

DATE: August 19, 1987

TO: Mark Nelson, Chairman, Campaign Review Task Force

FROM: City Attorney

SUBJECT: Legal Assistance

I have recently learned that some members of the Campaign Task Force (Task Force) have been critical of this office in pursuing your review of campaign spending measures. Obviously our first priority has to be in focusing on the present (1987) election. To that end we had to review, evaluate and prepare three (3) separate ordinances (Ordinance Nos. 16912, 16913 and 16914) providing for four (4) Council offices, two (2) general obligation bond measures and six (6) municipal propositions that included three (3) initiative matters. Each of these had to be completed and to the Registrar of Voters by the end of July 1987.

That having been accomplished, we will do our best to assist the Task Force on specific legal questions. However, it appears that in the interest of efficiency, we can best assist by answering specific legal questions rather than vague questions that have no specific answer without articulating the specific mechanism.

You inquired generally:

- 1) What are the prospects of pursuing a challenge to Buckley v. Valeo as it relates to expenditure limits? Buckley v. Valeo, 424 U.S. 1 (1976) remains the signal case in election control having been repeatedly affirmed in numerous cases (e.g. FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. , 93 L.Ed.2d 539 (1986). The Task Force is free to propose alternatives to direct money subsidies which must be tested against the government's right to further a "substantial governmental interest" with no greater restriction than is "essential to the furtherance of that interest."

Republican Nat. Committee v. Fed. Elec. Com'n, 487 F. Supp. 280, 287 (S.D.N.Y. 1980).

The use of tax credits or alternative subsidies remains constitutionally untested. The California Commission on Campaign Financing "believes . . . more likely than not" that they will withstand constitutional attack. The New Gold Rush: Financing California's Legislative Campaigns, p. 281 (1985). This is hardly citable authority for a legal conclusion. Hence we would have to review the specific public subsidy proposed.

2) Review of Mayor O'Connor's TINCUP II proposal with particular attention to definitions. The proposal we have received (attached) is totally void of definitions. Therefore it would be appropriate to add a definition section similar to Municipal Code section 27.2903 to articulate precisely what the legislation means by its relevant terms.

In defining agency, the Task Force could use a variation of the definition of "agency official" found in the Political Reform Act. California Government Code section 82004. Alternatively the Task Force may want to structure a definition around the amount of control exercised which has always been the common law definition of "agent." *McCollum v. Friendly Hills Travel Center*, 172 Cal.App.3d 83, 91 (1985). Again the Task Force is free to fashion a definition geared to the purpose of the regulation.

In summary, we can best assist the Task Force by responding to concrete questions arising from the regulatory goals of the Task Force.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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Attachment

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