

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**M E M O R A N D U M**

**DATE:** April 6, 2009

**TO:** Chair and Members of the San Diego Ethics Commission

**FROM:** Stacey Fulhorst, Executive Director

**SUBJECT:** Application of Pre-Election Fundraising Time Limit to Exploratory Activities

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As you know, the City's Election Campaign Control Ordinance [ECCO] prohibits City candidates from soliciting or accepting contributions more than twelve months before an election. SDMC 27.2938(a). The Commission staff recently realized that this provision does not address a potential City candidate's exploratory activities, such as conducting polls for name recognition or determining the issues important to voters. According to the FPPC, payments made for purely exploratory activities that do not include any type of express advocacy or mention of a candidate's qualifications for office are not considered campaign contributions or expenditures. The FPPC has advised, however, that such payments become reportable contributions if and when an individual ultimately decides to become a candidate. In such a scenario, a payment made previously for exploratory activities is either reported as a non-monetary contribution by the candidate (if he or she personally paid for the exploratory activities) or as a non-monetary contribution from a third party (if another individual paid for all or a portion of the exploratory activities). If a potential candidate ultimately decides not to run for office, the payments for the exploratory activities are never reported. *In re Powell*, FPPC Adv. Ltr. A-85-241.

Because of the City's twelve month pre-election fundraising time limit, individuals who are considering running for elective office in a June primary election tend to conduct their exploratory activities in March and April of the preceding year so that they are prepared to begin fundraising in June (twelve months before the election). If such an individual makes a decision to become a City candidate before June, however, funds spent on previous exploratory activities would become "contributions" that the candidate has arguably accepted more than twelve months before an election. In other words, if the time limits in SDMC section 27.2938(a) were applied to exploratory activities, many potential City candidates would effectively be prevented from making decisions to run for office and/or announcing their candidacies until twelve months before the primary, at which time they would be permitted to solicit and accept contributions.

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It is relevant to note that, at the time the Commission proposed the concept of a pre-election fundraising time limit in 2004, there was no discussion about the application of the time limit to exploratory activities. Instead, the Commission's recommendation was based on a desire to address the situation in which an incumbent officeholder begins raising money for his or her re-election four years in advance in order to discourage potential challengers from running. It is also relevant to note that, at the time it made presentations to the Rules Committee and City Council regarding this provision, the Commission pointed out that candidates would only be prohibited from accepting contributions - not campaigning for office - more than one year before the primary. In light of these facts, the staff believes that the pre-election fundraising time limit was intended to apply to contributions made for the purpose of supporting or opposing a City candidate, and not to payments made for purely exploratory activities. However, we would like to obtain input from the Commission before revising our educational materials to address this issue. Therefore, I have asked the Chair to docket this matter for discussion at our upcoming meeting on April 9, 2009.

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Stacey Fulhorst  
Executive Director