

AS OF JANUARY 5, 2005, THIS LETTER IS SUPPLEMENTED BY  
SAN DIEGO MUNICIPAL CODE SECTIONS 27.2950 AND 27.2951.

ALSO, NOTE THAT FORMER MUNICIPAL CODE SECTION 27.2947,  
WHICH IS CITED IN THIS LETTER, HAS BEEN AMENDED AND  
RE-NUMBERED AS SECTION 27.2950.

April 2, 2004

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

SDEC Informal Advice Letter No. IA04-03

Re: Request for Informal Advice Clarifying Acceptance of Contributions from Sole  
Proprietorships

Dear Ms. Boling:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated March 16, 2004. You are seeking advice from the Ethics Commission interpreting the requirements and prohibitions 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. You have requested clarification of a June 17, 2003, Ethics Commission Advice Letter (IA03-05) regarding acceptance of campaign contributions from sole proprietorships, and you have posed a series of additional hypothetical examples based on your experience during the recent primary election. Our response is detailed below.

#### **ANALYSIS OF ECCO**

As discussed in our previous advice letter, ECCO explicitly prohibits contributions from any type of entity other than an individual. SDMC § 27.2947(a). The previous advice letter concluded, therefore, that ECCO prohibits a committee (other than a ballot measure committee) from accepting a contribution in the form of a business check from an individual's sole proprietorship.

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

In your March 16, 2004, letter, you provide twenty-one examples of naming conventions that you have seen appear on contribution checks. Your letter asks the Ethics Commission to determine whether contribution checks bearing these naming conventions could be accepted by a

candidate-controlled committee, or whether they would instead have to be returned because the information on the checks suggests that they are from business entities.

The Ethics Commission recognizes that it is sometimes difficult to determine whether a contribution is being made by an individual or by that individual's business. Unfortunately, there is no bright-line rule applicable to the twenty-one examples you provided. It is the nature of a hypothetical to exist without real facts, and without an actual context the Ethics Commission cannot tell you whether a contribution check is unlawful.<sup>1</sup> Therefore, we cannot provide you with conclusive advice regarding whether the checks from any of the hypothetical contributors you have identified may lawfully be accepted by a candidate-controlled committee.

Although the name on a check may suggest that the funds are being drawn against a business account, that name does not generally contain, in and of itself, sufficient information upon which to arrive at the conclusive determination you are seeking. For this reason, it is important that you treat the name on a check as only one factor to consider when deciding whether to accept a contribution. As we indicated in our June 17, 2003, advice letter, the name on the check is not the only criterion a committee or treasurer should consider when determining whether a contribution is from a prohibited source. Other criteria include, but are not limited to: additional information provided on the check (such as a taxpayer identification number); the address of the contributor (if it is apparent that it is a business address); and the physical characteristics of the check itself (an oversized check may indicate a business account).

Of course, you may also contact the contributor to obtain additional relevant information. The balance of this letter, therefore, is designed to offer you guidance regarding when a committee would reasonably be expected to contact a contributor to obtain additional information before depositing a check bearing one of the naming conventions you have identified. We have reviewed your hypothetical examples and grouped them in categories we hope you will find helpful.

*A. Probably Acceptable*

The following information on a contribution check, in and of itself, does not strongly suggest that the source of the contribution is not an individual:

John Jones  
Attorney at Law  
CA Bar No. 123456

John Jones  
Attorney

John Jones Attorney

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<sup>1</sup> Although the Ethics Commission generally disfavors rendering advice on purely hypothetical matters, it makes exceptions in instances such as this where its guidance may be of use to other treasurers and committees active in the City of San Diego.

John Jones Attorney at Law

John Jones, Attorney at Law

John Jones  
Attorney at Law

John Jones, Esq.

John Jones, M.D.

