

MEMORANDUM OF LAW

DATE: April 17, 1986

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Statement of Write-In Candidate in Sample
Ballot

By means of a recent memorandum, you requested our advice on whether or not you must include in the sample ballot the candidate statement of write-in candidate Robert McCullough who recently requested the inclusion.

The San Diego Municipal Code refers to the statement of a candidate's qualification at Section 27.2204 which in pertinent part provides:

SEC. 27.2204 STATEMENT OF CANDIDATES'
QUALIFICATIONS

Candidates for elective office may prepare a statement of qualifications on a form provided by the Clerk. Such statement may include the name, age, occupation and education of the candidate and a brief description of the candidate's qualifications expressed by the candidate and limited to matter concerning only the candidate without reference to opponents or anyone else by name. Such statement shall not include the party affiliation of the candidate nor membership or activity in partisan political organizations. Such statement, which shall not exceed two hundred words, shall be filed in the office of the Clerk at the following times:

- (a) When nominating petitions are returned for filing.
- (b) Within three (3) days following the municipal primary election for candidates who will be on the general municipal election ballot in Council elections.

(c) No later than the day prior to the date after which the Registrar of Voters shall not accept nomination documents for statewide primary or general elections. The statement may be withdrawn but not changed during the period for filing the nominating

petitions and until 5 p.m. of the next working day after the close of the nomination period or during other prescribed filing periods and until 5 p.m. of the next working day after the close of such period. Statements received by the Clerk shall be kept confidential until the expiration of the filing period.

Emphasis added.

The Registrar of Voters may not accept nomination documents later than the eighty-eighth (88th) day prior to the primary election. California Elections Code sections 6490 and 23302.5. This allows for a practical period of preparation of the sample ballot which must be mailed out not more than forty (40) nor less than ten (10) days prior to the election. California Elections Code section 10010.

Therefore under 27.2204(c), the Clerk cannot accept a candidate's statement of qualification any later than the eighty-ninth (89th) day prior to the election - that being the "day prior to the date after which the Registrar of Voters shall not accept nomination documents" Hence no statement may currently be accepted that was not filed eighty-nine (89) days prior to June 3, 1986.

Any other construction to provide a different date to write-in candidates would wreak havoc with the preparation of a sample ballot both practically and legally since nominating papers for write-in candidates can be received by the Clerk up to fourteen (14) days prior to the election (San Diego Municipal Code section 27.3209) while he is prohibited from sending out a sample ballot later than ten (10) days prior to an election. In short, a write-in candidate has a right to have his candidacy considered but not his qualifications circulated by the government unless all appropriate filing deadlines are met.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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