

July 1, 2004

SDEC Formal Advice Letter No. FA04-05

Advice Provided to:

Bill Baber
Office of Mayor Dick Murphy
202 "C" Street, 11th Floor
San Diego, CA 92101

Re: Request for Advice Regarding Communications Identifying a Candidate or Elected Official

Dear Mr. Baber:

This advice letter has been prepared in response to your memorandum to the City of San Diego Ethics Commission dated June 30, 2004. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Election Campaign Control Ordinance and the City's Ethics Ordinance, both of which are contained in the San Diego Municipal Code [SDMC]. Your memorandum seeks advice concerning whether the Mayor has any reporting obligations in connection with a private party's mailer that identifies the Mayor but does not expressly advocate his election or defeat in a City election.

According to the City's Election Campaign Control Ordinance [ECCO], the definition of "contribution" includes any expenditure made at the behest of a candidate. ECCO defines "expenditure" to mean any payment "unless it is clear from the circumstances that it is not made for political purposes." Finally, ECCO defines "political purpose" to mean "the purpose of influencing or attempting to influence the action of the voters for or against the nomination, election, defeat or recall of any candidate or elective officer." SDMC § 27.2903.

You have provided a copy of the proposed mailer. The mailer contains language indicating that it was not printed or mailed at government expense. It invites recipients to attend the Grand Opening of State Route 56. Mayor Murphy's name appears on the flyer. Mayor Murphy is a candidate for re-election in the upcoming general election in November of 2004. The mailer does not expressly advocate Mayor Murphy's election or defeat at this election. In fact, there is nothing in the mailer that suggests it is being made or circulated for political purposes. The mailer, therefore, is not considered a contribution or expenditure subject to ECCO's reporting requirements.

In addition to triggering concerns under the City's campaign laws, payments by private parties also implicate provisions of the City's Ethics Ordinance, particularly as they pertain to the

acceptance of gifts. According to the Ethics Ordinance, a payment that “confers a personal benefit on the recipient” is considered a gift. SDMC §27.3503. There is no indication that the subject mailer will confer any personal benefit on the Mayor. Even if the mailer did confer a personal benefit, however, the Ethics Ordinance contains an exception to the gift restrictions that explicitly applies to payments for events of a governmental nature. The mailer you provided states that the event will be to celebrate the grand opening of a City highway and, as such, the event is of a governmental nature. Under these circumstances, the following provision of the Ethics Ordinance is applicable:

The following are not considered benefits for the purpose of this Division, and are not subject to the restrictions of section 27.3520:

...

- (y) Payments made at the behest of, at the request of, or in consultation or coordination with, an elected City Official, that are made to co-sponsor an event that is principally legislative, governmental, or charitable in nature, although such payments made to an elected Official by a single source totaling \$5,000 or more in a calendar year for this type of event must be reported in accordance with California Government Code section 82015(b).

SDMC § 27.3525(y).

Your memorandum states that the private party will be making payments in excess of \$5,000 in connection with the mailer for the event. If this payment has been made at the behest of, at the request of, or in consultation or coordination with, Mayor Murphy, then the reporting requirements contained in section SDMC § 27.3525(y) must be followed. Your memorandum indicates that the Mayor will be reporting the private party’s payments as required under SDMC § 27.3525(y) as well as the corresponding provision of state law, which provides that payments made at the behest of a candidate who is an elected official for legislative or governmental purposes shall be reported within thirty days following the date on which the payment or payments meet or exceed \$5,000. California Gov’ t Code § 82015(b)(2)(B)(iii).

Based on the information you provided, it does not appear that the Mayor has any additional reporting obligations associated with the private party’s mailer for this event.

If you have any additional questions, please contact our office.

Sincerely,

Stacey Fulhorst
Executive Director