



THE CITY OF SAN DIEGO

August 12, 2011

Mr. David Tos
Friends of David Tos
(Address Withheld)

Re: Ethics Commission Audit of Friends of David Tos (ID # 1303810)

Dear Mr. Tos,

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting held on August 11, 2011. Although the report reflects twelve material findings, the Commission does not believe that the findings warrant additional administrative remedies. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

If you have any questions concerning the foregoing, please contact me at your convenience.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: Dan De Marco, Treasurer



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 Fax (619) 533-3448





THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

August 5, 2011

Mr. David Tos
Friends of David Tos
(Address Withheld)

Treasurers: Dan De Marco
8738-9 Villa La Jolla Drive
San Diego, CA 92037

SAN DIEGO ETHICS COMMISSION
AUDIT REPORT:
Friends of David Tos

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Friends of David Tos, Identification Number 1303810 ("the Committee") for the period from January 15, 2008, through October 31, 2008. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 18, 2009. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29). The Election Campaign Control Ordinance (ECCO) was amended on January 1, 2009. This Committee operated under the previous ECCO, and therefore all Code references in this report relate to the provisions of ECCO that were in effect prior to January 1, 2009.

During the period covered by the audit, the Committee reported total contributions of \$11,264.00 and total expenditures of \$11,264.00. **The audit revealed twelve material findings:**

- **The Committee inaccurately reported that it had paid two vendors, failed to report five accrued expenses, and failed to report expenditures to two vendors on its final campaign statement, in violation of San Diego Municipal Code section 27.2930; and**
- **The Committee accepted and deposited three contributions that exceeded the contribution limit in violation of San Diego Municipal Code section 27.2935 because it did not comply with the requirements associated with the acceptance of contributions drawn off joint checking accounts.**



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II. Committee Information

On January 29, 2008, the Committee filed a Statement of Organization with the Secretary of State indicating that it had not yet qualified as a committee. Although the Committee's records indicate it received contributions totaling \$1,000 or more as of March 4, 2008, it failed to file an amended Statement of Organization reporting the date it qualified as a committee. The Committee did not file a Statement of Organization with the San Diego City Clerk. The Committee was formed to support the election of David Tos for Council District 7 in the June 3, 2008, primary election. On October 31, 2008, the Committee filed a Statement of Termination indicating that its filing obligations were completed on September 30, 2008. The Committee's treasurer was Daniel De Marco.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements, pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with applicable filing deadlines;
3. Compliance with restrictions on contributions, loans and expenditures;
4. Accuracy of total reported receipts, disbursements and cash balances as compared to bank records; and
5. Compliance with all record-keeping requirements.

V. SUMMARY OF APPLICABLE LAW

San Diego Municipal Code Section 27.2930 - Base Level Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code section 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirement:

....

Government Code section 84211 – Contents of Campaign Statements

Each campaign statement required by this article shall contain all of the following:

....

- (i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars (\$100) or more.
- (j) The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than one hundred dollars (\$100).
- (k) For each person to whom an expenditure of one hundred dollars (\$100) or more has been made during the period covered by the campaign statement, all of the following:
 - (1) His or her full name.
 - (2) His or her street address.
 - (3) His or her occupation.
 - (4) The name of his or her employer, or if self-employed, the name of the business.

....

For purposes of subdivisions (i), (j), and (k) only, the terms “expenditure” or “expenditures” mean any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

San Diego Municipal Code Section 27.2935 – Contribution Limitations

- (a) It is unlawful for an individual to make to any candidate or committee supporting or opposing a candidate, or for any candidate or committee supporting or opposing a candidate to solicit or accept, a contribution that would cause the total amount contributed by that individual to support or oppose the candidate to exceed \$250 for any single election if the candidate is seeking City Council district office, or to exceed \$300 for any single election if the candidate is seeking the office of the Mayor or City Attorney.

....

- (e) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

Title 2, section 18533(a) of the California Code of Regulations - Contributions from Joint Checking Accounts

- (a) A contribution made from a checking account by a check bearing the printed name of more than one individual shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise. The document shall indicate the amount to be attributed to each contributing individual and shall be signed by each contributing individual whose name is printed on the check. If each individual whose name is printed on the check signs the check, the contribution shall be attributed equally to each individual, unless an accompanying document signed by each individual directs otherwise. If the name of the individual who signs the check is not printed on the check, an accompanying document, signed by the contributing individuals, shall state to whom the contribution is attributed.

