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First Draft of

Contribution Limits Subcommittee Report
to the Campaign Review Task Force

October 1985

Executive Summary

The Contribution Limits Subcommittee was formed to review, reseach and make recommendations to the Campaign Review Task Force on issues related to campaign contribution limits. The Subcommittee is comprised of eight members with James Leahy, Chairman.

The Subcommittee met a total of fourteen times, heard a variety of expert witnesses from the public and private sectors and reviewed a wealth of written documents available on this issue.

As a result of this review, the Contribution Limits Subcommittee submits, for the Task Force consideration, this report detailing issues and recommendations. Following is an executive summary of the Subcommittee's recommendations.

1. Contribution Limitations

   a. Change the contribution limit to $500 from an individual per candidate per election.

   b. Allow $500 as a contribution limit from corporations, partnerships, sole proprietorships and other business entities per candidate per election.

   c. Allow $1,000 as a contribution limit from Political Action Committees (PAC's) per candidate per election.

   d. Do not establish a different contribution limit for Mayoral and City Council races.

   e. Raise the limit for events held in honor of a candidate or committee to $500.

2. Loans to Campaigns

   a. Require a candidate or officeholder to sign a promissory note for a loan with a written payment schedule.

   b. Loan shall have a rate of interest no less than 7 percent.

   c. Only personal assets may be utilized as security for a loan.

   d. Copies of loan documents will be maintained and available for inspection.

3. Interfund Transfers

   Reaffirm existing Ordinance provisions. (See discussion below)

4. Off-Year Fundraising

Off-year fundraising will be permitted with the exception that funds designated for one office can be "rolled-over" or used for another race only with contributor consent.

5. Independent Committee Expenditures

This issue is one for judicial redress rather than for legislative action. The Supreme Court has ruled that independent expenditures can not be limited.

6. Timing of Expenditures

Require a summary report from a candidate/committee listing cumulative expenditures and contributions made from the previous closing date for filing reports through Friday prior to an election. This report may be filed without penalty of perjury.

7. Filing Report Requirements

Deferred issue to Enforcement Subcommittee.

8. Expenditure Limits/Code of Ethics

Deferred issue to Enforcement Subcommittee with a recommendation to consider the concept of a voluntary expenditure limitation within the context of a voluntary code of ethics.

9. "Seed" Money

Do not approve a change in the current Ordinance to allow acceptance of unlimited contributions up to a maximum amount, commonly referred to as "seed" money.

10. "Hit-Pieces"

Deferred issue to Enforcement Subcommittee.

I. Introduction

In 1973, the City of San Diego enacted an Election Campaign Control Ordinance. In the ensuing twelve years, the methodology of conducting campaigns in San Diego has changed greatly. The City Council in March of 1985 formed a Task Force to examine the Election Campaign Control Ordinance and identify recommendations to the City Council in those areas of local law where improvement could be made to the election process which would enhance and promote public confidence in the City's campaign procedures.

To this end, the Campaign Review Task Force immediately formed various Subcommittees to review specific areas of the local election laws.

The Contributions Limits Subcommittee, therefore, was formed to review, research and make recommendations on all those issues related to campaign contribution limits. The Subcommittee is composed of eight members (attachment 1) with James Leahy, professor of constitutional law serving as Chairman. The Subcommittee conducted 14 public meetings to develop their proposals.

The Subcommittee developed a plan to accomplish their scope of work based on four parts; issue identification; expert testimony from individuals in both the public and private sectors; research and review; and development of recommendations for incorporation into the Task Force Report to the City Council.

A. Issue Identification

The Subcommittee identified the following issues to be researched and reviewed. Some of the issues which will be discussed in depth later in this report were substantive, requiring substantial investigation, other issues were found to be less complex in nature. However, in every case, the Subcommittee sought to fairly and objectively review each issue for all practical and legal implications as well as the impacts of Subcommittee's proposals as they relate to the realities of campaigns.

The following issues were reviewed by the Subcommittee.

- Contribution Limitations
- Loans to Campaigns
- Interfund Transfers
- Off-Year Fundraising
- Independent Committee Expenditures
- Timing of Expenditures
- Filing Report Requirements
- Expenditures Limit/Code of Ethics
- Seed Money
- "Hit" Pieces

B. Expert Testimony

The Subcommittee utilized a 1981 Task Force Report to the City Council on campaign reform as a base to develop a list of individuals, in both the public and private sectors, who either through the nature of their daily professional business or through involvement with the development of the original Campaign Ordinance or other involvement since 1973 in campaign laws, would be invited to present expert testimony to the Subcommittee on the specific issues being studied. The witnesses provided background information, legal and financial data on background, legal ramifications and other considerations to the Subcommittee on the specific issues being studied. The list of witnesses is contained in attachment two.

