

AS OF JANUARY 11, 2006, THIS LETTER IS SUPPLEMENTED BY
SAN DIEGO MUNICIPAL CODE SECTION 27.2980

October 14, 2004

SDEC Formal Advice Letter No. FA04-07

Advice Provided to:

Richard Miller, Treasurer
Taxpayers for Better Transportation Planning,
No on Proposition A
P. O. Box 99179
San Diego, CA 92169

Re: Request for Advice Regarding Use of Candidate's Name on Signs Regarding Ballot Measure

Dear Mr. Miller:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated September 7, 2004. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Election Campaign Control Ordinance [ECCO], which is contained in the San Diego Municipal Code [SDMC]. Your letter seeks advice concerning whether or not a ballot measure advertisement that mentions the support of a City candidate is considered a campaign contribution to that candidate.

You have provided a copy of the proposed sign which reads, "Prop A, Wrong Way, Vote with Donna Frye, No on A, www.TrafficTax.org." You have indicated that all the lettering will be printed in white, the background will be blue, and the logo will be red. Proposition A is not a City of San Diego ballot measure; it is a measure that will be voted on countywide.

According to ECCO, the definition of "contribution" includes any expenditure made at the behest of a candidate. In other words, if the sign is an "expenditure" 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 Councilmember Frye (a candidate in the pending City of San Diego mayoral race), then it would be considered a contribution to Councilmember Frye. To determine whether these factors are met, we must first look at the definition of "expenditure." ECCO defines "expenditure" to mean any "payment . . . unless it is clear from the circumstances that it is not made for political purposes." SDMC § 27.2903. Finally, ECCO defines "political purpose" to mean "the purpose of influencing or attempting to influence the action of the voters for or against the nomination, election, defeat or recall of any

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candidate or elective officer, for or against the qualification of a City measure for the ballot, or for or against the adoption or defeat of any City measure.” *Id.*

Based on the information you have provided, the advertisement contains no language relating to the nomination, election, defeat, or recall of a City candidate. Although the advertisement mentions Councilmember Frye’s position with respect to Proposition A, it does not advocate her election or defeat with respect to the upcoming mayoral election. In other words, the advertisement is not an attempt to influence the action of voters with respect to her candidacy for Mayor.

Additionally, because the subject ballot measure will be voted on countywide, the advertisement is not supporting or opposing a “City measure.” However, even if the advertisement did support a City ballot measure, the legislative intent underlying the definitions of “expenditure” and “political purpose” is clear: if a payment is made for an advertisement that urges a vote for or against a ballot measure, then it is considered an expenditure made for the political purpose of supporting or opposing that ballot measure. Such an expenditure is separate and distinct from a payment made for the purpose of supporting or opposing a City candidate for office, which is also considered an expenditure made for political purposes. It is incongruous to conclude that an advertisement supporting or opposing a ballot measure that mentions an officeholder’s position with respect to the ballot measure (as opposed to urging a particular result in a candidate election) is an expenditure made for the political purpose of supporting or opposing the officeholder’s candidacy.

For the foregoing reasons, the advertisement does not appear to be an expenditure made for the “political purpose” of supporting Donna Frye’s current candidacy for mayor. As a result, the advertisement cannot be considered a contribution to Councilmember Frye’s mayoral campaign. Because it is not considered a contribution to a City candidate, it is not subject to the limitations and source prohibitions set forth in ECCO for contributions used to support or oppose City candidates.

If you have any additional questions, please contact our office.

Sincerely,

Stacey Fulhorst
Executive Director

SF/s