ethics Commission's investigation and in exchange for the Respondent's admission to Counts 1 and 3, the Complainant has agreed to dismiss Counts 2 and 4 (vendor debt in excess of ninety days for Andrea Todd and receiving an organizational contribution).

CONCLUSION

A. Debt Beyond Ninety Days

23. Although the ninety day vendor debt rule has not been historically enforced, it is clearly and unambiguously codified in ECCO as a requirement and therefore cannot be ignored by the Respondent or any other candidate. The Respondent and all other candidates running in a City of San Diego election must act prudently and responsibly by not incurring debt unless sufficient contributions have been collected or there is a reasonable certainty that sufficient contributions will be collected to pay the debt off within 90 days. If this practice is not followed, it creates an uneven playing field and the appearance of

corruption if one candidate fails to follow this requirement and incurs long-term debt while another candidate incurs only short-term debt by complying with ECCO.

B. Forgiveness of Debt

24. By the plain language of ECCO, it is presumed that the forgiveness or reduction of a debt is a campaign contribution. The one exception is only when "it is clear from the circumstances that the amount of the reduction was reasonably based on a good faith dispute" with the vendor. Without a "good faith dispute" as justification for the reduction, a candidate could engage in the improper practice of incurring debt with vendors in furtherance of achieving the candidate's political objectives with no intention of paying creditors the amount owed. This gives the candidate engaging in such practice an unfair advantage over other candidates who responsibly pay off debt in a timely manner. Even if a candidate has no wilful purpose or intent to engage in such improper practices, pressuring vendors to reduce debt gives an appearance of corruption. A stated purpose of ECCO is to "avoid the corruption or the appearance of corruption brought about when candidates for elective office accept large campaign contributions."

25. Vendor debt may only be forgiven, reduced, or settled in compliance with ECCO when it is clear from the circumstances that a "good faith dispute" exists. It is the opinion of the Ethics Commission that under the plain meaning of this narrow exception in ECCO, the circumstances must show that the candidate and the vendor have a legitimate dispute regarding the quantity or quality of the services rendered or the goods supplied. In this situation, the Respondent bargained with a vendor for slate mailer services to be provided for an agreed upon price of \$10,000. The evidence shows the services were provided as promised and in a timely manner. The vendor reduced the debt long after services were provided at the request of the Respondent, because the vendor believed insufficient funds existed in the campaign checking account to pay the outstanding bills. However, Respondent believed the originally quoted price was unfair, and sought the renegotiated price, upon learning that other candidates paid the same slate mailer organization significantly less for the same goods and services. Respondent believed the renegotiated sum was fair market value in light of prices paid by other candidates. Respondent made earnest efforts to raise sufficient funds to pay his campaign debts, and ultimately loaned his own personal funds to his campaign to make the payments at issue. However, under ECCO, buyer's remorse

regarding the price agreed to be paid does not translate into a dispute with the vendor unless it can be shown there was a legitimate dispute as to the agreed-upon price or the services provided. Here it was undisputed the initial agreed-upon price for the slate mailer services was \$10,000, and that this price was reflected on campaign disclosure forms filed by the Respondent.

26. Respondent shall pay the amount of \$2,000 for violations of SDMC sections 27.2945(d) and 27.2941. This amount must be paid prior to the Executive Director's execution of this Stipulation.

27. This Stipulation shall not become effective until Respondent has provided to the Ethics Commission the amount set forth in paragraph 26, by check or money order made payable to the City Treasurer.

DATED: _____

CITY OF SAN DIEGO ETHICS COMMISSION

CHARLES B. WALKER, Executive Director
Complainant

DATED: _____

Byron Wear
Respondent

DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on _____. The Ethics Commission hereby approves the Stipulation.

DATED: _____

DOROTHY LEONARD, Chair

SAN DIEGO ETHICS COMMISSION