



California Fair Political Practices Commission

July 27, 1987

Stephen M. Eckis
City Attorney, City of Poway
P.O. Box 789
Poway, CA 92064

Re: Your Request for Informal Assistance
Our File No. I-87-202

Dear Mr. Eckis:

You have requested clarification of our previous letter (No. I-87-148) concerning the City of Poway's proposed revised campaign ordinance. This letter is limited to potential conflicts between the proposed ordinance and the Political Reform Act (the "Act"). ^{1/}

QUESTION

Does the Act prohibit a city from adopting a local ordinance which requires that all committees, including committees participating in the elections of more than one jurisdiction, comply with local ordinance contribution limits as to money contributed to support or oppose city candidates or ballot measures?

CONCLUSION

The Act does not prohibit a city from adopting a local ordinance which requires that all committees, including committees participating in the elections of more than one jurisdiction, comply with local ordinance contribution limits as to money contributed to support or oppose city candidates or ballot measures.

ANALYSIS

The Act contains the following provisions regarding local campaign ordinances:

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Stephen M. Eckis
July 27, 1987
Page 2

81009.5. Local Ordinances. (a) Any local government agency which has enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures shall file a copy of the action with the commission.

(b) Notwithstanding the provisions of Section 81013, no local government agency shall enact any ordinance imposing filing requirements additional to or different from those set forth in Chapter 4 for elections held in its jurisdiction unless the additional or different filing requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.

81013. Imposition of Additional Requirements. Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail.

Section 81013.

Neither statute restricts the ability of a city to impose contribution limitations on committees participating in the elections of more than one jurisdiction. Thus, the Act does not limit a city's ability to so regulate the political activity of those committees. We emphasize that this analysis does not address the constitutionality of the proposed ordinance.

Sincerely,

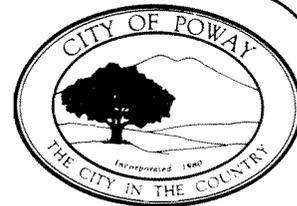
Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:jaj

CITY OF POWAY



BRUCE TARZY, Mayor
BOB EMERY, Deputy Mayor
LINDA BRANNON, Councilwoman
DON HIGGINSON, Councilman
CARL R. KRUSE, Councilman

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July 16, 1987

Kathryn E. Donovan
California Fair Political
Practices Commission
Legal Division
P. O. Box 807
Sacramento, California 95804-0807

Re: Proposed City of Poway Campaign Ordinance
Your File Number I-87-148

Dear Ms. Donovan:

Thank you for your letter of July 8, 1987.

I concluded from that letter and from our telephone conversation that your only concern about the Poway Ordinance requiring all committees, including those participating in the elections of more than one jurisdiction (hereinafter "multi-jurisdictional committees") was the conflict between the filing requirements imposed by the Ordinance on such multi-jurisdictional committees and Government Code Section 81009.5(b). As you can see from the enclosed copy of the revised Ordinance (proposed), Section 2.28.060(E) has been added to expressly resolve the reporting problem.

From the absence of any comment to the contrary and from our telephone conversation, I concluded that it is the opinion of your office that the substantive requirement of 2.28.030(A)(11) can be imposed by local ordinance upon multi-jurisdictional committees without violating the Political Reform Act. That is certainly my own opinion. I would appreciate, however, your clarifying that matter in writing. The question may be succinctly posed as follows:

Does the Political Reform Act prohibit a city from adopting a local ordinance which requires that all committees, including committees participating in the elections of more than one jurisdiction, comply with local ordinance contribution limits as to monies expended in the city's election?

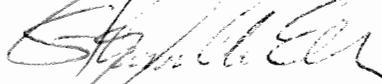
The Poway City Council will next consider the proposed Ordinance at its meeting of July 28, 1987. If it would be

Kathryn E. Donovan
July 16, 1987
Page Two

possible for you to respond to the question posed by that date, I would be able to communicate that opinion to the City Council that evening.

Your continuing assistance in this matter is very much appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stephen M. Eckis".

STEPHEN M. ECKIS
City Attorney

SME/kpm
Enclosure

Chapter 2.28

CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Sections:

- 2.28.010 Intent and purpose.
- 2.28.020 Definitions.
- 2.28.030 Limitations.
- 2.28.040 Campaign expenditures uncontrolled by candidates of committees.
- 2.28.050 Election campaign accounts.
- 2.28.060 Statements generally.
- 2.28.070 Declaration in lieu of campaign statement.
- 2.28.080 Suppliers of goods and services--Disclosure of records required.
- 2.28.090 Late filing of campaign statement.
- 2.28.100 Enforcement.
- 2.28.110 Violation--Penalty.

