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THE CITY OF
SAN DIEGO
CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CA 92101

October 29, 1985

Supervisor Leon Williams
County of San Diego
1600 Pacific Highway
San Diego, CA 92101

Dear Supervisor Williams,

Enclosed please find copies of the City of San Diego's Campaign Review Task Force Draft Reports.

The City Council set up this Task Force in March of this year to review and make recommendations on the City's Election Campaign Control Ordinance. The enclosed reports are first drafts of recommendations from the Task Force.

In an effort to solicit public comments and testimony on these reports, the Task Force has set aside a special meeting date, November 8th, to conduct a public hearing. Results of this public hearing will be considered by the Task Force to be incorporated into a Final Report which is scheduled for review by the City Council in mid or late December.

In addition to public testimony, the Task Force is hopeful that you or your representative could submit your reactions and suggestions on these recommendations in person or in writing at the November 8th public hearing. Since the County and the City currently operate under essentially the same election laws, and have always sought to do so, the Task Force felt it was extremely important for the Board to be aware of the draft recommendations under consideration by the Task Force. The Task Force wishes to afford the Board an early opportunity to review these proposals.

Once the November 8th public hearing is held and the testimony is considered by each Subcommittee of the Task Force, a final report will be written and reviewed for adoption by the full Task Force at a November 22nd meeting. You will be apprised of the Task Force progress as we move through this schedule. Your input, recommendations and suggestions are welcome throughout this process.

Your early consideration of these proposals is appreciated. We look forward to hearing from you or your representative on or before November 8, 1985.

Sincerely,

Mark Nelson

Mark Nelson
Chairman
Campaign Review Task Force

Enclosure

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FIRST DRAFT

ENFORCEMENT SUBCOMMITTEE REPORT

TO THE CAMPAIGN REVIEW TASK FORCE

I. INTRODUCTION

This Report constitutes the Enforcement Subcommittee's draft recommendations to the Campaign Review Task Force on enforcement related issues pertaining to the City's Election Campaign Control Ordinance (Municipal Code Sections 27.2901 - 27.1975). The Enforcement Subcommittee ("Subcommittee") consists of six (6) members (Attachment 1), with Greg Garratt serving as chairman.

The Task Force and its subcommittees were created in response to a request by Councilman William Jones (letter dated December 6, 1984) and action of the City Council (March 4, 1985). The Task Force was directed to review and propose amendments to the Ordinance and make other recommendations to promote public trust and confidence in City government and its elected officials.

The draft Report contains a summary of the recommendations made by the Subcommittee to date, but has not been reviewed by the full Subcommittee prior to its distribution. The Subcommittee will meet on November 1, 1985, to review and make appropriate clarifications to the Report, as well as discuss its contents with Mr. Jim Hamilton of the District Attorney's Office and representatives of the City Attorney's Office.

The Subcommittee held 15 meetings open to the public and discussed more than 15 separate issues. _____ witnesses (Attachment 2) appeared before the Subcommittee and made recommendations on one or more of the issues. This Report includes both a brief discussion of those issues where the Subcommittee felt a specific change in the law or procedures should be recommended, as well as a discussion of the more significant issues where no change was recommended. Issues receiving limited attention by the Subcommittee are not included in the Report.

Some of the recommended actions can be accomplished by the City Council very simply, either by adoption of easily drafted ordinance changes or by directing changes in the procedures utilized by staff. Other recommendations, although "simple" to implement, require a commitment by the City Council to additional staff and/or money in order to be effective. A few of the recommendations are complex, in terms of the ordinance changes or other modifications required, and will require the assistance of the City Attorney in their preparation. These latter recommendations are made by the Subcommittee "In Principle". If the Task Force and the City Council endorse the recommendations which are made "In Principle", it would seem appropriate that the Task Force be directed to work with the City Attorney in developing specific ordinance language to effectuate these changes which can then be further considered by the City Council.

In a second draft of the Report, a more detailed explanation of the process used by the Subcommittee is developing its recommendations will be included. Deferral of this matter to the second draft occurred so that the substantive recommendations contained in this first draft could be made available for review and discussion as soon as possible.

II. ISSUES, RECOMMENDATIONS, DISCUSSION

A. Issue - Audit of Committee Records

The issue related to whether additional auditing of committee records should occur.

