

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

MEMORANDUM

DATE: September 7, 2010

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stephen Ross, Program Manager

SUBJECT: Election Campaign Control Ordinance and the *Thalheimer* Lawsuit
Docketed for Ethics Commission open session meeting on September 9, 2010

This memo relates to the Ethics Commission's ongoing discussion of the impact of the *Thalheimer v. City of San Diego* litigation on the City's Election Campaign Control Ordinance [ECCO].

At its meeting on July 8, 2010, the Ethics Commission decided that for the time being, it will not enforce the re-reporting provisions of SDMC sections 27.2930(b) and (c), and 27.2936(d). Collectively, these provisions require general purpose recipient committees to file a statement with the City Clerk identifying the source and amount of contributions used when making independent expenditures supporting or opposing City candidates. The re-reporting provisions were adopted to ensure that general purpose recipient committees were following the attribution rules in SDMC section 27.2936(b), i.e., using only contributions from individuals in amounts no greater than \$500.

Earlier this year, District Court Judge Irma Gonzalez issued a ruling enjoining the City from enforcing SDMC section 27.2936(b)'s attribution rules against committees making only independent expenditures. Thus, the main rationale for re-reporting disappeared, and the Commission decided not to enforce ECCO's re-reporting provisions for those committees for so long as the City is enjoined from enforcing the attribution rules.

Judge Gonzalez's ruling also led to the ability of political party committees to make contributions up to \$1,000 directly to City candidates. The Commission decided that it will also not enforce the re-reporting rules with respect to political party contributions (for so long as the \$1,000 contribution limit is in effect) because the \$1,000 contribution limit itself largely curtails the possibility of a political party committee being used as a pass-through to circumvent the \$500 contribution limit applicable to individuals.

Despite the foregoing, the *Thalheimer* plaintiffs recently moved the district court for a temporary restraining order and preliminary injunction seeking, in part, to enjoin the City from enforcing

SDMC section 27.2936(b). The plaintiffs essentially argued that, although the Commission had decided it would not enforce the re-reporting rules set forth in SDMC section 27.2936(d), it was still planning to enforce the attribution rules set forth in SDMC section 27.2936(b). In other words, although the re-reporting would not be required, political parties would still be required to use only contributions from individuals in the amount of \$500 or less when making contributions directly to City candidates.

The matter was heard before Judge Gonzalez on August 30, 2010. Because the sole purpose of the re-reporting rules is to track a committee's compliance with attribution rules, the Commission staff represented to Judge Gonzalez that the Commission will not be enforcing either the re-reporting rules or the attribution rules with respect to political parties that make contributions directly to City candidates (for so long as the \$1,000 limit is in effect). The Commission staff further represented to Judge Gonzalez that it would bring this matter back to the Commission for clarification purposes.

In the meantime, on September 3, 2010, Judge Gonzalez issued an order denying plaintiffs' motion, finding that "[b]ecause section 27.2936(b) is not presently being enforced as to political party contributions, this issue is not ripe for adjudication." In other words, Judge Gonzalez recognized that there was no need to grant the relief sought by plaintiffs because the Commission had indicated that it would not be enforcing SDMC section 27.2936's attribution rules with regard to political party contributions subject to the \$1,000 limit.

In order to confirm the representations made to the Court, and in order to eliminate any ambiguity as to this issue, staff recommends that the Commission make a formal determination that it will not be enforcing the attribution rules in SDMC section 27.2936(b) with regard to the source and amount of funds used by a political party committee to make a contribution to a City candidate, for so long as the \$1,000 limit remains in place. Such a determination will mean that a political party committee may use funds from any person or entity in any amount so long as it does not exceed the \$1,000 limit when making a contribution to a City candidate.

Stephen Ross
Program Manager