



THE CITY OF SAN DIEGO

January 13, 2012

Mr. Bob Nelson
Yes on Propositions A, B & C Committee
3624 Robinson Mews
San Diego, CA 92103

Re: Ethics Commission Audit of the Yes on Propositions A, B & C Committee (ID# 1305653) and Ethics Commission Case No. 2011-60

Dear Mr. Nelson:

The Ethics Commission audit of the Yes on Propositions A, B & C Committee (ID# 1305653) is now concluded, and the Final Audit Report is enclosed. The report reflecting material findings was delivered to and accepted by the Ethics Commission at its meeting on January 12, 2012. As you know, the Commission previously conducted an investigation related to the findings noted in the report, and approved a stipulation in the above-referenced matter at its meeting on December 15, 2011.

Sincerely,

Rosalba Gomez
Ethics Commission Auditor

Enclosure

cc: William Baber, Treasurer
8130 La Mesa Blvd., #202
La Mesa, CA 91941
(via regular and electronic mail)



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
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THE CITY OF SAN DIEGO

FINAL AUDIT REPORT

January 4, 2012

Mr. Bob Nelson
Yes on Propositions A, B & C Committee
3624 Robinson Mews
San Diego, CA 92103

Treasurer: William Baber
8130 La Mesa Blvd., #202
La Mesa, CA 91941

**SAN DIEGO ETHICS COMMISSION
AUDIT REPORT:
*Yes on Propositions A, B & C Committee***

I. Introduction

This Audit Report contains information pertaining to the audit of the committee, Yes on Propositions A, B & C Committee, Identification Number 1305653 ("the Committee") for the period from April 2, 2008, through December 31, 2010. 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 10, 2009. 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 \$298,993.40 (inclusive of \$67,893.40 in non-monetary contributions) and total expenditures of \$230,201.56. The difference, \$898.44, represents the available cash on hand. The audit revealed twenty-one material finding(s):

- **The Committee failed to accurately and timely disclose the date of three nonmonetary contributions in violation of San Diego Municipal Code section 27.2930;**
- **The Committee failed to identify the name of a major donor whose contributions totaled \$50,000 or more on a campaign advertisement in violation of San Diego Municipal Code section 27.2975;**



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- **The Committee failed to amend its Statement of Organization within ten days in order to identify itself using a name or phrase that clearly identified the economic or special interests of a major donor in violation of San Diego Municipal Code sections 27.2930 and 27.2976; and**
- **The Committee failed to identify a major donor's economic or special interests on sixteen campaign statements in violation of San Diego Municipal Code section 27.2976.**

II. Committee Information

On April 2, 2008, the Committee filed an initial Statement of Organization with the San Diego City Clerk indicating that it had not yet qualified as a committee. The audit revealed that the Committee qualified (received contributions totaling \$1,000) on April 10, 2008.

The Committee was primarily formed to support Propositions A, B, and C (Exemption of Core Public Safety Services From Managed Competition, Charter Amendments Relating to Permanency of the Strong Mayor Form of Governance, and Charter Amendments Relating to Financial Officers and Responsibilities) in the June 3, 2008, primary election. The Committee has not terminated. The Committee's treasurer is William Baber.

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 27.2930 - Base Level Campaign Statements and Disclosures

Each candidate and committee shall file campaign statements in the time and manner required by California Government Code section 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirement...

Government Code Section 84103(a) – Statement of Organization; Amendment

- (a) Whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change. The committee shall file the original of the amendment with the Secretary of State and shall also file a copy of the amendment with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

Government Code Section 84203(a) – Late Contributions

- (a) Each candidate or committee that makes or receives a late contribution, as defined in Section 82036, shall report the late contribution to each office with which the candidate or committee is required to file its next campaign statement pursuant to Section 84215. The candidate or committee that makes the late contribution shall report his or her full name and street address and the full name and street address of the person to whom the late contribution has been made, the office sought if the recipient is a candidate, or the ballot measure number or letter if the recipient is a committee primarily formed to support or oppose a ballot measure, and the date and amount of the late contribution. The recipient of the late contribution shall report his or her full name and street address, the date and amount of the late contribution, and whether the contribution was made in the form of a loan. The recipient shall also report the full name of the contributor, his or her street address, occupation, and the name of his or her employer, or if self-employed, the name of the business.

Government Code Section 84203.3(b) – Late In-Kind Contributions

- (b) Nothing in this section shall relieve a candidate or committee that makes a late in-kind contribution or the recipient of a late in-kind contribution from the requirement to file late contribution reports pursuant to Section 84203. However, a report filed by the recipient of a late in-kind contribution shall be deemed timely filed if it is received by the filing officer within 48 hours of the time the contribution is received.

