MEMORANDUM OF LAW

DATE: January 22, 1993

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Whether Loans to Candidates Are Violations of San Diego's Campaign Control Ordinance

This is in response to your memorandum of November 6, 1992, in which you ask whether the San Diego Municipal Election Campaign Control Ordinance, in particular, San Diego Municipal Code ("SDMC") section 27.2941(b), prohibits a candidate for City office from personally borrowing, at market rate, an amount exceeding two hundred fifty dollars ($250) from a source other than a financial institution and subsequently contributing the proceeds of that loan to his or her own campaign.

CONCLUSION

For the reasons set forth below, we find that SDMC section 27.2941(b) permits a candidate to obtain a market rate loan from any source and give it to his or her own campaign for a City office, even if the loan amount exceeds the City's two hundred fifty dollar ($250) campaign contribution limitation.

ANALYSIS

The San Diego Municipal Election Campaign Control Ordinance ("Campaign Control Ordinance") is codified at SDMC sections 27.2901-27.2975. SDMC section 27.2941 sets campaign contribution limits for City elections. SDMC section 27.2941(a) essentially prohibits a person from making or accepting a campaign contribution in excess of two hundred fifty dollars ($250) per candidate per election. SDMC section 27.2941(b) provides a limited exception to this rule, and reads as follows:

> (b) Extensions of credit for a period of more than thirty (30) days are prohibited. Extensions of credit for more than two hundred fifty dollars ($250) are prohibited. Provided, however, a candidate may

personally borrow an unlimited amount
and such funds shall be considered as
a contribution by the candidate
himself; provided, further, that such
transaction is fully disclosed and
documented in accordance with
applicable law.

╒Emphasis added.σ

SDMC section 27.2941(b) on its face states that a candidate may "personally borrow an unlimited amount" and that amount is to be considered "a contribution by the candidate himself." The point made by the drafters of this provision is that the candidate as an individual, but not the candidate's campaign committee, may borrow money in excess of the monetary limits set forth in SDMC section 27.2941(a). This view is supported by other provisions in the Campaign Control Ordinance, as shown below.

First, Section 27.2941(a) states in relevant part that "╒nσo person other than a candidate shall make . . . any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, . . . to exceed two hundred fifty dollars ($250). (Emphasis added.) For purposes of the Campaign Control Ordinance, the term "contribution" includes "loans." SDMC sections 27.2903(e); 27.2903(i). The term "person" for purposes of the Campaign Control Ordinance includes a "committee" (SDMC section 27.2903(m)), which in its turn includes a campaign committee.

Under SDMC section 27.2941(a), it is clear that a candidate may contribute any amount he or she wants to the candidate's own campaign. Therefore, if the candidate is personally wealthy, SDMC section 27.2941(a) leaves no doubt that a candidate may contribute any amount of his or her own money to the candidate's own campaign.F

Indeed, for the City's Campaign Control Ordinance to attempt to limit a candidate's expenditures or contributions on the candidate's own behalf would violate the federal constitution under the reasoning and holding of the leading campaign finance case of Buckley v. Valeo, 424 U.S. 1, 51-54, n.58 (1976).

Furthermore, reading SDMC section 27.2941(a) together with Section 27.2941(b), clearly a candidate may obtain a personalF

We note that SDMC section 27.2941(b) does not permit a candidate's controlled committee from taking out a loan, unless the source of the loan to the committee is the candidate him or

herself. Any loan must be to the candidate personally in order to fit within the exception.

loan, at least from some sources, and then contribute that borrowed money to his or her campaign.

The question you posed, however, is whether SDMC section 27.2941(b) itself or some other Municipal Code section or law purports to place restrictions on the source of the loan to the individual candidate. It is our opinion that, under the plain terms of SDMC section 27.2941(b), as long as the loan to the candidate is made at market rate,F

The term "contribution" includes the granting of discounts not available to the public generally (SDMC section 27.2903(e)). If a loan were made at less than market rate, the discounted loan would be a form of contribution.

this Municipal Code section does not itself purport to set any conditions on who may be the source of the loan to the candidate. There are no other Municipal Code sections that alter that conclusion.

We conclude that, standing alone, the plain language of SDMC section 27.2941(b) clearly permits a candidate as an individual to obtain a market rate loan from any source and then to contribute that money to his or her own campaign.