Recommendation

Create a mandatory audit/discretionary audit threshold for audits to be conducted at the end of every calendar year: all committees must be audited which have received $50,000 or more in contributions during a calendar year; random audits would be required for 10% of all committees receiving under $50,000 per year; additional audits would be at the discretion of the Enforcement Authority; funding

should come from the City's General Fund; and release of audit findings should be at the discretion of the Enforcement Authority, subject to the provisions of the Freedom of Information Act. (The matters of who should conduct the audits and the amount of staffing/funding required should be discussed with the selected Enforcement Authority before a recommendation is made to the City Council.)

Discussion

In addressing this issue, the Subcommittee identified six (6) subissues and a number of options for dealing with those subissues. The subissues, options and recommendations relating to these subissues are as follows:

Subissue #1. Should Audits be Mandatory or Discretionary?

Options:

a. Establish a mandatory audit/discretionary audit threshold.

b. Leave the decision on auditing to the discretion of the Enforcement Authority.

c. Require audits on a random sample basis.

Recommendation re Subissue #1.

Create a mandatory audit/discretionary audit threshold such that all committees receiving $50,000 or more in contributions in a calendar year must be audited; random audits would be required for 10% of all committees which have received less than $50,000 in a calendar year; and additional audits would be at the discretion of the Enforcement Authority. (This approach is similar to that specified in Sections 90000-90007 of the Political Reform Act.)

Subissue #2. Who performs audit?

Options:

a. City Attorney

b. City Treasurer

c. City Auditor

d. Registrar of Voters

e. Independent Enforcement Authority

f. Contract with Private Auditing Firm

g. Fair Political Practices Commission/ Franchise Tax Board

h. City Attorney or District Attorney (depending upon who is Enforcement Authority for the election)

i. City Clerk

j. Peer review (Treasurers of Committees audit each other)

k. District Attorney

l. Defer and Consult with Enforcement Authority Selected

Recommendation re Subissue #1

Defer decision until the Subcommittee makes a recommendation on who should serve as the

Enforcement Authority and then seek the Enforcement Authority's input.

(This matter will be discussed at the Subcommittee's November 1, meeting.)

Subissue #3. When should the audit occur?

Options:

a. At the end of the City's fiscal year

b. At the end of a calendar year

c. Immediately following an election

d. Leave to Enforcement Authority discretion

Recommendation re Subissue #3

Conduct calendar year audits; additional audits should be left to the discretion of Enforcement Authority; and interim audits should not be precluded.

Subissue #4. Should a recommendation for staffing and funding be made?

Options:

a. Yes

b. No

c. Recommend on staffing but not funding

d. Recommend on funding but not staffing

e. Consult with Enforcement Authority

f. Choose an option where no additional staffing or funding is required

Recommendation re Subissue #4

The Task Force should make a specific recommendation to the City Council on the amount of staffing and funding. However, this issue should first be discussed with the Enforcement Authority selected. (This matter will be discussed at the Subcommittee's November 1, meeting.)

Subissue #5. How should the costs of audits be paid?

Options:

a. User fees

b. Fines obtained from enforcement efforts

c. City General Fund responsibility

Recommendation re Subissue #5

The funds to pay for all audits should be budgeted and paid for out of the City's General Fund.

Subissue #6. Should audit findings be disclosed to the public?

Options:

a. Yes

b. No

c. Partial release

d. Enforcement Authority discretion, subject to requirements of State Law (Freedom of Information Act)

Recommendation re Subissue #6

Enforcement Authority discretion, subject to requirements of the Freedom of Information Act.

B. Issue - Disclosure/Recordkeeping for Contributions under $100

This issue concerned whether the City should impose additional disclosure and/or recordkeeping requirements for contributions received in the amount of less than $100.

Recommendation

No change should be made to the disclosure/recordkeeping requirements for contributions under $100. Instead, auditing and other enforcement techniques should be strengthened.

Discussion

The Subcommittee felt the existing disclosure and recordkeeping requirements in the Political Reform Act were adequate.

C. Issue - Allowing More Than One Checking Account per Candidate/Committee

Testimony was presented to the Subcommittee that the existing limitation of only one checking account per candidate/committee should be deleted.

