

MEMORANDUM OF LAW

DATE: December 19, 1988

TO: Jack McGrory, Assistant City Manager
FROM: City Attorney
SUBJECT: Use of City Facilities to Print Council
Newsletters/Proposition 73 and Council Policy
000-4

This is in response to your handwritten memorandum of December 9, 1988, to Curtis M. Fitzpatrick, Assistant City Attorney, regarding the use of City facilities (print shop, etc.) to print newsletters originating from Council offices in relation to Proposition 73 and Council Policy 000-4. Your memorandum was triggered by a memorandum dated November 21, 1988, to James Sills of Councilmember Bruce Henderson's staff from Deputy City Attorney Cristie C. McGuire. A copy of that memorandum is attached for easy reference.

A cursory review of my memorandum reveals it is confined to Proposition 73, which prohibits mass mailings at public expense while your concern is Council Policy 000-4 which prohibits any public expenditure "for private gain or advantage." To the extent a newsletter is public business it is not for private gain and, hence, not prohibited by Council Policy 000-4, while it still could be prohibited by Proposition 73. Hence, the former focuses on the number of pieces while the latter focuses on the nature of the piece.

This distinction was formulated and resolved in an extensive memorandum of law prepared by former Assistant City Attorney Robert S. Teaze, dated January 5, 1979, and in Opinion No. 74-5, dated May 28, 1974, prepared by Chief Deputy City Attorney Jack Katz. Copies of this memorandum of law and opinion are attached for your reference. Whether an individual councilmember's newsletter serves a public purpose or is produced more for private gain of the councilmember will depend directly on the content of that newsletter. Assuming the newsletter contains information pertaining to the councilmember's district or the City as a whole, the newsletter likely falls under the category

of "City business," rather than "private business." In that instance the use of City time, facilities, equipment, or supplies to print the newsletter would not violate the Council Policy. However, because of the statutory changes brought about by Proposition 73, all costs of producing such a newsletter must be reimbursed to the City.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:TB:tmv:930.62(x043.2)

Attachments

ML-88-106