C. Research and Review

The Subcommittee met fourteen (14) times from May, 1985 through October, 1985 to research, review and study the issues listed under A of this Introduction. In addition to expert testimony given at the Subcommittee level, the members also considered expert testimony which was heard at seven (7) full Task Force Committee meetings held from March, 1985 through October, 1985, excluding the month of August. A number of written documents were also reviewed and discussed at this level and are listed in attachment three.

D. Development of Recommendations

The recommendations contained in this Subcommittee Report were developed in two ways. First, the Subcommittee is proposing some recommendations to the Task Force which due to their substantive nature and complex legal overtones are presented in concept only and are referred to in the text as recommendations approved "in principle". These concepts were found by the Subcommittee to contain a number of complex considerations which in turn would have required lengthy sessions to develop specific language which would effect the recommendation. It was felt by the members that due to time restrictions imposed by the City Council on returning to them with recommendations on the Ordinance prior to the end of 1985, it was more expedious to meet that deadline with recommendations approved "in principle" on some issues. If the recommendation(s) approved "in principle" are considered by the Task Force to have merit, it will be incorporated in the full report to be reviewed by the City Council. Upon Council review and approval, these recommendations approved "in principle" will then be brought back to the Subcommittee for draft language to be developed in conjunction with the City Attorney's office.

A second set of recommendations are presented to the Task Force in a "final" format with draft language contained as part of the recommendation. The issues and recommendations contained herewith are less substantive and more administrative in their make-up and could be implemented immediately with Council approval.

Following, then, is a full presentation of the issues considered and reviewed by the Contribution Limits Subcommittee and presented here for the Task Force consideration for incorporation into the Report to the City Council.

II. Issues, Recommendations, Discussion

Following is a presentation of the Subcommittee's recommendations. For each issue, the topic is stated followed by the Subcommittee's recommendation, in principle or actual draft language and a full discussion of the Subcommittee's considerations and intents in development of the recommendation.

A. Issue - Contribution Limitations

This issue is concerned with whether or not to retain, raise, or lower the currently allowed contribution limitation of $250 from an individual per candidate per election.

In addition to the dollar amount of contributions limits, the Subcommittee considered the following subissues related to limits:

Subissue #1 - Whether to allow any other entities, such as corporations, political action committees (PAC's), and unions to contribute.

Subissue #2 - Whether to establish a different contribution limit for Mayoral and Council races.

Subissue #3 - Whether to retain, raise, or lower the currently allowed $200, the allowed cost for an event held in honor of candidates or committees. Section 27.2903(e), paragraph 5, San Diego Election Campaign Control Ordinance.

Recommendation

1. Contribution Limitations (In Principle)

   Change the contribution limits to $500 from an individual per candidate per election.

   a. Subissue #1 (In Principle)

      Allow $500 as a contribution limit from corporations, partnerships, sole proprietorships and other business entities per candidate per election.

      Allow $1,000 as a contribution limit from political action committees (PAC's) per candidate per election.

b. Subissue #2 (Actual)

There should not be a different contribution limit for Mayoral and Council races.

c. Subissue #3 (Actual)

Raise the limit for events held in honor of a candidate or committee to $500.

Discussion

Subissue #1

With regard to the recommendation increasing the individual contribution limits, the Subcommittee researched and confirmed that, according to the Consumer Price Index, $250 in 1974 translates to about $550 in 1985. This figure includes the cost of housing in San Diego. Other factors supporting this recommendation include the fact that San Diego is now California's second largest city. Additionally, San Diego runs citywide elections and therefore more funds are needed to run a successful campaign. In order to run citywide, it seems necessary to spend funds on various types of media including television and radio. Actual costs of postage for mailers has essentially doubled. Other cities in California have amended or adopted their respective campaign ordinances to allow higher individual contributions, including the City of Los Angeles, which now allows $500 from an individual per candidate per election for Council offices.