2.28.010 Intent and Purpose. It is the intent of the City Council in enacting the ordinance codified in this chapter to place realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections, as well as to supplement the requirements of State law with regard to the reporting of campaign contributions and expenditures, for the purpose of preventing the exercise by campaign contributors of potential undue or improper influence over elected officials and to inform the public of the sources and objects of campaign contributions and expenditures. The City Council finds that municipal elections are municipal affairs and that the regulation of campaign expenditures and contributions in municipal elections is not preempted by general State law and is the proper subject of municipal regulation under authority granted to Cities by Article XI, Section 7 of the California Constitution and State Government Code Section 81013.

2.28.020 Definitions. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Campaign statement" means an itemized report which is prepared on a form provided by the City Clerk and which provides the information required by this chapter.

B. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective City office or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination or election to any elective City office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of

candidacy at such time. "Candidate" also includes any City office holder who is the subject of a recall election.

C. "Clerk" means the City Clerk of the City.

D. "Closing date" means the date which any report or statement filed under this chapter is required to be complete.

E. "Committee" means any person including an individual who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates or for or against the nomination or election of one or more candidates or for or against the ballot qualification or passage of any measure. "Committee" includes both controlled committees and independent committees.

F. "Contribution" shall have that meaning set forth in Government Code Section 82015 as amended from time to time, except that the exclusion set forth therein for costs of a meeting or fundraising event in the home or office of the occupant shall be limited to costs of \$100.00 or less.

G. "Controlled committee" means a committee which is controlled directly or indirectly by a candidate or which acts jointly with or in coordination with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee or if such committee coordinates its expenditures with the expenditures of a candidate or a committee controlled by a candidate, whether or not such candidate is personally aware of such coordination.

H. "Election" means any City general, special, initiative, referendum or recall election.

I. "Expenditure" shall have that meaning set forth in Government Code Section 82025, as amended from time to time.

J. "Fundraiser event" means any political event organized for the purpose of raising funds to be used in the support of or opposition to any candidate or measure.

K. "Independent committee" means all committees which receive contributions or make expenditures or committees for the purpose of influencing or attempting to influence a City election which is neither controlled by a candidate nor coordinates its expenditures with the expenditures of a candidate or of a committee controlled by a candidate.

L. "Individual" means a sole human being.

M. "Measure" means any proposition submitted to a popular vote at any election.

N. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association or committee (including both controlled and independent committees), labor union, and any other organization or group of persons acting in concert.

2.28.030 Limitations. A. Contributions generally.

1. Except as expressly provided in this Section 2.28.030, no person as defined in Section 2.28.020(N) (and including any controlled committee or independent committee) shall make nor shall any person solicit or accept any contribution in aid of and/or in opposition to the nomination or election of a candidate which will cause the total amount contributed to (a) the candidate and any controlled committee of such candidate, or to (b) any independent committee by such person in a single election to exceed one hundred dollars (\$100.00).

2. The prohibition of Subsection (A)(1) hereof shall specifically apply to contributions to all independent committees independently expending money, providing goods, or providing services for the purpose of influencing or attempting to influence the action of voters in a City election, whether such committee is organized and operates inside or outside of the City limits.

3. The \$100.00 limitation of Subsection (A)(1) hereof is not a limitation upon expenditures and shall not limit the expenditures by any candidate or any committee.

4. Spouses are two separate persons for purposes of the contribution limitation of Subsection (A)(1) hereof.

5. (a) Joint funding of campaign expenditures by two or more committees shall not be deemed a contribution by any such committee to any candidate provided that each such committee contributes equal amounts to each such expenditure.

(b) Any such joint expenditure shall cause any theretofore independent committee participating therein to be deemed a controlled committee of any and all candidates for whose benefit such joint expenditure is made.

(c) Any independent committee which becomes a controlled committee by reason of (b) above, shall be deemed a controlled committee for purposes of the one hundred dollar (\$100.00) limitation on contributions to the committee, effective retroactive to the date upon which the first contribution to such committee was received by such committee.

6. The \$100.00 limitation of Subsection (A)(1) hereof shall not apply to a candidate in aid of himself or herself.

7. Subject to Subsections (A)(5)(b) and (A)(5)(c) hereof, the \$100.00 limitation of Subsection (A)(1) hereof shall not apply to any independent committee composed solely of one individual. Such individual's contributions to an independent committee composed solely of that individual, as well as the expenditures of such independent committee, shall, however, be subject to all of the reporting requirements of this Chapter 2.28.