VI. Material Findings

Section 27.2930: Base Level Campaign Statements and Disclosures

1. The Committee inaccurately reported that it had paid two vendors on its pre-election campaign statement covering the period from March 18, 2008, through May 17, 2008. In particular, it reported that it had paid COGS \$682.75 and Impact Placements \$325.00, when in fact no such payments were made during this reporting period.
2. The Committee failed to report accrued expenses on its campaign statements. In particular, it failed to report two accrued expenses on its pre-election campaign statement for the period ending March 17, 2008, and failed to report three accrued expenses on its pre-election campaign statement for the period ending May 17, 2008, as presented in the following table:

Reporting Period	Vendor	Invoice Date	Amount
01/01/08 - 03/17/08	Print Net	02/20/08	\$ 1,136.22
01/01/08 - 03/17/08	Leonard Porrello Media Consulting	03/01/08	\$ 140.00
03/18/08 - 05/17/08	Safari Signs & Etched Solutions	04/03/08	\$ 37.46*
03/18/08 - 05/17/08	COGS South Signs	04/15/08	\$ 682.75
03/18/08 - 05/17/08	Impact Placements	04/15/08	\$ 650.00

* The total invoice amount was \$508.58, of which \$471.12 was paid during the reporting period leaving a remaining balance of \$37.46.

3. The audit revealed that the Committee failed to disclose any of its expenditures on its terminating campaign statement filed on November 9, 2008, for the period covering July 1, 2008, through September 30, 2008. In particular, the Committee failed to report one unitemized expenditure of \$15.00 for bank fees, and expenditures totaling \$488.79 paid to the Committee’s treasurer during the reporting period.

At the post-audit conference held on July 7, 2011, the Committee acknowledged its reporting mistakes but contended that its overall actions evidence its intent to substantially comply with applicable regulations. In addition, the Committee asserted that its reporting errors were unintentional oversights.

Section 27.2935: Failure to Comply with Contribution Limits

The Committee accepted the following three contributions that exceeded the \$270 contribution limit because it did not comply with the rules concerning contributions drawn off joint checking accounts set forth in FPPC Regulation 18533(a):

Account Holders	Check No.	Amount	Date	Signature
Grace & Rina Mocerì	2439	\$ 540.00	03/18/08	Grace Mocerì
Salvatore E. & Deseray Mocerì	3594	\$ 540.00	03/26/08	Salvatore Mocerì
Joseph & Jennifer Vaught	1033	\$ 540.00	04/10/08	Joe Vaught

With regard to a contribution drawn off of a joint checking account, title 2, section 18533(a) of the California Code of Regulations states that the contribution is attributed to the individual(s) whose

name(s) appears on the check and to the individual(s) who signs the check. An exception is provided when the check is accompanied by a document indicating the amount to be attributed to each contributing individual and signed by each contributing individual whose name is printed on the check.

The above-referenced contributions were drawn off joint accounts but were only signed by one account holder. The Committee improperly attributed these contributions to both account holders without first obtaining an additional document signed by both account holders. The three contributions of \$270.00 each that were improperly attributed to the second account holder without proper documentation represent 7% of total contributions received.

At the post-audit conference held on July 7, 2011, the Committee stated that it was not aware of the rules concerning joint checking accounts but contended that the Committee's overall actions evidence an intent to substantially comply with applicable regulations. The Committee recently obtained documents signed by contributors Rina Mocerri, Deseray Mocerri, and Jennifer Vaught indicating their intent to make the respective contributions. Although the additional signed documents should have been obtained before the Committee deposited the checks drawn off the joint accounts, they support the Committee's disclosure that these contributions were made by individuals in the amount of \$270.00 each.

VII. Conclusion

Through the examination of the Committee's records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO, with the following exceptions:

- **The Committee inaccurately reported that it had paid two vendors, failed to report five accrued expenses, and failed to report expenditures to two vendors on its final campaign statement, in violation of San Diego Municipal Code section 27.2930; and**
- **The Committee accepted and deposited three contributions that exceeded the contribution limit in violation of San Diego Municipal Code section 27.2935 because it did not comply with the requirements associated with the acceptance of contributions drawn off joint checking accounts.**

Rosalba Gomez
Ethics Commission Auditor

Date

Lauri Davis
Ethics Commission Senior Investigator

Date