Government Code Section 84211 – Contents of Campaign Statements

Each campaign statement required by this article shall contain all of the following:

.....

- (f) If the cumulative of contributions (including loans) received from a person is one hundred dollars

(\$100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:

- (1) His or her full name.
- (2) His or her street address.
- (3) His or her occupation.
- (4) The name of his or her employer, or if self-employed, the name of the business.
- (5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan.
- (6) The cumulative amount of contributions.

California Code of Regulations, Title 2, Division 6 Section 18421.1(f) – Disclosures of the Making and Receipt of Contributions

- (f) A nonmonetary contribution is ‘made’ by the contributor, and ‘received’ by the candidate or committee, on the earlier of the following dates:
- (1) The date that funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the candidate or committee;
 - (2) The date the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the goods or services, or the date that the candidate or committee otherwise receives the benefit of the expenditure.”

San Diego Municipal Code Section 27.2975(a) – Expenditures Supporting Ballot Measures

- (a) In addition to all other applicable disclosure requirements set forth in this Division, it is unlawful for any candidate or committee to place an advertisement supporting or opposing a ballot measure unless the advertisement includes a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more.

San Diego Municipal Code Section 27.2976(a) - Identification of Entities Supporting Ballot Measures

- (a) Any committee that supports or opposes one or more ballot measures shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, including, but not limited, to its statement of organization filed pursuant to California Government Code section 84101.

VI. Material Findings

Section 27.2930: Failure to Accurately and Timely Disclose Contributions

ECCO requires committees to file campaign statements in the time and manner required by California Government Code section 81000, et seq. and the regulations adopted by the Fair Political Practices Commission. Contributions are disclosed on the campaign statement covering the reporting period in

which they are received. Committees are required to timely and accurately disclose contributions. According to FPPC Regulation 18421.1, nonmonetary contributions are considered “received” on the date that funds are expended or the date the committee receives the benefit of the expenditure, whichever is earlier. The Committee failed to timely and accurately disclose the following contributions:

Contributor	Contribution Type	Actual Date Received	Date Reported Received	Date Disclosure Filed	Amount
Sycuan Band of the Kumeyaay Nation	Nonmonetary	5/22/2008	5/27/2008	5/27/2008	\$25,000
San Diego Restaurant & Beverage PAC	Nonmonetary	5/19/2008	5/21/2008	5/22/2008	\$20,000
San Diego Lodging Industry Assoc. PAC	Nonmonetary	5/19/2008	5/21/2008	5/22/2008	\$20,000

On May 22, 2008, the Committee received a nonmonetary contribution from the Sycuan Band of the Kumeyaay Nation (Sycuan) in the form of a \$25,000 payment to the Lincoln Club of San Diego Voter Guide (LCVG) for the inclusion of advertising supporting Propositions A, B, and C in a Lincoln Club slate mailer. On May 27, 2008, the committee filed a Late Contribution Report (Form 497) and inaccurately disclosed that it received the \$25,000 nonmonetary contribution from Sycuan on May 27, 2008. On July 28, 2008, the Committee filed a semi-annual Campaign Statement (Form 460) for the period from May 18, 2008, through June 30, 2008, and again inaccurately disclosed that it received the nonmonetary contribution from Sycuan on May 27, 2008.

Because the nonmonetary contribution was made and received during the 16 days immediately preceding the election (the late period), the Committee was obligated to report it within 48 hours of the date it was received. Therefore, the Late Contribution Report (Form 497) concerning the receipt of the Sycuan contribution should have been filed by the Committee with the City Clerk no later than May 24, 2008.

The Committee also received nonmonetary contributions from the San Diego Restaurant & Beverage Political Action Committee (Restaurant PAC) and the San Diego Lodging Industry Association PAC (Lodging PAC) in the form of \$20,000 payments to the Lincoln Club of San Diego Voter Guide for the inclusion of advertising supporting Propositions A, B, and C in the Lincoln Club slate mailer. These nonmonetary contributions were received on May 19, 2008. The Committee filed a Late Contribution Report (Form 497) on May 22, 2008, and inaccurately reported that these nonmonetary contributions were received on May 21, 2008.

Because these nonmonetary contributions were made and received during the 16 days immediately preceding the election (the late period), the Committee was obligated to report them within 48 hours of the date they were received. Therefore, the Late Contribution Report (Form 497) concerning the receipt of the Restaurant PAC and the Lodging PAC contributions should have been filed by the Committee with the City Clerk no later than May 21, 2008.