The more problematic question, however, is what effect, if any, does state law have on the interpretation of SDMC section 27.2941(b) set forth above? The question arises because a provision of the Political Reform Act (codified at Gov't Code Section 81000 et seq.) defines "contribution" in part to include a loan received by a candidate "unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from surrounding circumstances that it is not made for political purposes." Government Code section 84216(a).F

Technically, the definition of "contribution" is found in Gov't Code ' 82015. Careful reading of the statutes, however, reveals that at least for some purposes the term is also defined in Gov't Code ' 84216(a).

To analyze the question, it is necessary to note that the State Legislature has expressly authorized local governments to set their own campaign contribution limits. Government Code section 81013 expressly permits cities to adopt campaign contribution limits if they do not prevent a person from complying with the Political Reform Act of 1974.

As shown above, The City of San Diego has chosen to adopt campaign contribution limits of two hundred fifty dollars ($250) per candidate per election in the City's own elections. SDMC

section 27.2941. Also, as discussed above, SDMC section 27.2941 also sets forth certain exceptions to the contribution limitations. In particular, it allows candidates for City offices to personally borrow unlimited amounts of money, and turn around and give or loan that money to their own campaign. Under Government Code section 81013,F

Gov't Code ' 81013 reads: Imposition of Additional Requirements.

> Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail.

In this Code section, "title" refers to Title 9 of the California Government Code. Title 9 is essentially the codified version of the Political Reform Act of 1974, as amended.

the question becomes: Does the San Diego Campaign Control Ordinance, in particular, SDMC section 27.2941, prevent a person from complying with the Political Reform Act. (Title 9 of the California Government Code, sections 81000-91005.) If it does not, then the Campaign Control Ordinance limit is valid. For the reasons set forth below, we conclude that this local campaign contribution limit does not prevent anyone from complying with state law.

First, the state law does not purport to set limits on what amount a candidate may borrow from any source. Instead, the state law merely requires the candidate to report the loan transaction as a contribution.

At the outset, we note the term "contribution" for the most part is defined similarly in Government Code section 82015 and SDMC section 27.2903(e). In both instances, the term "contribution" expressly includes the term "payment." The term "payment" is in turn defined to include the term "loan." (Government Code sections 82015; 82044; SDMC sections 27.2903(e) and (l).)

Critically, however, for the purposes of disclosure only, the term "contribution" is further defined in the Political Reform Act. Government Code section 84216.

Government Code section 84216 in relevant part reads:

> Section 84216. Loans
>
> (a) Notwithstanding Section

> 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.

Critical to the present analysis is the fact that the rest of Government Code section 84216 deals only with reporting of campaign loans. The Political Reform Act does not purport to set any monetary limits on loans or contributions to candidates.F We note that Proposition 73, an initiative adopted by the people of the State of California in June 1988, purported to amend the Political Reform Act in part by establishing a $1,000 campaign contribution limit to be applied per candidate per fiscal year. However, this particular portion of Proposition 73 was invalidated by a Federal Appeals Court in Service Emp. Intern. v. Fair Political Practices Commission, 955 F.2d 1312 (9th Ct. App. 1992). Incidentally, additional portions of Proposition 73, unrelated to the issues presented here, at least as applied to charter cities, were invalidated by the California Supreme Court in Johnson v. Bradley (92 D.A.R. 17340, December 24, 1992).

It merely sets forth the requirements for reporting them. This is a critical distinction from local law. As such, we find it is possible to reconcile the state and local law.

For purposes of the City's campaign contribution limit law, a candidate may personally borrow an unlimited amount and contribute that amount to his or her own campaign. In so doing the candidate does not violate the City's campaign limit law. However, that borrowed money, if borrowed from a source other than a commercial lending institution at market rate or if borrowed for political purposes, will have to be reported as a "contribution" for purposes of Government Code section 84216.

This issue was recently litigated in The City of San Diego in the case of Friends of Golding v. Abdelnour et al., San Diego Superior Court, Case No. 657722. In that case, Judge James R. Milliken specifically ruled that a mayoral candidate was permitted to borrow large amounts of money from his mother and turn around and contribute those borrowed moneys to his campaign without violating the City's campaign finance laws. Under state law, the mere fact that he borrowed the money from his mother, who is clearly not a "commercial lending institution," to be used in his campaign is not a violation of law. The loan will merely

have to be disclosed as a "contribution" on his candidate campaign statements. By so doing, the candidate did not admit to a violation of local law.

In conclusion, SDMC section 27.2941(b) permits a candidate to obtain a market rate loan from any source and give it to his or her own campaign for a City office, even if the loan amount exceeds the City's two hundred fifty dollar ($250) campaign contribution limitation.

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