Recommendation

Change the Ordinance to eliminate the limitation to only one checking account per committee, but continue the requirement to report to the City within 24 hours the opening of any new accounts, the requirement that all accounts must be located within the City of San Diego and impose a requirement that all accounts be under the control/accountability of the same treasurer.

Discussion

- The Subcommittee members were concerned that multiple accounts may be difficult to trace during an audit. However, that concern could be answered if the same treasurer was accountable and the City was notified of the location of all accounts when they are opened. In addition, multiple accounts would permit those committees having large balances to earn interest and eliminate the risk of loss for balances over $100,000 where no FDIC insurance coverage exists. Finally, additional accounts would permit committees to segregate funds received during a primary election but earmarked for expenditure during the general election.

D. Issue - Numbering Report Pages

The issues related to what steps could be taken to assure the public that copies of documents provided by the City Clerk constituted the complete package of all documents/pages submitted by a campaign committee to the Clerk.

Recommendation

Request the City Clerk to maintain a current, separate index which would be available to the public and would include a reference to all reports and amendments filed (as required by the Political Reform Act at Section 81008), as well as a statement of the number of pages contained in each report and amendment.

Discussion

Because extensive campaign reports, consisting of unnumbered pages, are filed with the Clerk and it is not always clear that copies of all pages have been received, a separate index should be maintained by the Clerk listing all campaign related materials and documents received and the number of pages contained in each. This approach was recommended over an alternative approach requiring the Clerk to number the pages on original reports when they are received. The Clerk and City Attorney both expressed concerns about the Clerk adding additional information on original reports filed with the Clerk.

E. Issue - Additional Controls Regarding Final Week Contributions

Recent elections have shown that it is common for candidates to deposit substantial sums of money into their campaign accounts between the closing date of the last report which must be filed before election day and the few days just prior to election day. This information does not become available to the public until well after election day. (This recommendation varies from that made by the Contribution Limits Subcommittee.)

Recommendation (In Principle)

Amend the Ordinance to require a summary report to be filed with the Clerk listing total cash contributions received from the end of the last reporting period before election day through 5:00 p.m. on the last Thursday before election day, said report to be hand delivered to the Clerk no later than Friday (the week before the election) at 3:00 p.m. No requirement is proposed to identify the individual contributors involved, only the total dollars received.

Discussion

A report requiring only a statement of total contributions received, but no indication as a part of this report regarding the identity of the contributors, should give the public a better sense of the total dollars received by a committee prior to election day.

F. Issue - Advertising Accountability

Dan Stanford, in his presentation to the Task Force, recommended that consideration be given to making candidates and committees accountable for advertising material.

Recommendation (In Principle)

Require a candidate, consultant or organization responsible for preparing a publication, broadcast, or other communication relating to an election to execute a written approval for dissemination on a proof of the communication (including but not limited to T.V. scripts, radio scripts, mass mailers and skywriting. The definition of "communication" shall include the above, but not

fundraiser invitations or letters sent to less than 200 people.

Discussion

While it has been suggested that slander lawsuits provide protection to candidates or individuals injured by such communications, it is frequently difficult to prove an individual was responsible for the communication. This recommendation attempts to pin down responsibility.

G. Issue - Internal Procedures for Enforcement

This issue relates to the need for a timetable which would apply to the Enforcement Authority in his response to complaints filed.

Recommendation (In Principle)

Set up a procedure and timetable for the Enforcement Authority to respond to complaints filed with the Enforcement Authority, similar to the procedure and timetable applicable to the Fair Political Practices Commission when it receives complaints about violation of the Political Reform Act.

Discussion

Timely response to complaints is important to the complainant and the public.

H. Issue - Extension of Credit/Loans

This issue relates to whether the existing prohibitions on extension of credit should be maintained, whether certain exemptions should be expressly provided form what happens if the committee has inadequate funds at the time a bill is presented and whether special provisions should be added re loans by a candidate to his/her committee.