Section 27.2975: Failure to Identify Any Person Whose Cumulative Contributions are \$50,000 or More on Campaign Advertisements

To ensure that the identity of persons spending significant sums of money to support or oppose particular ballot measures is readily available to the public, ECCO requires each primarily formed recipient committee that places an advertisement supporting or opposing a ballot measure to include a disclosure statement identifying any person whose cumulative contributions are \$50,000 or more.

The Committee received the following contributions from the Sycuan Band of the Kumeyaay Nation:

Contributor	Contribution Type	Date	Amount
Sycuan Band of the Kumeyaay Nation	Monetary	05/13/08	\$ 45,000
Sycuan Band of the Kumeyaay Nation	Nonmonetary	05/22/08	\$ 25,000
			\$ 70,000

The Committee failed to identify Sycuan as a major funding source on its mass telephone communications after the \$50,000 cumulative threshold was crossed. Specifically, on May 31, 2011, the Committee disseminated recorded telephone messages to 32,683 individuals and households for the purpose of supporting Propositions A, B, and C, but did not include in the telephone message the identity of Sycuan as contributor of \$50,000 or more.

Section 27.2976: Failure to Identify Entities Supporting Ballot Measures on Campaign Statements

ECCO states that any primarily formed recipient committee supporting or opposing one or more ballot measures and receiving \$50,000 or more from one or more donors must identify themselves using a name or phrase that clearly identifies the economic or special interest of their major donor(s) in any reference to the committee required by law, including, but not limited, to the committee’s statement of organization filed pursuant to California Government Code section 84101. The audit revealed that the Committee failed to amend its Statement of Organization to include the economic or special interests of Sycuan after Sycuan made contributions totaling \$50,000 or more. Once the \$50,000 cumulative threshold was reached on May 22, 2008, the Committee was required to amend its Statement of Organization (Form 410) within ten days in order to identify itself using a name or phrase that included the economic or special interests of Sycuan. According to records on file with the City Clerk, the Committee has never filed an amended Form 410 to change its name.

In addition, the information identifying Sycuan’s interests should have been included in the Committee’s name on all campaign statements filed by the Committee after June 1, 2008 (ten days after it was required to amend its Statement of Organization as a result of Sycuan’s cumulative contributions totaling \$50,000 or more). The following sixteen campaign statements were filed by the Committee without the requisite information concerning Sycuan:

Type of Campaign Statement:	Date Filed:
Form 497 Late Contribution Report	06/02/08
Form 460 Semi-annual Statement for the period covering 05/18/08 - 06/30/08	07/28/08
Form 460 Amended Semi-annual Statement for the period covering 05/18/08 - 06/30/08	09/23/08
Form 410 Amended Statement of Organization	01/14/09
Form 460 Amended Semi-annual Statement for the period covering 05/18/08 - 06/30/08	02/01/09
Form 460 Amended Pre-election Statement for the period covering 01/01/08 - 05/17/08	02/01/09
Form 460 Semi-annual Statement for the period covering 07/01/08 - 12/31/08	02/01/09
Form 410 Amended Statement of Organization	02/02/09
Form 460 Semi-annual Statement for the period covering 01/01/09 - 06/30/09	07/19/09
Form 460 Semi-annual Statement for the period covering 07/01/09 - 12/31/09	01/16/10
Form 460 Semi-annual Statement for the period covering 01/01/10 - 06/30/10	07/12/10
Form 460 Quarterly Statement for the period covering 07/01/10 - 09/30/10	10/05/10
Form 460 Quarterly Statement for the period covering 10/01/10 - 12/31/10	01/09/11
Form 460 Quarterly Statement for the period covering 01/01/11 - 03/31/11	04/03/11
Form 460 Quarterly Statement for the period covering 04/01/11 - 06/30/11	07/25/11
Form 460 Quarterly Statement for the period covering 07/01/11 - 09/30/11	10/31/11

VII. Conclusion

The audit revealed twenty-one material findings:

- **The Committee failed to accurately and timely disclose the date of three nonmonetary contributions in violation of San Diego Municipal Code section 27.2930;**
- **The Committee failed to identify the name of a major donor whose contributions totaled \$50,000 or more on a campaign advertisement in violation of San Diego Municipal Code**

section 27.2975;

- **The Committee failed to amend its Statement of Organization within ten days in order to identify itself using a name or phrase that clearly identified the economic or special interests of a major donor in violation of San Diego Municipal Code sections 27.2930 and 27.2976; and**
- **The Committee failed to identify a major donor's economic or special interests on sixteen campaign statements in violation of San Diego Municipal Code section 27.2976.**

Rosalba Gomez
Ethics Commission Auditor

Date

Lauri Davis
Ethics Commission Senior Investigator

Date