John Jones  
Certified Public Accountant

John Jones, CPA

Although some of the above examples suggest an occupational or business relationship between the name and title, it is not uncommon for certain types of professionals to use their titles (e.g., M.D., Ph.D., C.P.A., and Esq.) in their personal affairs. These examples, therefore, do not raise a red flag strongly indicating an association with a business account. Keep in mind, however, that whether or not a name is indicative of a business does not determine whether ECCO has been violated. In other words, notwithstanding its presence on the above list, if the “John Jones, Attorney at Law” check is drawn against a business account, the making and receiving of that contribution would constitute a violation of ECCO. If that were the case, however, and the committee did not possess any other indicia that a business was the source of the contribution, the Ethics Commission would not have expected the committee to conduct additional investigation into the matter. In other words, in instances where it is not reasonable to expect the committee to investigate further before accepting a check, committees that unknowingly accept a check from an impermissible source can expect the Commission to treat the committee’s actions as excusable.

*B. Probably Unacceptable*

In contrast to the above list, candidate committees should be especially cautious about accepting contributions in the form of checks bearing the following naming conventions:

John Jones  
Attorney at Law General Account

John Jones  
Attorney at Law  
General Account

Law Office of John Jones

Law Offices of John Jones  
General Account

Law Offices of John Jones  
Attorney at Law

Law Offices of John Jones  
John Jones

John Jones  
Wardrobe Consultant

John Jones, Architect

John Jones  
John Jones Realty Services

The above naming conventions suggest that a business is the true source of the funds. Although it is common for attorneys to use their title in personal matters, including using it on personal checks, it would be unusual for someone to use the professional title “Architect” or “Wardrobe Consultant” outside the scope of conducting business. We believe the examples set forth above are more than mere professional titles and their presence on a check is a strong indication that the account was established for an individual acting in a business capacity. For this reason, these examples raise a red flag, and it would be prudent for committees to investigate further. Contacting the contributor would be a reasonable and expected means of obtaining sufficient additional information to properly determine whether the contribution may lawfully be accepted. If a committee accepted a check bearing one of the above naming conventions and chose not to conduct any investigation into the true source of the funds, that fact would likely be construed against the committee in the event of an Ethics Commission enforcement action.

### *C. Real Estate Investments*

You have identified the following additional hypothetical examples that appear to relate to an individual’s investment in real property:

John Jones  
Juniper Property Account  
9999 Juniper Street

John Jones  
Property Account

It would be necessary to obtain additional information before determining whether contribution checks from the above sources are from a contributor acting in an individual capacity, or whether they are from a business account. The “Property Account” designation suggests a significant possibility that a business entity created to manage real property investments is the actual source

of the contribution. Therefore, as with those naming designations listed in the “Probably Unacceptable” category, it would be reasonable and prudent for a candidate committee to investigate the source of the funds before depositing these investment property checks.

### **CONCLUSION**

As indicated above, based strictly on the name printed on a check, one cannot determine conclusively whether the hypothetical contributors listed in your letter would be permitted to participate in City of San Diego candidate elections. In each case, additional information would shed some light on whether or not the source of the contribution was indeed an individual. Because an initial inference based solely on the information printed on a contributor’s check could potentially be rebutted by additional information or documentation provided by the contributor, it is incumbent on the treasurer (or other committee agent) to evaluate the information provided and determine whether additional information is required. Although there is no language in ECCO that explicitly mandates the collection of additional facts from a contributor in instances where compliance with the organizational contribution ban is suspect, doing so is implicitly required by ECCO and would constitute a reasonable amount of due diligence to prevent a violation of the law by both the contributor and committee.

It is certainly possible for a committee to unknowingly accept a prohibited contribution, even after exercising due diligence to determine the facts surrounding the contribution. If the committee’s agents acted reasonably and in good faith when deciding to accept a contribution, the Ethics Commission would certainly consider these actions to be substantial factors in mitigation in the event that an audit or enforcement action later revealed that the contribution was from a prohibited source.

I hope this letter sufficiently answers your questions. If you require additional assistance, or if you would like to obtain guidance regarding an actual contribution received by a committee, please contact our office.

Sincerely,

Stacey Fulhorst  
Executive Director