Recommendation (In Principle)

Fix the limit on extension of credit should be tied to the contribution limit (presently $250); provide for limited exceptions to the extension of credit prohibition, for example, telephone bills gas bills, payroll and payroll taxes); require all expenses to be paid directly by the candidate/ committee with the understanding that credit card bills may be paid indirectly provided each individual credit card

expense does not exceed the limit on extension of credit specified above; add a proposed Section 27.2942(b)(3) provision that if a committee does not have enough funds to pay a bill when it comes in, the first funds in will go out to pay unpaid bills; and impose additional restrictions on candidate loans by adopting a provision similar to proposed Section 27.2942(a) but modifying the interest rate to be at the rate then charged by the Federal Reserve Board, 11th District, for its funds, require the immediate declaration by the candidate of whether or not an advance of money to a campaign is a loan and the establishment of a payment schedule which is not met and resulting in complete repayment by 1 year after election day, shall constitute a contribution as to the amount not repaid; and provide a grandfather clause for existing outstanding candidate loans.

Discussion

I. Issue - Enforcement Authority

The matter of who should be designated as the Enforcement Authority for the City's Ordinance is the subject of this issue.

Recommendation

Designate the District Attorney as the Enforcement Authority, subject to further review at the Subcommittee's November 1, 1985 meeting on the issue of whether an "Independent" Enforcement Authority could be legally created by the City Council, without an amendment of State law. A second issue for discussion on November 1, is whether an independent public panel should be established to provide recommendations to the Enforcement Authority on the enforcement of Ordinance provisions.

Discussion

The options considered were the District Attorney, the City Attorney and an Independent Enforcement Authority. Mark Zerbe supports on Independent Enforcement Authority. The other members selected the District Attorney, subject to further review of the two items mentioned in the recommendation, for the following reasons:

1. History shown that criminal prosecutions seem to include a felony charge. Since felonies cannot be prosecuted by the City Attorney, the matter would have to be referred to the District Attorney.

2. The establishment of an "Independent" Enforcement Authority would result in the creation of a new bureaucracy, be expensive, be subject to political appointment and hence perhaps not as truly independent as might be expected, and probably would require an amendment to State law to give he new entity authority to prosecute criminal cases.

3. While the budgets of both the District Attorney and City Attorney are subject to approval of local governing bodies (District Attorney - Board of Supervisors; City Attorney = City Council), the District Attorney appears to be more removed from day to day contact with the Board of Supervisors since the District Attorney (unlike the City Attorney) does not provide advice on a day to day basis to a governing body on civil matters.

J. Issue - Filing Authority

Who should be selected as the Filing Authoirty for campaign reports and related documents was the subject of this issue.

Recommendation

Seek a change in State law to give the City Council authority to designate the City Clerk or other entity (e.g. Registrar of Voters); enforcement related functions of the Filing Authority should be eliminated; and the City Clerk should again be requested to make available to the public a list of reports on file, as recommended in the Task Force's Preliminary Report to the City Council.

Discussion

State law, Section 84215(e) of the Political Reform Act, states that the City Clerk shall be the Filing Officer.

The options for Filing Authority considered were:

1. City Clerk (no change) but increase budget/staff.

2. Leave function with City Clerk but contract service out with Registrar of Voters.

3. Change State law to give City Council authority to designate Clerk or other body (e.g. Registrar).

4. No change but remove any "enforcement" related functions and blowing the whistle - Enforcement Authority assume all of those functions.

5. Supplement ou report by requesting Clerk's provision of a list of all reports on file, said list to be available to the public.

K. Issue - Timing of Contributions/Off-Year Fundraisers

The issue is whether a limitation should be imposed on the timing or amount of contributions which may be received in non-election years.

Recommendation (In Principle)

No more than the contribution limit may be received from an individual prior to any election, unless the

excess is earmarked for the next election and not spent until after the first election (i.e. any such money raised must be deposited and not spent until after the first election); and an amendment to the Ordinance shall be adopted (or an opinion of the Enforcement Authority obtained that no amendment is necessary) specifying that any carry over surplus from the first election must be treated as a contribution to the second election as to the "last in" contributors of the surplus.

Discussion

L. Issue - Penalties

M. Issue - Private Attorney General

N. Issue - Code of Ethics

O. Issue - Additional Control of Expenditures in Final Week

Enforcement Subcommittee Members

Greg Garratt, Chairman

Caryl Iseman

Terry Knoepp

John Leppert

Bob Miller, Sr.

Mark Zerbe

ATTACHMENT 1

Enforcement Subcommittee Witness List

The following people gave testimony at a Subcommittee hearing:

ATTACHMENT 2