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November 7, 2011

Thomas A. Willis
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577

Dear Mr. Willis:

This letter responds to your request for advice regarding the ban on contributions from City contractors, specifically how the ban applies to Mayoral candidate campaigns.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *See* S.F. Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* Informal advice does not provide similar protection. *See id.* Because you are asking for general advice on the applicability of local law, the Commission is treating it as a request for informal advice.

Background

The City's contractor contribution ban, San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.126, prohibits persons seeking City contracts worth \$50,000 or more in a fiscal year from making political contributions to City elective officers who must approve those contracts. The ban on making contributions begins with the commencement of negotiations for the contract until the termination of negotiations or six months have elapsed from the date the contract is approved. *See* C&GC Code § 1.126(b).

With the passage of Proposition H in June 2008, persons holding City elective office could no longer accept such contributions where the elective officer or a board on which the officer sits must approve the contract. Unlike the prohibition on contributing, the prohibition on soliciting or accepting the contribution begins at the time the contract is submitted to the official's department, not at the time the negotiations commence. *See* C&GC Code § 1.126(c).

A City elective officer who accepts such a contribution must forfeit it to the City and could face other penalties as well. The Ethics Commission may provide for a waiver or reduction of the forfeiture. *See* C&GC Code § 1.126(d).

Questions Asked

You asked the following questions:

1. Does a candidate committee have an obligation to return contributions subject to section 1.126(b), notwithstanding the fact that section 1.126(c) applies only to sitting officeholders and not to candidates for that office?
2. If so, should the contribution be returned to the donor or forfeited to the City's General Fund?
3. If so, how does the Ethics Commission treat contributions subject to section 1.126(b) to candidates for the office if the contributor's ineligibility to donate was not publicly known at the time of receipt, due to the fact that the sitting officeholder filed late Form SFEC-126 disclosures?
4. What enforcement actions will the Ethics Commission take on sitting officeholders for filing late Form SFEC-126 disclosures when the late filing resulted in the candidate committees accepting contributions in violation of section 1.126(b)?
5. In the foregoing circumstances, will the Ethics Commission provide a process for candidate campaigns to petition for waivers or reductions of forfeitures under its authority to do so in section 1.126(d)?

Discussion

Section 1.126(c), the prohibition on receipt of contributions, applies to an "individual holding City elective office or [a] committee controlled by such an individual." The ban in receiving contributions applies "at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved." A committee that receives a contribution in violation of section 1.126(c) must forfeit the amount received to the City's General Fund, pursuant to section 1.126(d).

A plain reading of these provisions leads to the conclusion that a committee of a candidate who is not a sitting City elective officer who must approve the contract is not subject to sections 1.126(c) and (d). Thus, for example, in the context of the election for Mayor, a committee controlled by a candidate other than the Interim Mayor is not subject to the forfeiture provisions of section 1.126(d) for having received a contribution in violation of section 1.126(b).¹ Having said this, a contribution received in violation of section 1.126(b) is nonetheless a contribution

¹ However, candidates who are City elective officers are subject to the contribution ban and forfeiture provisions of sections 1.126(c) and (d) for contributions received from contractors who are negotiating contracts with their respective departments, or from contractors whose contracts were awarded or approved by their respective offices. Thus, for example, your client Dennis Herrera for Mayor 2011 is subject to the provisions of sections 1.126(c) and (d) for contracts that his City Attorney office is negotiating or has approved in the last six months. Other sitting Supervisors who are seeking the office of the Mayor are similarly subject to sections 1.126(c) and (d) for the contracts that the Board of Supervisors is negotiating or has approved in the past six months.

received in violation of the law; thus, a committee that received such a contribution may wish to return it to the donor in order to show compliance with the law.

I hope that this information has been helpful to you. Please do not hesitate to let us know if you have further questions.

Sincerely,

John St. Croix, Executive Director

By: Mabel Ng, Deputy Executive Director