

AS OF JANUARY 5, 2005, THIS LETTER IS SUPPLEMENTED BY
SAN DIEGO MUNICIPAL CODE SECTION 27.2953

IN ADDITION, SOME OF THE SAN DIEGO MUNICIPAL CODE SECTIONS
REFERENCED IN THIS LETTER WERE RE-NUMBERED AS OF JANUARY 5,
2005 (SEE COMPARISON CHART WITH "OLD" AND "NEW" SECTION NUMBERS
ON THE ETHICS COMMISSION WEBSITE)

June 26, 2003

SDEC Formal Advice Letter No. FA03-06

Advice Provided to:

Councilmember Scott Peters

City Council, District 1

202 C Street, 10th Floor

San Diego, CA 92101

Re: Request for Advice Regarding Recall Committee and Contribution Limits

Dear Councilmember Peters:

This advisory opinion is in response to your memo to the City of San Diego Ethics Commission dated June 23, 2003. You have requested an advisory opinion from the Ethics Commission concerning the formation of a candidate-controlled committee to oppose a recall effort, as well as the contribution limits that apply to such a committee. Your questions and the Commission's responses are detailed below.

QUESTIONS

1. Is it permissible for you to form a committee to oppose a recall effort in light of the fact that you have already formed a committee for your City Council candidacy in the 2004 election?
2. What contribution limits apply to a committee formed to oppose a recall effort?

3. Are there any limits on contributions to the committee formed to oppose the recall from individuals who have already contributed to the committee for the 2004 election?

SHORT ANSWERS

1. Yes, you may form a committee to oppose the recall effort.
2. The committee formed to oppose the recall effort may solicit and accept contributions from individuals in amounts up to \$250.
3. Individuals who have contributed to the committee for the 2004 election may still contribute up to \$250 to another committee formed to oppose the recall effort.

BACKGROUND

In preparation for the upcoming 2004 election cycle, you have formed a committee known as “San Diegans for Scott Peters” to support your re-election, and this committee has accepted contributions from various individuals.

On June 19, 2003, the San Diego Daily Transcript published a notice of intent to circulate a recall petition aimed at recalling you from office.

The City’s Election Campaign Control Ordinance [ECCO] provides as follows with respect to the definition of “election”:

“Election” has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District.

- a. For the purpose of this division, a District or City-wide Primary Election, a

District or City-wide General Election, and a special election are single and separate events.

“Special election” has the same meaning as that term is defined in Section 27.0103, but does not include elections of the San Diego Unified School District.

San Diego Municipal Code [SDMC] § 27.2903.

Section 27.0103 of the SDMC includes the following definition of “special election”:

“Special Election” means any election other than a District or City-wide Primary Election, or District or City-wide General Election. It includes all elections to consider ballot measures as well as elections to fill vacancies in elective office and recall elections.

SDMC § 27.0103.

In addition, the following provision concerning contribution limits is included within ECCO:

It is unlawful for a candidate, committee supporting or opposing a candidate, or individual acting on behalf of a candidate or committee to solicit or accept from any other individual a contribution which will cause the total amount contributed by that other individual in support of or opposition to a candidate to exceed two hundred fifty dollars (\$250) for any single election.

SDMC § 27.2941(a).

ANALYSIS AND CONCLUSIONS

State and local law do not prohibit the formation of more than one committee at any given time, but candidates are limited to one controlled committee for each specific office to which he or she seeks election. For example, a sitting councilmember might form a new committee to seek re-election, and might also form yet another committee for a mayoral election, or for an election in another jurisdiction. Because the recall election is a separate election unrelated to the 2004 election, you are permitted to form a separate committee to oppose the recall effort, regardless of the fact that you have already formed a committee to support your re-election in 2004.

The contribution limit set forth in ECCO clearly states that a committee may accept contributions of up to \$250 per individual “for any single election.” Moreover, the definitions set forth in ECCO and the Elections Code clarify that a recall election is a single election. Therefore, this \$250 contribution limit is applicable to a committee formed for the purposes of supporting or opposing a recall effort.

Because ECCO clearly states that there is a contribution limit of \$250 per election, it is clear that contributions made for separate elections are not aggregated for purposes of the contribution limit. Therefore, individuals who have already contributed to the San Diegans for Scott Peters committee may also contribute up to \$250 to another committee formed to oppose the recall effort.

Sincerely,

Charles B. Walker

Executive Director

CBW:jm