THE CITY OF SAN DIEGO

August 17, 2009

Michael Zucchet
Friends of Michael Zucchet 2006
c/o F. Lawrence Scott Jr., Treasurer
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024-8705

Re: Ethics Commission Audit of Friends of Michael Zucchet 2006 (ID # 1255124)

Dear Mr. Zucchet:

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 13, 2009. Although the report reflects 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. Thank you for your assistance and cooperation during the course of the audit.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

August 7, 2009

Michael Zucchet
Friends of Michael Zucchet 2006
c/o F. Lawrence Scott Jr., Treasurer
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024-8705

Treasurer: F. Lawrence Scott, Jr.
Scott & Cronin, LLP
330 Encinitas Blvd., Suite 101
Encinitas, CA 92024-8705

SAN DIEGO ETHICS COMMISSION
AUDIT REPORT:
Friends of Michael Zucchet 2006

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Friends of Michael Zucchet 2006, Identification Number 1255124 ("the Committee") for the period from May 16, 2003, through September 30, 2005. 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 13, 2007. 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 5, 2005. This Committee operated primarily 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 5, 2005.

During the period covered by the audit, the Committee reported total contributions and loans of $201,998.50 (inclusive of $33,000.00 in candidate loans and $5,719.50 in non-monetary contributions) and total expenditures of $196,294.96. The difference, $5,703.54 reflects non-monetary adjustments and other miscellaneous adjustments. **The audit revealed fifteen material findings: the committee accepted and deposited fifteen contributions from persons other than an individual in violation of San Diego Municipal Code section 27.2947.**

II. Committee Information

On May 16, 2003, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it had not yet qualified as a committee. The Committee filed an amended Statement of Organization to report the date that it qualified as a committee on May 19, 2003. The Committee was formed to support the re-election of Michael Zucchet for City Council in the March 7, 2006, District 2 election. The Committee had one Legal Defense Fund open from January 19, 2005, through September 30, 2005, which is included in this audit. The Committee terminated on September 30, 2005. The Committee's treasurers were F. Laurence Scott Jr. and Nancy Haley from Scott & Cronin LLP.

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 27.2947– Prohibition and Limits on Contributions from Organizations

(a) 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.

(b) It is unlawful for a person other than an individual to make a contribution to any candidate or committee, except to a committee that is organized solely for the purpose of supporting or opposing the qualification of a City measure for the ballot, or the adoption or defeat of a City measure, and the committee pursues no other purpose.

(c) For purposes of Section 27.2494(a) and (b), the term "committee" includes any committee that makes independent expenditures, in addition to any controlled committee.

. . . .

VI. Material Findings

A. Section 27.2947: Failure to Comply with the Prohibition on Contributions from Organizations

The Committee accepted and deposited fifteen contributions from persons other than an individual. The audit revealed that Committee received the following fourteen contributions drawn from trust checking accounts and one contribution drawn from a business checking account:

Date	Contributions	Check No.	Amount
	Trust Accounts		
05/19/03	Milton Fradkin, The Fradkin Family Trust	1042	$ 250.00
05/20/03	John Logan, The John Richard Logan, II Trust	149	$ 250.00
05/21/03	Robert L. Baker, Baker Family Trust	2716	$ 250.00
05/29/03	Sol Price Trustee, Sol & Helen Price Trust	1142	$ 250.00
06/01/03	William & Nora Smith, TTEES, Smith Living Trust	2023	$ 100.00
07/10/03	Ernest H. Wright, TTEE	3102	$ 250.00
07/16/03	Ernest H. Wright II, TTEE, Wright Family Trust	221	$ 250.00
08/18/03	Wilda Jones Shafer, Wilda S. Jones Trust	1920	$ 10.00
08/20/03	Elizabeth G. Sherry, Trustee, The Sherry Family Trust	4141	$ 50.00
08/20/03	Irwin Mark Jacobs, Jacobs Family Trust	4875	$ 250.00
09/08/03	Anne Dungan Ewing, Trustee	2743	$ 50.00
09/30/03	Jacqueline Sinclair, TTEE	567	$ 250.00
10/02/03	Ann L. Navarra, Ann L. Navarra Trust	742	$ 250.00
12/16/03	Allison Price, TTEE	3476	$ 250.00
			$ 2,710.00
	Business Account		
06/03/04	Sanderling Properties, Phyllis R. Kraus	13416	**$ 250.00**

During the 2003-2004 election period there was confusion among candidates about accepting contributions from trust accounts. The Ethics Commission addressed the issue in a formal advice letter dated April 2, 2004, and clarified that trust account checks were prohibited pursuant to the ban on contributions from organizations. It is relevant to note that this advice letter was issued after the Committee received the trust account contributions.

At the post-audit conference held on July 14, 2009, the Committee stated that the trust contributions

were accepted prior to the issuance of the Commission's April 2, 2004, advice letter concerning trust accounts. With regard to the one business contribution listed above, the Committee stated that it had reasonable procedures in place to identify contributions from non-individuals, and attempted to identify all contributions drawn on business checking accounts. The Committee asserted that the one business check is de minimus in light of the Committee's overall actions to substantially comply with applicable regulations.

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. However, the audit revealed fifteen material findings: **the committee accepted and deposited fifteen contributions from persons other than an individual in violation of San Diego Municipal Code section 27.2947.**

_____ _____

Rosalba Gomez
Ethics Commission Auditor

Date

_____ _____

Lauri Davis
Ethics Commission Senior Investigator

Date