8. No person shall make a contribution for any other person under an assumed name or under the name of any other person.

9. Contributions, not to exceed a total of ten dollars from any one person or source, are permitted to be retained by a

candidate or any committee when received from anonymous sources or from persons who do not consent to having their name made known. Any such amount in excess of ten dollars shall be turned over to the City Clerk and deposited to the City's treasury. No independent committee shall knowingly accept any contribution in excess of ten dollars without obtaining the name, address, employer, and occupation of the person making the contribution.

10. No person shall make contributions aggregating more than five hundred dollars (\$500.00) in a single election, whether to one or more candidates, controlled committees or independent committees, except as provided in Subsections (A)(6) and (A)(7) hereof.

11. No committee shall make any expenditures to influence or attempt to influence the voters in a City election if such committee has not complied with the contribution limitations imposed by this Chapter upon such committees' receipt of funds.

B. Contributions by City Contractors.

1. No person who contracts with the City, either for the rendition of personal services or for the furnishing of any material, supplies, or equipment to the City, or for selling any land or building to the City, shall make any contributions to a candidate or committee at any time between the commencement of negotiations for and during the completion of the performance under, or the termination of negotiations for such contract or the furnishing of material, supplies, equipment, land, or building, whichever occurs later.

2. No candidate, agent for a candidate, committee, or agent for a committee shall knowingly solicit any contribution from any person prohibited by subdivision 1 of this subsection from making such a contribution.

C. Business Contributions. If a contribution is received pursuant to subdivision 1 of subsection A of this section from a person (corporate or otherwise) other than an individual, the contribution of said person shall be deemed the contributions of the individuals who own such person in accordance with their respective percentage ownership interests. The controlling individual shall not make any further contribution to a candidate or committee at any time thereafter. Any contribution from a person, other than an individual, shall identify all persons owning any interest in said person and the percentage amount of such interest. Nothing contained in this Chapter shall prohibit a husband and wife who equally own a business from making contributions by a single business check in a sum not exceeding two hundred dollars.

D. Excess Contributions. The total contributions exceeding the maximum provided for in subsections A and B will be deposited in the general fund of the City, earmarked to be used for the purpose of defraying the costs of municipal elections.

2.28.040--2.28.050

2.28.040 Identification of Expenditures by Committees.

Independent committees which make expenditures for or against a candidate shall indicate clearly on any material published, displayed, or broadcast, the name of the independent committee and the fact that the material was paid for by an independent committee. Every independent committee shall comply with all of the reporting requirements imposed on candidates and committees by this chapter, including both contributions to and expenditures by such committee.

2.28.050 Election Campaign Accounts.

A. Election Campaign Account. Each candidate's campaign treasurer and every committee whether composed of a single individual or otherwise that receives or expends more than two hundred dollars shall open a checking account at a State or federally chartered Bank or Savings and Loan Association. Said account shall be identified as the election campaign account. The account number of each such account shall be provided to the City Clerk in writing within ten (10) days of the opening of such account. Any committee that receives or expends more than two hundred dollars shall file with the City Clerk a statement of organization in substantially the form required by State law not later than ten (10) days following the opening of the election campaign account.

B. Deposit of Contributions. All campaign contributions accepted by a campaign treasurer or committee shall be deposited within five (5) days of receipt into the election campaign account by the campaign treasurer, committee, or authorized agent thereof.

C. Expenditures. Campaign expenditures shall be made only by checks drawn against the election campaign account by the campaign treasurer, committee, or authorized agent.

1. No campaign treasurer, committee, or authorized agent shall draw checks against the election campaign account except for campaign expenses; provided, that checks may be drawn against the election campaign account to transfer to a petty cash fund which is not to exceed one hundred fifty dollars total amount in any one election.

2. Funds in the election campaign account shall not be considered for any purpose to be personal funds of a candidate, campaign treasurer, or any other person. Said funds shall be held in trust.

D. Access to Records by City Clerk. The City Clerk shall have full access at all reasonable hours to the bank's or savings and loan association's records concerning all election campaign accounts.

E. Disbursement of Unexpended Campaign Funds. If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee may after the election disburse the whole of said surplus. If said fund is disbursed, it shall be disbursed to the City for deferment of election costs and/or to charitable organizations of the

2.28.060

committee's or candidate's choice within the City. The candidate or committee, or authorized agent thereof, shall file a statement within thirty days of such disbursement with the City Clerk verifying said closure and listing the donees of all disbursements authorized by this section and the dollar amounts given to each donee.

F. Retention of Records. The candidate, committee, or authorized agent thereof, shall retain all campaign records for a period of four years after the election.

2.28.060 Statements Generally.

A. Required. Each candidate and each committee, including all independent committees, shall file as a public record with the City Clerk, campaign statements showing the amounts of contributions received and expenditures made with the respect to such election at the times required by the Political Reform Act of 1974, as amended. In addition, a campaign statement shall be filed on the Friday immediately preceding the election date covering the period through the previous day. The required statements may be completed on campaign statement forms required to be filed by State law so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee chairperson that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of or in contravention of Section 2.28.030. All such statements filed by independent committees shall, in addition to all other requirements, identify each candidate or measure for or against whom each reported expenditure was made.

