

April 25, 2006

SDEC Formal Advice Letter No. FA06-07

Advice Provided to:
Councilmember Jim Madaffer
San Diego City Council, District 7
202 "C" Street, 10th Floor
San Diego, CA 92101

Re: Request for Advice Regarding Reporting Payments of \$5,000 or More Made on
Behalf of a City Official (Your File # M-06-04-12)

Dear Councilmember Madaffer:

This advice letter has been prepared in response to your memorandum to the City of San Diego Ethics Commission dated April 13, 2006. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Election Campaign Control Ordinance and the City's Ethics Ordinance, both of which are contained in the San Diego Municipal Code [SDMC]. Your memorandum seeks advice concerning your reporting obligations in connection with the solicitation of donations benefiting the Alpha Project.

QUESTION

What are the reporting requirements for an elected official who solicits donations to benefit a non-profit charitable entity in the amount of \$5,000 or more?

SHORT ANSWER

Donations made at the behest of an elected official that are for a charitable purpose are not considered gifts or contributions to that official. The official, however, must report all such donations that equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. The report must be filed with the City Clerk and contain the following information: name of payor, address of payor, amount of the payment, date the payment was made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made.

BACKGROUND

The Alpha Project provides opportunities for homeless and very-low income individuals and families with supportive employment, affordable housing, job training, educational assistance, recovery programs, and other support services. It is a non-profit charitable entity organized under Internal Revenue Code section 501(c)(3). You state that you and your wife have annually hosted a benefit event for the Alpha Project, and will do so again this year. When soliciting donations to offset the cost of the event and raise funds for the Alpha Project, you have historically limited such donations to \$4,500 per donor. You are now interested in soliciting donations of \$5,000 or more. You are seeking guidance with regard to any reporting obligations you may have in connection with such donations.

ANALYSIS

Payments made at the behest of a City Official are generally considered either a “gift” or a “contribution.” In particular, a City Official’s request for a payment from a private party may implicate the gift provisions of the City’s Ethics Ordinance. According to the Ethics Ordinance, a payment that “confers a personal benefit on the recipient” is considered a gift. SDMC §27.3503. There is, however, no indication that donations to the Alpha Project or donations to offset the cost of the Alpha Project fundraising event will confer any personal benefit upon you. Even if a donation arguably conferred some type of personal benefit, however, the Ethics Ordinance contains an exception to the gift restrictions that applies to payments of a charitable nature. Because the Alpha Project is a charitable organization operating under Internal Revenue Code section 501(c)(3), payments made to benefit that organization at your behest are not considered a gift to you. SDMC § 27.3525(y).

With regard to whether donations to or for the Alpha Project made at your behest could be considered a political “contribution,” the City’s Election Campaign Control Ordinance [ECCO] defines “contribution” to include any expenditure made at the behest of a candidate¹, and defines “expenditure” to mean any payment “unless it is clear from the circumstances that it is not made for political purposes.” ECCO defines “political purpose” to mean “the purpose of influencing or attempting to influence the action of the voters for or against the nomination, election, defeat or recall of any candidate or elective officer.” SDMC § 27.2903. Nothing in the materials you provided to us indicates that the Alpha Project event has anything to do with your candidacy for office, or is otherwise related to a political purpose. Moreover, ECCO’s definition of “contribution” is expressly intended to be consistent with the state’s definition of “contribution” as set forth in the Political Reform Act [PRA]. SDMC § 27.2903. Under the PRA, a payment at the behest of an officeholder is not a “contribution” if:

It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following

¹ Regardless of whether you intend to run for future office, you retain your status as “candidate” for the duration of your time in office. Cal. Gov’t Code § 82007.

types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

....

- (iii) A payment . . . made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution.

Cal. Gov't Code § 82015(b)(2)(B).

Based on the above, it is clear that a charitable contribution made at your behest is neither a gift nor a contribution under state or local law. Local law requires, however, that charitable donations in the amount of \$5,000 or more made at the behest of a City Official be reported in accordance with Government Code section 82015(b). SDMC § 27.2903. According to section 82015(b), payments made at the behest of an elected officer "shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made." Cal. Gov't Code § 82015(b)(2)(B)(iii). According to this language, therefore, you have an obligation to report any donations of \$5,000 or more made at your behest to the Alpha Project or for the Alpha Project fundraising event. You also have an obligation to report any donations to or for the Alpha Project that are less than \$5,000 if the same donor makes other charitable donations at your behest within the same calendar year that cause the combined value of that person's donations to equal or exceed \$5,000.

The details concerning the reporting requirements are expressly set forth in the PRA:

The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later.

Cal. Gov't Code § 82015(b)(2)(B)(iii).

For each entity that makes a donation of \$5,000 or more to or for the Alpha Project at your behest, you may comply with the provisions of state and local law by filing a document (in any reasonable format) within thirty days with the City Clerk that contains all the information

required by Government Code section 82015(b)(2)(B)(iii). In other words, for donations to the Alpha Project, report the name and address of the entity making the donation, the amount and date of the donation, the Alpha Project's name and address, and a statement describing the purpose of the donation. For any donations used to offset the cost of the Alpha Project fundraising event, report the name and address of the entity making the donation, the amount and date of the donation, the name and address of the entity accepting the donation, a brief description of the goods or services obtained through the use of the donation, and a description of the event. As stated above, this information must also be provided for any entity that donates less than \$5,000 in connection with the Alpha Project fundraising event if that entity makes other donations at your behest and in so doing reaches or exceeds the \$5,000 threshold within the same calendar year.

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice from an attorney to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

If you have any additional questions, please contact our office.

Sincerely,

Cristie C. McGuire
General Counsel

By: Stephen Ross
Program Manager – Technical Assistance