In addition to these factors, testimony was heard by the Subcommittee supporting the fact that there are other costs of running a campaign in 1985 that are much higher or are additional costs than in 1974, including such items as the cost of a professional treasurer. Most campaigns now, in light of the complexity and liability inherent on the accounting side of campaigns, find that hire of a professional treasurer is more prudent and cost effective in the long term.

In terms of allowing corporations, partnerships, sole proprietorships, other business entities and political action committees to contribute, the Subcommittee's intent is primarily to broaden the base of support for elections in San Diego. Testimony heard from several sources indicated that San Diego was unusual in being one of the few California cities to allow only individual contributions. It is more difficult (and San Diego has been less successful in this endeavor) to obtain contributor information, thereby defeating the concept of disclosure in campaigns. Business entities and PAC's as established beings are easier to track thereby increasing the level of disclosure in campaigns.

The argument for recommending a higher level of contribution for PAC's is that, in practical terms, many individuals only contribute through the vehicle of PAC's and without this method most individuals would not participate in or contribute to elections. This allowance would then, in effect, broaden the base of support in local elections. In addition to this expanded base, unions would be included under the umbrella of PAC's since union members generally contribute through a PAC.

With this recommendation, the Subcommittee is including a cavaet which will require either additional review or an opinion from the City Attorney's office. The potential situation would exist that with approval of the recommendation to include both PAC's and business entities to contribute, that an individual could give multiple contributions. This could occur if the same individual contributed through the vehicle of owning more than one corporation. This same situation might occur with an individual who is a member of more than one PAC. The Subcommittee recognizes the potential abuses in these possibilities but is of the opinion that these problems can be solved through careful drafting.

Subissue #2

There was no testimony brought to the attention of this Subcommittee which would support the idea of having a different contribution limit for Mayoral and Council races since all local races are run citywide in the general election.

Subissue #3

With regard to the recommendation to increase from $200 to $500, the amount allowed to be spent for an event held in honor of a candidate, it should be noted that these events are solely for the purpose of introducing a candidate or otherwise developing a base of support for a candidate. They are not fundraising events.

The rationale for the recommendation to increase the allowed amount is to more realistically meet the cost of hosting such an event. Again, 1985 dollars are worth less than 1974 dollars and it is difficult to conduct an event with $200.

B. Issue - Loans to Campaigns

In dealing with the issue of loans to campaigns, the Subcommittee addressed the idea that loans to campaigns are not currently required to have documentation. That, not withstanding the current Ordinance provision 27.2941 that states, in part, that a candidate may personally borrow an unlimited amount of money for political purposes, the Subcommittee endorsed the additional requirements suggested by the 1981 Task Force, as follows:

Recommendation (Actual)

(a) A candidate or officeholder sign a promissory note for the amount borrowed with a specific written payment schedule comparable to that which would be imposed by a commercial lending insitution; and

(b) That a rate of interest no less than 7 percent per annum is charged; and

(c) No security for such loan is pledged other than the personal assets of the candidate or officeholder or his or her spouse; provided, however, that other individuals may pledge security for such loan subject to the limitations set forth in Section 26.2941(a); and

(d) Copies of all loan documents shall be maintained and made available for inspection in the manner set forth in Section 27.2925; and

(e) The loan shall be reported at the times and in the manner set forth in Section 27.2931.

Discussion

The Subcommittee is concerned that without proper loan documentation, contributions in excess of the legal limit could be made by a "loan" to a candidate which at some future time would be forgiven. The proposed amendment to the present Campaign Ordinance would require full documentation of the loan which would have to be shown on the candidate's reporting forms as outstanding until paid in full.

C. Issue - Interfund Transfers

The issue identified by the Subcommittee concerns whether or not transfers of money can legally be made from one candidate to another, or from one committee to another.

Recommendation (Actual)

The Subcommittee's recommendation is to reaffirm that prohibitions against interfund transfers currently exist in the Ordinance in Section 27.2942 - Organizational Contributions; Section 27.2943 - Anonymous Contributions; and Section 27.2944 - Assumed Name Contributions.

Discussion

The Subcommittee heard substantial testimony that supported the idea that interfund transfers were prohibited and were already addressed in the current Ordinance. In terms of a contribution from one fund to another, the $250 limit would apply.

Section 27.2942 in the current Ordinance prohibits organizational contributions; "no person, other than an individual, shall make a contribution to any candidate or committee."

