

January 14, 2005

SDEC Formal Advice Letter No. FA05-02

Advice Provided to:
Councilmember Ralph Inzunza
202 "C" Street, 10th floor
San Diego, CA 92101

Re: Request for Advice Concerning Compliance with Notification Requirements
Regarding Reimbursement Prohibition

Dear Councilmember Inzunza:

This advice letter has been prepared in response to your e-mail to the San Diego Ethics Commission dated January 10, 2005. You are seeking formal advice from the Ethics Commission concerning your plans to comply with the notification requirements regarding the prohibition on reimbursement of campaign contributions set forth in the City's Election Campaign Control Ordinance [ECCO].

QUESTION

By placing the statement required by San Diego Municipal Code [SDMC] section 27.2945 in bold-faced type in the middle of a form used by contributors to disclose pending matters when making contributions to your legal defense fund, have you complied with the notice requirement set forth in this provision of ECCO?

SHORT ANSWER

Yes. Your plan to place the requisite statement in the middle of the form your contributors will use to disclose pending matters when making contributions to your legal defense fund will comply with the notice requirement in SDMC section 27.2945.

ANALYSIS AND CONCLUSION

As you know, the recent amendments to ECCO include the following new provision:

It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in contrasting typeface not smaller than the typeface used in a majority of the text in the materials or on the site: "It is unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate."

SDMC section 27.2945(a).

You have indicated in your e-mail as well as information you have provided verbally that you plan to establish a legal defense fund pursuant to the provisions of SDMC sections 27.2965 through 27.2969. As you know, individuals who wish to make contributions to a legal defense fund must complete a disclosure form identifying the particulars of all matters that the contributor has pending before the City Official's board, department, or agency. SDMC section 27.2969. Although the Ethics Commission has proposed a "Disclosure of Pending Matters" form for this purpose, committees and contributors are not required to use this form.

You have provided a copy of the "Disclosure of Pending Matters" form prepared by the Ethics Commission which you have modified to include the notice requirement regarding reimbursement of contributions. Specifically, the form you have provided includes the statement required by SDMC section 27.2945(a) in the middle of the form, immediately below the discussion regarding the nature of "pending matters," and immediately above the actual disclosure portion of the form. The statement is in the same typeface as the rest of the form, and in fact appears in bold-faced type in black ink on a white background. According to the information you have provided, you will require that all contributors sign one of these forms, regardless of whether or not they have "pending matters" to disclose.

As a result of the foregoing, we conclude that the modified form you have proposed will comply with SDMC section 27.2945(a) in that the requisite statement will appear in a prominent location, in contrasting typeface, and in a typeface not smaller than the typeface used in a majority of the text.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

Sincerely,

Stacey Fulhorst
Executive Director