

August 9, 2019

VIA REGULAR & ELECTRONIC MAIL

Mr. Ricardo Flores
Flores for City Council 2016
4142 Adams Avenue, Apt. 206
San Diego, CA 92116

Re: Ethics Commission Audit of the Flores for City Council 2016 (ID#
1377572) and Ethics Commission Case No. 2019-05

Dear Mr. Flores:

The Ethics Commission audit of the Flores for City Council 2016 (ID# 1377572) is now concluded, and the Final Audit Report is enclosed. The report reflecting material findings was delivered to and accepted by the Ethics Commission at its meeting on August 8, 2019. As you know, the Commission conducted an investigation related to the findings noted in the report, and approved a stipulation in the above-referenced matter at its meeting on August 8, 2019.

Sincerely,

[REDACTED]

Rosalba Gomez
Audit Program Manager

Enclosure

cc: Nancy R. Haley, Treasurer
Haley & Company, LLC
374 No. Coast Highway 101, Suite 2
Encinitas, CA 92024

FINAL AUDIT REPORT

August 5, 2019

Mr. Ricardo Flores
Flores for City Council 2016
4142 Adams Avenue, Apt. 206
San Diego, CA 92116

Treasurer: Nancy R. Haley
374 No. Coast Highway 101, Suite 2
Encinitas, CA 92024

SAN DIEGO ETHICS COMMISSION AUDIT REPORT: *Flores for City Council 2016*

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Flores for City Council 2016, Identification Number 1377572 (“the Committee”) for the period from May 5, 2015, through December 31, 2016. 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 14, 2017. 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) has been amended on several occasions; all Municipal Code references in this report relate to the provisions of ECCO that were in effect at the time of the actions described herein.

During the period covered by the audit, the Committee reported total contributions of \$304,287.45 (inclusive of \$5,472.08 in non-monetary contributions) and total expenditures of \$299,598.09. Total cash contributions relative to total expenditures resulted in a \$782.72 differential that was reconciled by the Committee’s miscellaneous increase to cash. **The audit revealed twelve material findings:**

- **the committee failed to include a “on behalf of” disclosure in ten mass telephone communications in violation of San Diego Municipal Code section 27.2971; and**
- **the committee failed to include a “paid for by” disclosure in two mass media advertisements in violation of San Diego Municipal Code section 27.2974.**

II. Committee Information

On June 12, 2015, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the election of Ricardo Flores for Council District 9 in the June 7, 2016, primary election and November 8, 2016, run-off election. On January 20, 2017, the Committee filed a Statement of Termination indicating that its filing obligations were completed on December 31, 2016. The Committee's treasurer was Nancy R. Haley of 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

Section 27.2925 - Accounting and Recordkeeping

...

- (c) Every *candidate* or *committee* paying for campaign advertisements supporting or opposing one or more *City candidates* or *City measures* shall maintain records in accordance with the following requirements:

...

- (2) for *mass telephone communications* subject to section 27.2981, records that identify the date(s) the telephone calls were made and the number of calls made, as well as a transcript of the messages communicated and a copy of any recorded messages;

...

Section 27.2971 – Telephone Communications

- (a) It is unlawful for any candidate or committee to engage or hire other to engage in mass telephone communications unless the communications include a statement that the communications are “paid for by,” or are otherwise being made “on behalf of” immediately followed by the name of each candidate or committee that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
- (1) A call is “paid for by” a candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.
-
- (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a candidate or committee when it is made by a volunteer at the direction of the candidate or committee.

Section 27.2974 – Mass Media Advertisement Disclosure

- (a) It is unlawful for any candidate or committee to pay for advertising in a regularly published newspaper, periodical, or magazine of general circulation, or on any Internet web page, for the purpose of supporting or opposing one or more City measures or candidates for elective City office unless the advertisement includes the words “paid for by” followed by the name of that candidate or committee.
-

VI. Material Findings

Section 27.2971 – Telephone Communication

SDMC section 27.2971 states that committees that use paid staff to engage in mass telephone communications must include the words “paid for by” immediately followed by the name of the committee. Similarly, committees using volunteers to engage in mass telephone communications must include the words “on behalf of” immediately followed by the name of the committee. In addition, SDMC section 27.2925(c)(2) requires that committees maintain a transcript of each telephone communication; this transcript serves as evidence that a committee has complied with the disclosure requirements.

The Auditor determined that the Committee engaged in a total of eleven mass telephone communications. According to information provided by Committee representatives, a mix of paid staff and volunteers were used to make these telephone calls. In particular, paid callers reportedly used six of the eleven scripts. Insufficient recordkeeping by the Committee prevented the Auditor from determining whether these paid callers included the requisite “paid for by” disclosure. Specifically, the scripts maintained by the committee all indicate that the callers were to identify themselves as

volunteers during the introduction; the scripts do not include a “paid for by” disclosure in the introduction or anywhere else within the body of the script. Committee representatives pointed out that a footer appears at the bottom of each page stating: “Paid for by Flores for Council 2016 110 West C Street Suite 1300 San Diego, CA 92101.” They stated that paid callers were verbally instructed to use the “paid for by” information in the footer instead of the volunteer language in the script. In support of this assertion, they provided a “Training Guide,” which states that all phone banking was to include a “paid for by” disclosure at the beginning and end (if possible) of each call, and that the disclosure should be provided to any call recipient asking for such information.

According to Committee representatives, volunteers used all eleven scripts. The Auditor determined that only one of these scripts included an “on behalf of” disclosure. The other scripts indicate that callers were to identify themselves as a “volunteer” or a “volunteer/student,” without also disclosing that they were, in fact, volunteering for the Committee. In this regard, the callers failed to adhere to the letter of the law as well as the purpose and intent of the disclosure requirement, which is to let call recipients know the name of the committee responsible for the call.

At the post audit conference held on March 5, 2019, the Committee acknowledged the disclosure mistakes but contended that its overall actions evidence its intent to substantially comply with applicable regulations.

Section 27.2974: Mass Media Advertisements

SDMC section 27.2974 requires committees that pay for mass media advertisements to include the words “paid for by” immediately followed by the name of the committee. The Committee paid a Vietnamese language newspaper (the Tieng Viet – San Diego News) to print the same campaign advertisement in two separate publications in the Vietnamese language. According to information and documentation provided by Committee representatives, the English version included a “paid for by” disclosure and the campaign volunteer who translated it was verbally instructed to include a “paid for by” disclosure in the Vietnamese translation. Despite these efforts, the Committee representatives could not locate the “paid for by” disclosure in the Vietnamese version. Consequently, the Auditor determined that the two mass media advertisements did not comply with the disclosure laws.

At the post audit conference held on March 5, 2019, the Committee representative emphasized that the translator was instructed to include the “paid for by” disclosure in the advertisement and asserted that the omission was not intentional.

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 the necessary documentation regarding contributions and expenditures.

However, the audit revealed the following material findings:

- **the committee failed to include a “on behalf of” disclosure in ten mass telephone communications in violation of San Diego Municipal Code section 27.2971; and**

- **the committee failed to include a “paid for by” disclosure in two mass media advertisements in violation of San Diego Municipal Code section 27.2974.**

[REDACTED]

Rosalba Gomez
Audit Program Manager

Date

[REDACTED]

Stacey Fulhorst
Executive Fulhorst

Date