

MEMORANDUM OF LAW

DATE: February 14, 1986
TO: Councilman Bill Cleator
FROM: City Attorney
SUBJECT: Printing and Mailing of Letter Noticing the
March 10, 1986 Meeting of the Transportation
and Land Use Committee

By memorandum of February 11, 1986, you asked for a written opinion on the propriety of mailing approximately 1,950 letters to residents in the Old Town area of San Diego informing them of the Transportation and Land Use Committee's consideration of the Old Town Task Force Update. The letter is neutral in content, urges the citizen's attendance and on your council stationery. You seek our advice out of a desire to "avoid any hint of impropriety."

Communication between representatives and constituents is the very heart of representative government. Hence we have found proper expenditures by then Councilman Jim Bates in an "outreach" effort to be proper even while he was a candidate for the 4th Supervisorial District of the County of San Diego. City Attorney Opinion Number 74-5 (1974). However, that opinion required weighing the content of the communication against the enhancement of candidacy.

Since that opinion, however, California Elections Code sections 11800 and 11801 have been enacted and provide as follows:

11800. No mass mailing at public expense.

No newsletter or other mass mailing shall be sent at public expense by or in behalf of an elected city, county, or district official, including an official of a chartered city or chartered county, to any person residing within the jurisdiction from which he or she was elected or to which he or she seeks

election, after the elected official has filed a declaration of candidacy, nomination paper, affidavit of acceptance of sponsor's declaration, acceptance of nomination, or any other paper evidencing an intention to be a candidate for any local, state, or federal office.

11801. "Mass mailing" definition.

"Mass mailing" means identical or nearly identical pieces of mail in an amount which, in any month, exceeds 1 percent of the population of the jurisdiction from which the official was elected, according to the latest federal census, or which, in the 30 days preceding a local election, exceeds 200 pieces, but does not include a form letter or other mail which is sent in response to a letter or inquiry or an official mailing required by law.

While no cases have construed the parameter of these two (2) sections, it is clear that you are an elected city official that has filed a declaration of candidacy for the local office of Mayor of the City of San Diego. The issue then becomes whether the 1,950 letters are within the definition of "mass mailing."

We believe this issue must be answered in the affirmative since the amount clearly exceeds the 200 piece limitation of mailing within 30 days of an election set for February 25, 1986. The letters do not admit of the noted exception since they are not a response to a letter, inquiry or mailing required by law. California Government Code 54950 et. seq.; San Diego Municipal Code section 22.0101, Rule 12.

In light of the above-cited Election Code provisions, we believe the proposed mailing would not be proper. In so advising, we note that this opinion is based solely on the statutory definition of "mass mailing" since the content of the letter is a neutral notice that neither encourages nor exhorts your candidacy in the up-coming election.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:011(x043.2)

Attachment

ML-86-18