

MEMORANDUM OF LAW

DATE: August 11, 1987

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Candidacy of Wes Pratt

You requested our review of a six (6) page letter from Michael F. Boyle, Esq. urging that under various legal arguments Wes Pratt qualified for the Municipal Primary Election of September 15, 1987. We have analyzed the letter and supporting references and find that Mr. Pratt does not qualify for the ballot. Our reasoning follows.

Election Officer Jack Fishkin confirms that Mr. Pratt obtained only one hundred seventy-nine (179) valid signatures on his nomination petition. San Diego Municipal Code sections 27.2104 and 27.2106 explicitly require two hundred (200) valid signatures.

SEC. 27.2106 REQUIRED NUMBER OF PETITIONS

Nominating petitions of candidates for the office of Councilmember or member of the Board of Education shall be signed by at least two hundred persons residing in the district and at the time of signing shall have been registered voters for a period of at least thirty (30) days in the district from which the candidate seeks nomination.

Nominating petitions of other candidates shall be signed by at least three hundred persons.

All persons signing nominating petitions must be registered voters for a period of at least thirty (30) days at the time they sign such petitions.

Emphasis added.

That the potential signatories as well as the circulators are aware of this requirement is clear from the face of the nominating petition itself.

SEC. 27.2104 PETITION SIGNATURES AND AFFIDAVIT OF AUTHENTICITY

Signatures shall be executed by voters in their own handwriting. Voters must also print their names and indicate place of residence, including street and house number, or other

designation from which the location can be readily ascertained. The date of execution must also be indicated by voters.

....

Any number of voter signature sheets may be incorporated in a petition section. The following note shall appear on each signature sheet:

(NOTE: Petitions for Candidacy for Mayor and City Attorney may be signed at large throughout the City and must contain the signatures of at least 300 qualified voters. Petitions for candidacy for Members of the Council and Board of Education may be signed only by voters within the home district of the Candidate and must contain the signatures of at least 200 qualified voters. No person shall sign petitions of nomination for elective officers for a greater number of candidates than are to be elected.)

Emphasis added.

In face of this explicit requirement, the writer points out the doctrine of substantial compliance. The case of *Riles v. Eu*, Supreme Court, California No. S.F. 23806 (unpublished) is not persuasive since the court explicitly found "isolated atypical circumstances" arose. Here the requirement of two hundred (200) signatures is clearly expressed and capable of exact measurement. Where the statute has such requirements, substantial compliance will not substitute for the statutory minimum.

At this point, let us say that, in applying to the proceeding "the rule of substantial compliance," we do so with the reservation

that such interpretation as we have given must not be relied upon to determine every proceeding of similar nature. The procedure set up by the Constitution and the statute is simple, clearly expressed and may be exactly followed with little difficulty. "Substantial compliance" may be carried too far, in which case its application may not be relied upon to save carelessly or negligently prepared petitions.

Calif. Teachers Assn. v. Collins,
1 Cal.2d 203, 205 (1934)

Emphasis added.

Here there is no vague, confusing or incomprehensible provision. Rather the requirement is clear, explicit and capable of being fulfilled. In such a situation, the only compliance allowed is the minimum provided by Sections 27.2104 and 27.2106.

Rather than the unpublished or foreign authorities referenced by the writer, we believe the California Court of Appeals squarely addressed the minimum signature requirement for nomination in *Kellam v. Eu*, 83 Cal.App.3d 463, 469 (1978) where it was held:

While we recognize the importance of free expression of divergent views on the ballot and elsewhere, we find that the statutory provisions at issue here do not operate to unduly restrict this expression. Significantly, the court went on in *American Party* to caution that "what is demanded may not be so excessive or impractical as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot." (415 U.S. at p. 783 39 L.Ed.2d at p. 761.) The 500 signatures requirement of California law has not been demonstrated to operate in any way as a denial of the constitutionally guaranteed right to appear on the special primary election ballot. It is rather the implementation of this state's legitimate desire that its elections represent a fair choice and that its ballots maintain manageable proportions.

Obviously since a five hundred (500) minimum signature requirement has survived constitutional scrutiny, we are confident that the municipal two hundred (200) requirement is in a like posture.

We hasten to add that this ruling does not infringe on any constitutional right of Mr. Pratt to seek office or for sympathetic voters to vote for him. The provisions of Section 27.3201 et seq. provide full access to the ballot both for Mr. Pratt and his supporters.

In summary, the doctrine of substantial performance does not excuse nomination limitations that are precise, clear and uniform in their requirements and the minimum signature requirement is a constitutional restriction that has been upheld in California.

JOHN W. WITT, City Attorney

By

Ted Bromfield

TB:js:014(x043.2)
ML-87-86

Chief Deputy City Attorney