



THE CITY OF SAN DIEGO

April 13, 2012

Councilmember David Alvarez
David Alvarez for City Council 2010
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: David Alvarez for City Council 2010 (ID # 1318768)

Dear Councilmember Alvarez:

The Ethics Commission audit of the above-referenced committee is now concluded, and the Final Audit Report is enclosed. This report was delivered to the Ethics Commission at its regularly-scheduled meeting held on April 12, 2012. Although the report reflects one material finding, the Commission does not believe that the findings warrant additional administrative remedies. In summary, the Commission determined that education was more appropriate than enforcement in this situation. As a result, the Commission voted to accept the report and take no further action.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: Xavier Martinez
Martinez & Associates, Inc.
1531 Grand Avenue, Suite D
San Marcos, CA 92078



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 • Fax (619) 533-3448





THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

March 14, 2012

Councilmember David Alvarez
David Alvarez for City Council 2010
202 "C" Street, 10th Floor
San Diego, CA 92101

Treasurer: Xavier Martinez
Martinez & Associates, Inc.
1531 Grand Avenue, Suite D
San Marcos, CA 92078

SAN DIEGO ETHICS COMMISSION AUDIT REPORT: *David Alvarez for City Council 2010*

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, David Alvarez for City Council 2010, Identification Number 1318768 ("the Committee") for the period from June 3, 2009, through January 31, 2011. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 23, 2011. The audit was conducted to determine whether the Committee materially complied with the requirements and prohibitions imposed by the City of San Diego's Election Campaign Control Ordinance (San Diego Municipal Code Chapter 2, Article 7, Division 29).

During the period covered by the audit, the Committee reported total contributions of \$154,674.94 (inclusive of \$1,060.94 in non-monetary contributions) and total expenditures of \$153,614.00. **The audit revealed one material finding: The committee accepted and deposited contributions after the general election that exceeded its outstanding debts in violation of San Diego Municipal Code section 27.2938.**

II. Committee Information

On June 11, 2009, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it qualified as a committee. The Committee was formed to support the election of David Alvarez for Council District 8 in the June 8, 2010, primary election and the November 2, 2010,



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 • Fax (619) 533-3448



general election. On January 31, 2011, the Committee filed a Statement of Termination indicating that its filing obligations were completed on January 31, 2011. The Committee's treasurer was Xavier Martinez of Martinez & Associates, Inc.

III. Audit Authority

The Commission is mandated by San Diego Municipal Code section 26.0414 to audit campaign statements and other relevant documents to determine whether campaign committees comply with applicable requirements and prohibitions imposed by local law.

IV. Audit Scope and Procedures

This audit was performed in accordance with generally accepted auditing standards. The audit involved a thorough review of the Committee's records for the time period covered by the audit. This review was conducted to determine:

1. Compliance with all disclosure requirements, pertaining to contributions, expenditures, accrued expenditures, and loans, including itemization when required;
2. Compliance with applicable filing deadlines;
3. Compliance with restrictions on contributions, loans and expenditures;
4. Accuracy of total reported receipts, disbursements and cash balances as compared to bank records; and
5. Compliance with all record-keeping requirements.

V. SUMMARY OF APPLICABLE LAW

San Diego Municipal Code Section 27.2938 – Restrictions on Time Period of Contributions

....

- (b) It is unlawful for any candidate or controlled committee for City office to accept contributions more than 180 days after the withdrawal, defeat, or election to office. Contributions immediately following such a withdrawal, defeat, or election and up to 180 days after that date, may be accepted only by a candidate or controlled committee with outstanding debts or loans, and shall be used only to pay the outstanding debts or loans owed by the candidate or controlled committee. These restrictions do not apply to contributions made by a candidate to his or her controlled committee.
- (c) Contributions pursuant to subsections (a) and (b) of this provision shall be considered contributions raised for the election in which the bills and debts were incurred and shall be subject to the contribution limits of that election.

....

VI. Material Findings

Section 27.2938: Acceptance of Contributions in Excess of Outstanding Debt

SDMC section 27.2938(b) states that City candidates are permitted to accept contributions after an election only if they have existing debts or loans. (This is commonly referred to as the “net debt” rule.) The audit revealed that the Committee accepted more than \$22,000.00 in contributions after the November 2, 2010, general election, despite the fact that its outstanding debts totaled approximately \$7,000.00. The Committee used these excess funds to pay for “campaign service appreciation awards” for campaign staff and volunteers.

According to information provided by the Committee’s treasurer, he misinterpreted an Ethics Commission Fact Sheet which indicated that the 180-day post election fundraising time period did not commence until the date the election results were certified. He incorrectly determined that this advice applied to “net debt” restrictions. In other words, he erroneously concluded that there was a temporal loophole between the date of the election and the date the election results were certified during which candidates may collect post-election contributions even in the absence of any outstanding debts. (Note that the subject Fact Sheet was revised in May of 2011 to indicate that the 180-day post election fundraising time period begins to run on the date of the election.)

VII. Conclusion

Through the examination of the Committee’s records and campaign disclosure statements, the Auditor verified that the Committee timely disclosed all contributions received and all expenditures made, and that the Committee maintained all necessary documentation regarding contributions and expenditures in accordance with disclosure and record-keeping provisions of ECCO. **However, the audit revealed one material finding: the Committee accepted and deposited contributions after the general election that exceeded the outstanding debt in violation of San Diego Municipal Code section 27.2938.**

Rosalba Gomez
Ethics Commission Auditor

Date

Lauri Davis
Ethics Commission Senior Investigator

Date