

NOTE: I advised Yvonne Smith on 2-17-78 that the final section referred to in the second paragraph of the February 9 letter should be 82013. Barbara Campbell

February 9, 1978

78-224

Mr. R.T. Denny  
Registrar of Voters  
5201 - 1 Ruffin Road  
Post Office Box 23044  
San Diego, California 92123

Dear Mr. Denny:

The staff of the Fair Political Practices Commission has discussed your letter concerning the recently effective change in Section 84216 of the Government Code outlining the method of disclosure for loans received by a candidate or committee.

The intent of this amendment is to clarify which loans are contributions. The amended section means that unless a loan is received from a commercial institution in the ordinary course of business or it is clear from the surrounding circumstances that the loan was not made for political purpose then the loan is a contribution. Therefore, loans which are defined as contributions by Section 84216 must be included in determining if an organization or person has reached the contribution thresholds which trigger "committee" status under Section 82015.

As to how this provision affects your local ordinance it is our advice that you contact the San Diego County District Attorney's office.

Sincerely,

Lee C. Rosenthal  
Acting Chief  
Legal Division

LR:RSK:vh



R. T. DENNY  
REGISTRAR OF VOTERS

COUNTY OF SAN DIEGO  
REGISTRAR OF VOTERS

COMMUNITY SERVICES AGENCY

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SAN DIEGO, CALIFORNIA  
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January 20, 1978

Mr. Lee Rosenthal  
Acting Chief of the Legal Division  
Fair Political Practices Commission  
1100 K Street Building  
Sacramento, CA 95814

Dear Mr. Rosenthal:

In a telephone conversation on January 17, 1978, with Yvonne Smith of this office, Regina Siciliano-Kutchens of your Technical Assistance and Analysis Division suggested that I request an opinion (formal or informal) on the following question:

In view of the limitations in the San Diego County Election Campaign Finance and Control Ordinance and the enactment of AB 1400, statutes of 1977, is a loan to a candidate or committee from other than a commercial lending institution subject to a limitation of \$250 per election?

AB 1400, Section 84216 states: "A loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business or it is clear from the surrounding circumstances that it is not made for political purposes."

Section 32.923(a), Campaign Contributions - Limitations (copy enclosed) states: "No person other than a candidate shall make and no campaign treasurer shall solicit or accept, any contribution which shall cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate, to exceed two hundred and fifty dollars (\$250)."

Mr. Lee Rosenthal

-2-

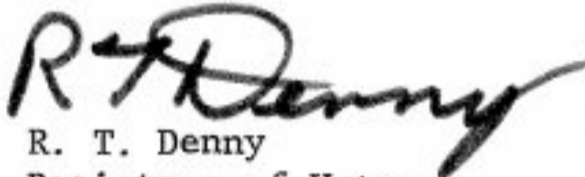
January 20, 1978

The Federal Election Campaign Act has similar restrictions. An advisory opinion issued by the Federal Election Commission (1975-69) states: "While outstanding, a loan is a contribution which counts against the individuals \$1,000 and \$25,000 contribution limitations. Once it is retired, however, the loan (a contribution by definition) is extinguished and no longer counts against these limitations." (12/11/75 - 57756)

Regina suggested that an opinion on the above question would assist other local agencies which have similar ordinances.

Thank you for your consideration of the above.

Very truly yours,



R. T. Denny  
Registrar of Voters

RTD:ys

Enclosure:

ORDINANCE NO. 4960 (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES BY REPEALING CHAPTER 9 (COMMENCING WITH SECTION 32.901) OF DIVISION 2, TITLE 3 AND BY ADDING THERETO A NEW CHAPTER 9 (COMMENCING WITH SECTION 32.901) RELATING TO ELECTION CAMPAIGN FINANCE AND CONTROL

The Board of Supervisors of the County of San Diego do ordain as follows:

Section 1. Chapter 9 (commencing with Section 32.901) Division 2, Title 3, of the San Diego County Code of Regulatory Ordinances is hereby repealed.

Section 2. Chapter 9 (commencing with Section 32.901) is hereby added to Division 2, Title 3 of the San Diego County Code of Regulatory Ordinances to read as follows:

CHAPTER 9  
ELECTION CAMPAIGN  
FINANCE AND CONTROL

A. GENERAL PROVISIONS

SEC. 32.901. PURPOSE AND INTENT

Inherent in the high cost of election campaigning is the problem of improper influence, real or potential, exercised by campaign contributors over elected officials. It is the purpose and intent of the Board of Supervisors of the County of San Diego in enacting this chapter to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in county elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of county election campaigns; and to provide full and fair enforcement of all the provisions of this chapter.

SEC. 32.906. "COMMITTEE"

Whenever used in this chapter, the term "committee" shall mean any person or combination of persons 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 the passage or defeat of any County measure, including any committee or subcommittee of a political party, whether national, state or local, if:

(1) Contributions received total five hundred dollars (\$500) or more in a calendar year;

(2) Expenditures and contributions made, other than contributions described in subsection (3), total five hundred dollars (\$500) or more in a calendar year; or

(3) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year.

SEC. 32.907. "CONTRIBUTION"

Whenever used in this chapter, the term "contribution" shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

The term "contribution" shall include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; a candidate's own money or property used on behalf of his candidacy; the granting of credit in the normal course of business; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(2) "County measure" includes any measure under subdivision (1) of this subsection which is submitted to a popular vote at an election by action of the Board of Supervisors, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it qualifies for the ballot.