The Subcommittee debated whether or not the prohibition on interfund transfers would apply in the case of a candidate or elected official with money in their campaign account. Could a candidate or elected official legally reimburse themselves for a personal check written to another candidate? The testimony received indicated that the current Ordinance limits how campaign funds are spent and that this would be an organizational contribution which is prohibited.

D. Issue - Off-Year Fundraising

The concern with off-year fundraising is one of control. If officeholders are permitted to raise money in the off-year (non-election year) should it be earmarked for a specific election/race. If the funds are not tied to a specific election, incumbents have the ability to build up a "war-chest" over an indefinite period of time.

A second issue is that the officeholders can raise money in the off-year for one race then switch those funds to another race without contributor knowledge.

Recommendation (In Principle)

The Subcommittee supports the controls currently in the Ordinance, which control off-year fundraising. However, with respect to controlling funds raised for one race being utilized for another race, the Subcommittee supports a recommendation in principle that campaign funds that were orginally designated for one office can be "rolled-over" or utilized for another elected office only with the consent of the contributor.

Discussion

Testimony heard by the Subcommittee supported the recommendation that a mechanism is needed to control use of off-year fundraising.

The concern of the Subcommittee is that contributors are often unaware that their contribution may be utilized for a race different from that for which they had made a contribution. The Subcommittee feels that contributors should be notified by letter or other vehicle that the candidate to which they had made a contribution is or may be seeking a different office. The assumption here is that while a contributor may support candidate X for City Council, he or she may not support candidate X for Mayor.

The Subcommittee discussed the following four options. First, require the sending of a letter to the contributor, a vehicle whereby the contributor can indicate whether or not the contribution can be utilized for a different race. A second option considered would be to simply have all contributions returned to contributors in the event that a candidate wishes to seek an office different from that for which he/she orginally declared. Third, the contribution could be "rolled over" into the new election fund without contacting the contributor. Fourth, the contributions could be sent to the City General Fund or to a charity.

E. Issue - Independent Committee Expenditures

This issue was brought to the Subcommittee for review by Common Cause. There have been court rulings effectively insulating groups from limitations on expenditures independent of the candidate. Common Cause feels this issue has not truly been tested and maybe there is room for some type limit on these expenditures.

Recommendation (Actual)

The Subcommittee feels that the Supreme Court ruling is quite clear that limits can not be placed on expenditures of independent committees. This issue is one for judicial redress rather than legislative action.

Discussion

Common Cause's argument is that at some particular point in time it may well be that there will be enough reasons from the government and society's point of view to put some limitations on independent expenditures.

The Subcommittee feels that in order to get this idea tested, some city will have to put limitations in their ordinance and then test it in the court system.

F. Issue - Timing of Expenditures

The primary issue with regard to timing of expenditures is disclosure of large expenditures by a candidate/committee during the final week before an election.

Recommendation (In Principle)

The Subcommittee is conceptually recommending that an information, summary report be required to be filed by a candidate/committee with the City Clerk on Friday prior to an election. This summary report would list cumulative expenditures and contributions made from the end of the previous closing date for filing reports through Friday noon prior to an election and could be made without penalty of perjury.

Discussion

In making this recommendation, the Subcommittee is recognizing that large contributions and expenditures can and do occur during the last week before an election. This enables a candidate/committee to generate advertising that could adversely impact an opponent. An opponent usually does not have the opportunity to respond. Additionally, the timing of these expenditures is such that disclosure of same does not occur until after the election.

The Subcommittee feels that this situation creates an unfair advantage and is attempting through this recommendation not to prevent this occurance but to have it disclosed prior to the election. It is hoped that notification of these expenditures will balance the advantage and that candidates/committees will have to be careful with these types of expenditures if a report on same will be public information several days before an election.

G. Issue - Filing Report Requirements

There are two issues that were considered by the Subcommittee with regard to filing reports. First, whether or not to require a reporting period which would correspond and apply to off-year elections. Second, to define the period when contributions can be accepted.

Recommendation (Actual)

In both cases, the Contributions Subcommittee is recommending that the Enforcement Subcommittee review these issues.

Discussion

The Contributions Subcommittee feels that review of these issues are enforcement related and outside the purview of this Subcommittee.

H. Issue - Expenditure Limits/Code of Ethics

The issue is whether or not to put a voluntary limitation on expenditures in campaigns through the vehicle of a code of ethics.

Recommendation

Defer this issue to the Enforcement Subcommittee, with the recommendation that as part of their review regarding the enforcement implications of incorporating a voluntary code of ethics into the Ordinance, that the concept of a voluntary expenditure limitation also be included.

