

MEMORANDUM OF LAW

DATE: July 8, 1987

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Eligibility for Candidacy

By memorandum of June 22, 1987, you inquire whether the change of residences by a previously registered voter would disqualify their candidacy for councilmember. This question is prompted by the candidacy of Gloria Tyler-Mallery, who we understand is a registered voter in District 4 and who has changed addresses within the District. She now, of course, intends to notify the Registrar of Voters of this change which prompts your disqualification inquiry.

San Diego Municipal Code section 27.2023(b) requires that a councilmember must have been a registered voter of the district for at least thirty (30) days prior to filing nominating papers. It reads in pertinent part:

b. No person shall be eligible to or hold the office of a Councilmember, other than the Mayor, either by election or appointment, unless that person is, at the time of assuming such office, a resident and elector of the district from which nomination or appointment is sought and was a registered voter of the district at least thirty (30) days prior to the date nominating papers were filed by the candidate pursuant to Section 27.2111 or 27.3209 of this Article or at least thirty (30) days prior to the date of filing an application for appointment to an elective office pursuant to Section 27.3104 of this Article.

While it is uncontroverted that Ms. Tyler-Mallery was a registered voter of the district, we must determine whether her change of address invalidates her registration. As the following

sections confirm, her change of residences does nothing to invalidate her status as a registered voter.

It is axiomatic that only a registered voter may vote (California Elections Code section 100) and once registered the registration of a voter is permanent unless and until cancelled by the County Clerk. California Elections Code section 700. Moreover the Elections Code simplifies and expedites transfers of

registration as evidenced by Sections 305 and 315 which provide respectively:

305. Time affidavits of registration accepted; effective date.

(a) Except as provided in subdivision (b), the county clerk shall accept affidavits of registration at all times except during the 28 days immediately preceding any election, when registration shall cease for that election as to electors residing in the territory within which the election is to be held. Transfers of registration for an election may be made from one precinct to another precinct in the same county at any time when registration is in progress in the precinct to which the elector seeks to transfer.

Emphasis added.

315. Voter letter designating address change; acceptance time.

In lieu of executing a new affidavit of registration for a change of address within the county the county clerk shall accept a notice or letter of the change of address signed by a voter as he is registered.

The county clerk shall accept notifications received by mail by the fourth day after the 29th day before an election, if the notice or letter is dated on or before the 29th day prior to the election, and shall change the address on the voter's affidavit of registration accordingly. Any requests for change of address received prior to an election, but after the day specified herein shall not be applicable to that election but shall apply to all subsequent elections.

Emphasis added.

As is readily apparent, transfers of registration are made simple by the Elections Code and may be accomplished by a mere letter. Since the notice of change of address acts as a transfer of registration as opposed to a whole new registration, it is clear that the transfer of registration occasioned by a new address does not invalidate a person's status as a registered voter. *Kagen v. Kearney*, 85 Cal.App.3d 1010, 1015 (1978). It would indeed be anomalous if specific provisions designed to

simplify and expedite change of addresses worked to invalidate the very right they were designed to preserve.

We find then that the transfer of registration caused by a change of address does nothing to invalidate the status of a registered voter. Hence Ms. Tyler-Mallery's status as a registered voter is preserved, thus preserving her eligibility as a candidate.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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