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OPINION NO. 79-2

March 14, 1979

A-79-160

OPINION

QUESTION PRESENTED:

May a candidate for the San Diego City Council accept contributions made by means of the contributor either in person or by mail providing signed authorization for charging said contribution to his or her credit card?

REQUESTED BY:

Joe Diaz, Jr.
5106 Federal Building, Suite 207
San Diego, California 92105

OPINION BY:

Edwin L. Miller, Jr., District Attorney, by James E. Hamilton,
Deputy District Attorney.

CONCLUSION:

Yes, with restrictions outlined in the following analysis.

ANALYSIS:

Section 84300 of the Government Code states, in pertinent part, "[a]ny contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made by a written instrument containing the name of the donor and the name of the payee."

Section 84300 does not require that the "written instrument" be a negotiable instrument such as a check.

There are two ways that a contributor can make a credit card contribution by means of a "written instrument" that will satisfy the requirements of Section 84300. One would be for the contributor to sign the credit card charge document directly. The other would be for the contributor to provide written authorization for the recipient to fill out the credit card charge document. In both cases the recipient candidate or committee deposits the credit card charge documents into the committee's campaign contribution

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checking account where it is handled in a manner similar to a check. Either method is acceptable.

There are no provisions in the San Diego Municipal Election Campaign Control Ordinance that prohibit contributions made in the manner described above. However, Section 27.2925 of the Ordinance requires the candidate or committee to maintain a record of every contribution received which in the case of credit card transactions would have to include a copy of the credit card charge document and the written authorization, if used. Also, the credit card charge document must be deposited into the committee's campaign account within three (3) business days in accordance with Section 27.2921.

Since Section 27.2942 of the Ordinance makes it a violation for any candidate or committee to knowingly accept a contribution from any person other than an individual, it would also be prudent and for his own protection for the committee treasurer to insure that the credit card used is issued to an individual and to require from the contributor a written statement that the credit card charge incurred will be paid from the personal funds of the contributor.

Care should be also be exercised to obtain all of the identifying information concerning the contributor required by Government Code section 84210.

Nothing in this opinion should be construed as dealing with credit card authorizations made by telephone. We are not satisfied that Government Code section 84300 would allow such contributions. However, since the Fair Political Practices Commission is the designated agency to issue opinions concerning the interpretation of the Political Reform Act, we would suggest that anyone desiring to accept credit card contributions made by telephone seek the advice of the Fair Political Practices Commission before doing so.

In preparing this opinion, this office has telephonically consulted with the legal staff of the F.P.P.C. which has on a prior occasion rendered an informal opinion by advice letter authorizing the use of credit cards in California campaigns. We have also read an advisory opinion (AO 1978-68) of the Federal Election Commission authorizing the use of credit cards in federal elections.

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Finally, it is our opinion that the San Diego City Council has the power to prevent the use of credit cards by suitable amendments to the Ordinance if they desire to do so. The present ordinance, however, does not prohibit their use by contributors.