B. Contributions. Each campaign statement shall show the total cumulative amount of contributions received during the period covered by the statement from persons who have given ten dollars or less and the total cumulative amount of contributions received during the period covered by the statement from persons who have given a total of more than ten dollars. Each person who has contributed more than ten dollars shall be listed by name, address, occupation, employer and amount contributed. The total amount received from anonymous sources and from persons who have not consented to publication shall be listed. In the event that any portion of the contributions was received in connection with a fundraiser event, then the statement shall list the gross receipts, the date and location of each event.

C. Expenditures Generally. Each campaign statement shall show the total amount of expenditures made during the period covered by the statement to persons who have received twenty-five dollars or less. Each person who has received a total of more than twenty-five dollars shall be listed by name and address, together with a brief description of the purpose of the expenditures.

2.28.070--2.28.080--2.28.090--2.28.100

D. Estimated Future Expenditures. The campaign statement required to be filed by the candidate or committee upon the Friday next preceding the election date shall include in addition to all other information required by this chapter, a statement of estimated additional expenditures which the candidate or committee chairperson reasonably expects to expend on or before the election date. There shall be no violation of this chapter if such estimate is unintentionally at variance with the amounts actually expended.

E. Exemption. Nothing in this Section shall impose upon any committee which participates in elections in jurisdictions in addition to the City of Poway any filing requirements additional to or different from those set forth in Chapter 4 of the Political Reform Act of 1974 so long as Government Code Section 81009.5(b) prohibits the imposition of such different or additional requirements on such committees.

2.28.070 Declaration in Lieu of Campaign Statement. A candidate or committee need not file a campaign statement if neither the cumulative receipts nor the cumulative expenditures exceeds two hundred dollars; provided, that the candidate or committee chairperson has filed a written declaration with the City Clerk that to the best of his or her knowledge not more than two hundred dollars has been received or expended on behalf of, or in opposition to a candidacy or measure, and that said contributions have not exceeded those limitations established in Section 2.28.030.

2.28.080 Suppliers of Goods and Services--Disclosure of Records Required. No person who supplies goods or services, or both goods and services, to a candidate or committee for use in connection with the campaign of the candidate or for or against a measure shall refuse to divulge or disclose to the enforcement authority his record of any expenditures made by the candidate or committee in payment for such goods or services, or both.

2.28.090 Late Filing of Campaign Statement.

A. If any person files a campaign statement after any deadline imposed by this chapter, he or she shall in addition to any other penalties or remedies established in this chapter, be liable to the City Clerk in amounts as set forth by State guidelines until the statement is filed.

B. The City Clerk shall deposit any funds received under this section into the general funds of the City to defray the cost of municipal elections.

2.28.100 Enforcement.

A. Any person residing in the City may sue for injunctive relief to enjoin violation or to compel compliance with this Chapter. The court may award to the presiding party reasonable attorney's fees and costs.

2.28.110

B. Any action alleging violation of this Chapter must be commenced within two years of the time the alleged violation occurred.

C. Review of complaints of violation of this Chapter and prosecution thereof shall be commenced only by the District Attorney, the Attorney General, or such other special counsel as may be retained by the City Council. No candidate who is alleged to have violated this Chapter shall participate in the selection by the City Council of the special counsel for prosecution for such alleged offense.

2.28.110 Violation--Penalty.

A. Any knowing or willful violation of any provision of this Chapter may be prosecuted either as an infraction or as a misdemeanor at the discretion of the prosecutor. In addition to any other penalty provided by law, any willful or knowing failure to report truthfully any contribution or expenditure shall be punishable by a fine of not less than five hundred dollars. The chairperson and treasurer of any committee shall be both criminally and civilly responsible for any violation of this Chapter by the committee. In addition, the candidate shall be both criminally and civilly responsible for any violation by a committee controlled by the candidate.

B. If a candidate is convicted of a violation of Section 2.28.030, the election to office of such candidate shall be void and such office shall immediately become vacant. In such event the vacancy shall be filled in accordance with the procedures as set forth in the Government Code.

REVISED.ORD(kpm)



California
Fair Political
Practices Commission

July 21, 1987

Stephen M. Eckis, City Attorney
P.O. Box 789
Poway, CA 92064

Re: 87-202

Dear Mr. Eckis:

Your letter requesting advice under the Political Reform Act was received on July 21, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) You have requested our response by July 28, 1987 and we will try to accommodate you.

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:jaj