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SAN DIEGO MUNICIPAL CODE SECTION 27.2947(f)**

April 2, 2004

SDEC Informal Advice Letter No. IA04-04

Lori Jacobs
Scott & Cronin LLP
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024

Re: Request for Informal Advice Regarding Acceptance of Contributions from Trust
Accounts

Dear Ms. Jacobs:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated March 17, 2004. You are seeking advice from the Ethics Commission interpreting the requirements and prohibitions of the City's Election Campaign Control Ordinance [ECCO] which is contained in the San Diego Municipal Code [SDMC]. Your letter asks general, hypothetical questions, and accordingly we consider your letter to be a request for informal advice. The subject of your inquiry relates to the question whether it is permissible to accept a campaign contribution from a check drawn against a trust account. Your letter includes a series of hypothetical examples.¹ Our interpretation of ECCO on this point and the application of ECCO to your hypothetical examples are set forth below.

ANALYSIS OF ECCO

ECCO contains the following explicit prohibition on contributions from any type of entity, other than an individual:

It is unlawful for a candidate, committee, committee treasurer or other person acting on behalf of a candidate or committee to accept a contribution from any person other than an individual.

¹ Although the Ethics Commission generally disfavors rendering advice on purely hypothetical matters, it makes exceptions in instances such as this where its guidance may be of use to other treasurers and committees active in the City of San Diego.

SDMC § 27.2947(a).

As you indicate in your letter, “person” is defined in the ordinance as follows:

“Person” means 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.

In your letter, you point out that this definition does not specifically include personal or individual trusts, and based thereon you question whether contributions from these types of entities are permitted by ECCO since they are “personal” and reportedly have no business affiliation. Although the definition of “person” does not explicitly include or exclude personal trusts, the legislative intent of section 27.2947 is clear: to prohibit the making or accepting of contributions from any type of entity other than an individual. The creation of a personal, living, family, or revocable trust establishes a legal entity separate from the person or persons creating it. That is a fundamental reason for creating a trust. Because this separate legal entity is distinguishable from a person acting in an individual capacity, it may not lawfully make campaign contributions in local candidate elections.

Your letter states that contributors have advised you that all of their assets are held by their trusts. You suggested that it would be unlikely for these contributors to open a separate individual bank account in order to participate in local elections. Notwithstanding the preferences of contributors, the plain language of ECCO permits candidate contributions only from persons who are individuals, not from any other type of entity. ECCO’s restrictions do not, however, prevent an individual whose funds are owned by a trust from lawfully participating in City candidate elections. In addition to opening an individual checking account, such a person may make a credit card contribution from an account opened in the individual’s name or a cash contribution (under \$100).

You point out in your letter that the FPPC distinguishes between different types of trusts in its interpretation of the Political Reform Act [PRA], and treats personal trusts as if they are individuals with regard to the disclosure of occupation and employer information on campaign statements. Although your point illustrates the close relationship between an individual and his or her personal trust, keep in mind that the PRA does not prohibit contributions from non-individuals, and that FPPC regulations do not interpret SDMC section 27.2947, which restricts the source of contributions. In other words, the FPPC’s treatment of personal trusts is limited to the manner in which contributions are reported. It does not extend to who may, or may not, lawfully make a contribution in a City of San Diego candidate election. The FPPC’s position on reporting practices, therefore, does not resolve the questions posed in your letter regarding ECCO’s restriction on the source of contributions.

APPLICATION OF ECCO TO HYPOTHETICALS

In your letter, you mention several hypothetical contributors and ask whether contributions from each would be banned by ECCO. In light of the analysis set forth above, a committee would be prohibited from accepting contributions from all of the following hypothetical contributors:

Joe Jones Trust

Jones Family Trust, Joe & Jane Jones Trustees

Joe Jones, Trustee of the Jones Revocable Trust

Joe Jones Living Trust

Because each of the foregoing names on a contribution check indicates that the contributor is an entity other than an individual, the acceptance of such a contribution would be impermissible.

The same is not true, however, with a check from "Joe Jones," although such a check may in fact be drawn against a trust account. ECCO does not require, and the Ethics Commission would not expect, a committee or committee treasurer to independently verify that a contribution check drawn on an account in the name of an individual is actually from an individual. If the committee's agents acted reasonably and in good faith when deciding to accept a contribution, the Ethics Commission would certainly consider those actions to be substantial factors in mitigation in the event that an audit or enforcement action later revealed that the contribution was from a prohibited source.

I hope this letter sufficiently answers your questions. If you require additional assistance, or if you would like to obtain guidance regarding an actual contribution received by a committee, please contact our office.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s