SEC. 32.911. "ELECTIVE COUNTY OFFICE"

Whenever used in this chapter, the term "Elective County office" shall mean: Member of the Board of Supervisors; Assessor; County Clerk; District Attorney; Recorder; Sheriff; Treasurer-Tax Collector or member of the County Board of Education.

SEC. 32.912. "ENFORCEMENT AUTHORITY"

Whenever used in this chapter, the term "enforcement authority" shall mean the District Attorney of the County of San Diego. Nothing in this chapter shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this chapter under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

SEC. 32.913. "EXPENDITURE"

Whenever used in this chapter, the term "expenditure" shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

SEC. 32.914. "INDEPENDENT EXPENDITURE"

Whenever used in this chapter, the term "independent expenditure" shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate or measure which is not made with the cooperation or with the prior consent of, a candidate or his agent or a controlled committee of a candidate or measure.

For the purposes of this definition:

association, committee, labor union, and any other organization or group of persons acting in concert.

### C. CAMPAIGN TREASURER

#### SEC. 32.917. CAMPAIGN CONTRIBUTION CHECKING ACCOUNT

Every candidate and every committee shall establish one campaign contribution checking account at an office of a bank located in the County of San Diego. Within 24 hours after opening the account, the candidate or the committee shall file with the Registrar of Voters and the Enforcement Authority the name and address of the bank and the number of the account. All contributions of money or checks, or anything of value converted by such candidate or committee to money or a check, made to a candidate, to a person on behalf of a candidate, to a committee supporting or opposing a candidate or a County measure, or to a person on behalf of a committee supporting or opposing a candidate or a County measure shall be placed in the candidate's or committee's checking account within three (3) business days. A candidate and a committee formed solely for the purpose of acting in aid of the nomination or election of the candidate may establish and maintain one joint checking account for the candidate and the committee.

#### SEC. 32.918. DISBURSEMENTS

Funds shall be disbursed from a campaign contribution checking account established pursuant to Section 32.917 hereof only by check signed by the candidate or by the candidate's or committee's campaign treasurer or designated agents of the campaign treasurer. Each candidate or committee shall maintain a written record of the payee of each check drawn on a campaign contribution checking account and an itemized record of the goods or services for which each check is issued.

#### SEC. 32.919. PETTY CASH FUND

Section 32.918 notwithstanding, the candidate or campaign treasurer or other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than \$20 per week to be used for petty cash purposes by the candidate or committee. An amount not greater than \$40 per week may be disbursed to a candidate and committee jointly establishing a campaign contribution checking account, to be used for petty cash purposes.

(b) No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to a County measure to exceed five hundred dollars (\$500).

(c) Extensions of credit for a period of more than thirty (30) days are prohibited. Extensions of credit of more than two hundred fifty dollars (\$250) are prohibited. Provided, however, a candidate may personally borrow an unlimited amount and such funds shall be considered as a contribution by the candidate himself; provided, further that such transaction is fully disclosed and documented in accordance with applicable law.

(d) The terms of this section are applicable to any contributions made to a candidate or committee hereunder, whether used by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(e) If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the County Treasurer for deposit in the General Fund of the County.

#### SEC. 32.924. ORGANIZATIONAL CONTRIBUTIONS

(a) No person, other than an individual, shall make a contribution to any candidate or committee; provided, however, that this section shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification for the ballot or adoption of one or more County measures.

(b) No officer, employee, agent or attorney or other representative of a person covered by this division shall aid, abet, advise or participate in a violation of this section.

(c) No person shall knowingly accept a payment or contribution made in violation of this section.

(d) If a campaign treasurer is offered a contribution which would be in excess of the limitation, the treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, he shall report in writing within five (5) days of the receipt of the contribution to the Enforcement Authority the facts surrounding such payment or contribution.

SEC. 32.928. ADVERTISING RATES; SERVICE FEES AND CHARGES

To the extent that any person sells space in any newspaper or magazine or sells time on a broadcast station to a candidate or committee or performs other services in connection with the campaign of the candidate or for or against the measure, the charges made for the use of such space or time shall not exceed the charges normally made for comparable use of such space or time by other users thereof.

SEC. 32.929. 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 the measure shall refuse knowingly 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.

G. OFFICIAL DUTIES

SEC. 32.930. DUTIES OF REGISTRAR OF VOTERS

In addition to other duties required of him under the terms of this chapter, the Registrar of Voters of the County shall:

(a) Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.

(b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state law.

(c) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by state law.

(d) Report apparent violations of this chapter and applicable state law to the Enforcement Authority.

(e) Compile and maintain a current list of all statements or parts of statements filed with his office pertaining to each candidate and each measure.

(f) Cooperate with the Enforcement Authority in the performance of the duties of the Enforcement Authority as prescribed in this chapter and applicable state laws.

SEC. 32.934. RULES OF CONSTRUCTION

This chapter shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this chapter which does not directly affect the jurisdiction of the County to control campaign contributions and expenditures shall avoid the effect of this chapter.

SEC. 32.935. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this chapter, or the application thereof to any person, if for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter or its application to other persons. The Board of Supervisors hereby declares that it would have adopted this chapter, and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions, or the application thereof to any person, be declared invalid or unconstitutional.

Section 3. This ordinance shall take effect and be in force thirty (30) days after the date of its passage; and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED, AND ADOPTED this 9th day of August, 1977.

JIM BATES

Chairman of the Board of Supervisors of  
the County of San Diego, State of California