

**AS OF JANUARY 5, 2005, THIS LETTER IS SUPERSEDED BY  
REVISED SAN DIEGO MUNICIPAL CODE SECTION 27.2903**

August 23, 2002

SDEC Informal Advice Letter No. IA02-03

C. April Boling, CPA  
7185 Navajo Road, Suite L  
San Diego, CA 92119

Re: Request for Informal Advice Regarding Limitations Under ECCO as  
Applied to Independent Expenditure Activity

Dear Ms. Boling:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated August 3, 2002. You are seeking advice from the Ethics Commission interpreting the requirements 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 of when the activities of multiple independent expenditure committees could implicate or trigger the contribution limitations of ECCO. As part of your letter, you submitted a series of hypothetical examples. Our interpretation of ECCO on this point and the application of ECCO to your hypothetical examples are set forth in this opinion.

**ANALYSIS OF ECCO**

SDMC § 27.2903 of ECCO contains a comprehensive and detailed definition of "contribution." In pertinent part, this section reads as follows:

“Contribution” includes:

....

(4) any expenditure made at the behest of a candidate or committee or elective officer, unless full and adequate consideration is received for making the expenditure.”

This definition of contribution also correlates with the definition of “independent expenditure” contained in ECCO, which reads in pertinent part as follows:

An expenditure that is made to or at the behest of a candidate or a committee is not an independent expenditure.

Reading these two definitions together, the concept is clear and unambiguous. If any committee (controlled by a candidate or not) makes an expenditure “at the behest” of another committee (controlled by a candidate or not) the expenditure will not be treated as an expenditure, but rather as a contribution to the committee that the expenditure was made at the behest of. As such, the source and amount of the contribution are subject to the limitations of ECCO set forth in SDMC §27.2941, which limits the source of contributions to individuals and in an amount no greater than \$250.

Therefore, the key to analyzing permissible or non-permissible coordination of activities between committees is to understand the term “at the behest.” This term is not defined in ECCO, but a definition does exist in the Regulations of the Fair Political Practices Committee [FPPC] at title 2, section 18225.7 of the California Code of Regulations, titled “Made at the behest of.” This regulation reads in full as follows:

- (a) “Made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.
- (b) An expenditure is presumed to be made at the behest of a candidate or committee if it is:
  - (1) Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
  - (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.

- (c) An expenditure is not made at the behest of a candidate or committee merely when:
- (1) A person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate's agents concerning the expenditure; or
  - (2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate's agents.

### **APPLICATION OF ECCO TO HYPOTHETICALS**

The hypothetical scenarios contained in your letter of August 3, 2002, and the application of the rules as described above, are as follows;

#### **SCENARIO NUMBER 1**

**Scenario:** Three completely unrelated (they share no common business ownership) business owners meet and agree that they really like Candidate X who is a candidate for City Council. These three owners agree that owner A will spend \$100,000 on a mailing, owner B will spend \$100,000 on radio and owner C will spend \$100,000 purchasing space on slate mailers - all of these activities are on behalf of Candidate X. These business owners do not pool their money - they individually make the arrangements for their respective expenditures. In this and all subsequent scenarios, please assume that none of these activities are coordinated in any way with Candidate X's campaign and that each owner files his/her own 461s on a timely basis.

**Analysis:** In accordance with Government Code Section 82013, and as implied in the hypothetical by reference to each owner filing a Form 461 campaign disclosure form, each owner qualifies as a "committee." As described in the hypothetical, the nature of the interaction between the respective committees may unambiguously be described as an expenditure being "made at the behest" of another committee. The agreement between the parties regarding expenditures is clearly being made "in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent" of the other committees. In this scenario, therefore, ECCO will treat each committee's expenditure as a contribution to the other committees. Since the contributions exceed \$250, owner A has violated SDMC §27.2941(a) by soliciting contributions exceeding \$250 from owners B and C. Owner B has violated SDMC §27.2941(a) by soliciting a contribution

exceeding \$250 from owners A and C, and the same logic applies to owner C. Additionally, all three owners have violated SDMC §27.2941(b) by making contributions in excess of \$250.<sup>1</sup>

### SCENARIO NUMBER 2

**Scenario:** Same as Scenario 1, but owner A had the idea first. He then contacted B & C urging them to make their own independent expenditures as identified above.

**Analysis:** If owners B and C follow the suggestion of owner A and make the expenditures as requested, then owners B and C will have made expenditures “at the behest” of another committee. The expenditures will have been made “at the request or suggestion” of another committee. The expenditures will therefore be unlawful contributions exceeding the \$250 contribution limitation. Owner A has violated SDMC §27.2941(a) by soliciting a contribution exceeding \$250 from owners B and C, and owners B and C will have violated SDMC §27.2941(b) by making contributions in excess of \$250.

### SCENARIO NUMBER 3

**Scenario:** Same as Scenario 1, but owner A spends \$100,000 to have doorhangers printed. owner B pays \$100,000 to contract walkers to distribute the doorhangers paid for by owner A. Owner C still spends \$100,000 purchasing space on slate mailers.

**Analysis:** Same analysis and conclusion as described above under Scenario 1.

### SCENARIO NUMBER 4

**Scenario:** Same as Scenario 1, but all of the owners agree to do a phone bank. Owner A pays for the set-up and some number of calls. Each subsequent payment of \$100,000 by B & C purchases additional telephone calls.

**Analysis:** Same analysis and conclusion as described above under Scenario 1.

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<sup>1</sup> Please note that for purposes of the analyses contained in this letter, it is assumed that the committees at issue are registered with the state in the name of the individual owners and not in the name of the businesses owned by the individuals. If the committees making the expenditures are registered with the state in the name of the respective business organizations owned by owners A, B, and C, then additional violations of ECCO would be triggered by the activity outlined in these scenarios because SDMC section 27.2947 precludes the acceptance or making of organizational contributions to support or oppose a candidate in a City election.

SCENARIO NUMBER 5

**Scenario:** Same as Scenario 1, but owner A pays a coordinator to help B&C implement their expenditures. That individual contacts the radio stations and the slate mailer vendors to get everything set up so that B&C can simply cut their checks. A includes the payment to this individual as part of the total independent expenditures reported on A's 461.

**Analysis:** Same analysis and conclusion as described above under Scenario 1. In addition, title, 2, section 18225.7(b)(2) of the California Code of Regulations provides that an expenditure is presumed to be made "at the behest" if it is "made by or through any agent of the candidate or committee in the course of their involvement in the current campaign." The "coordinator" is an agent of owner A's committee and in this scenario the expenditures by owners B and C are being made through the agent of another committee and are therefore at the behest of owner A's committee.

SCENARIO NUMBER 6

**Scenario:** Same as Scenario 1, but the individual is a political consultant and A, B, and C each pay 1/3 of the consultant's fees.

**Analysis:** Same analysis and conclusion as described above under Scenario 5.

Please be advised that the analyses contained in this informal advice letter are limited to compliance with ECCO and do not extend to any issues that may be implicated relative to compliance with the Political Reform Act. For example, pursuant to state law an independent expenditure committee may not accept any contributions. Whether or not any of the scenarios outlined above would cause an independent expenditure committee to be out of compliance with state law or cause them to transform from an independent expenditure committee to a recipient committee is a question more appropriately posed to the FPPC.

Thank you for contacting the Ethics Commission regarding this matter.

Sincerely,

Charles B. Walker  
Executive Director