Discussion

In reviewing this issue, the Subcommittee felt that the general concept of a voluntary code of ethics in campaigns should be reviewed. Within this context, testimony was received suggesting that as part of a voluntary code of ethics, the idea of including a voluntary expenditure limit should also be examined.

The Subcommittee feels that a code of ethics has the potential for enhancing the integrity of the local campaign process. However, there are a number of enforcement concerns that should be reviewed prior to any draft language being prepared.

Therefore, at this point in time, the Subcommittee wishes to defer this issue to the Enforcement Subcommittee for further review and analysis.

I. Issue - "Seed" Money

"Seed" money is a euphemism for no limits on contributions until an established threshold of contributions is reached. A secondary issue is whether to put controls on timing of events held in honor of a candidate.

Recommendation (Actual)

The Subcommittee does not approve a change in the current Ordinance to allow "seed" money.

Discussion

The concept of "seed" money has been debated in cities who are or have recently considered campaign ordinance changes. The theory behind "seed" money is to provide challengers a vehicle by which, without any contribution limits imposed, an initial amount of money can be raised to get a campaign off the ground.

It is argued that incumbents have many advantages, the strongest one being name identification which allows an incumbent to raise funds in the off-year and build up a reserve of money for future campaigns.

The Subcommittee heard arguments that if off-year, fundraising is an allowed activity and if corporations and PAC's are allowed to contribute to campaigns that "seed" money for challengers becomes a moot point.

A challenger has more difficulty generating funds through the vehicle of off-year fundraising, however, campaign funds can quickly accumulate with the allowance of corporate, business entity and PAC contributions.

The overwhelming argument against "seed" money is that, in the event that one individual, one business entity or one PAC contributes most or all of the allowed "seed" money to a candidate then that individual or that business entity has access to and can exert undue influence on that candidate.

J. Issue - "Hit-Pieces"

"Hit-pieces" are any form of media advertising such as T.V., radio, mailers, etc. that are released by a candidate/committee, the timing of which does not allow for rebuttal by an opponent and which contain basically false information about the other candidate.

Recommendation (Actual)

The Subcommittee is recommending that the Enforcement Subcommittee review this issue.

Discussion

The Subcommittee discussed the potential for an unfair advantage and potential harm through slander and libel which might be established by a candidate/committee through distribution of "hit-pieces" close to an election day. The Subcommittee felt that this issue warranted review because of the potential abuses, however, it is more in the purview of the Enforcement Subcommittee to review.

ATTACHMENT ONE

Contribution Limits Subcommittee Members

James Leahy, Chairman

Frank DeVore

Joe Francis

Vic Ioppolo

Nancy MacHutchin

Bud Porter

Lou Rea

Gary Youmans

ATTACHMENT TWO

Contribution Limits Subcommittee Witness List

1. The following people gave testimony at the Subcommittee level

* William Benjamin	- Attorney at Law; member of the 1981 Election Task Force
* Jim Hamilton	- Deputy District Attorney, Office of the District Attorney; member of the 1981 Election Task Force
* Gary Jacobson	- Professor of Political Science, UCSD
* William McKenzie, Jr.	- Attorney at Law; member of the 1981 Election Task Force drafting committee
* Ken Rietz	- Ken Rietz and Company
* Stuart Swett	- Chief Deputy, Criminal Division, City Attorney's Office

2. The following people gave testimony at the Task Force level

* Chuck Abdelnour	- City Clerk, City of San Diego
* Keith Boyer	- Assistant Registrar of Voters
* Jim Johnston	- Johnston and Lewis, Political Campaign Consultants
* Dave Ross	- Ross Enterprises, Political and Public Affairs Consulting
* Dan Stanford	- Chairman, Fair Political Practices Commission
* John Witt	- City Attorney, City of San Diego
* Walter Zellman	- Executive Director, California Common Cause

ATTACHMENT THREE

Contribution Limits Subcommittee Written Documents List

The following written documents were utilized during the Subcommittee's review process.

1. City of San Diego Municipal Election Campaign Control Ordinance
2. State of California Political Reform Act of 1974
3. 1981 Report of the Election Task Force
4. City Clerk Memorandums, dated April 4, 1985; April 25, 1985; August 29, 1985
5. Fair Political Practices Commission Report on Local Ordinances
6. Report from the Campaign Review Task Force Comparison Subcommittee