

MEMORANDUM OF LAW

DATE: February 29, 1988

TO: Charles G. Abdelnour, City Clerk  
FROM: City Attorney  
SUBJECT: Residency and Voter Registration/Eligibility  
Requirements for Mayoral Candidates

This is in response to your memorandum of February 12, 1988, to Ted Bromfield, Chief Deputy City Attorney, regarding the ability of Mr. Robert McCullough to qualify for the ballot as a candidate for Mayor in the June 7 primary election.

FACTS

The following facts were presented in your memorandum and supplemented by information provided by your assistant, Mikel Haas, over the telephone:

Mr. McCullough appeared in person to take out nomination papers at approximately 5:00 p.m., February 11, 1988. In taking out his nomination papers Mr. McCullough listed his residence as 1901 Imperial Avenue, within the City of San Diego, explaining that he had moved to this new address on February 8, 1988, and had not as yet reregistered to vote. Mr. McCullough was registered to vote under his prior residential address, 704 Redondo Court, also within the City of San Diego. This information was confirmed with the County Registrar. Mr. McCullough then filled out and presented your office with a completed voter registration form with his new address and asked that it be forwarded immediately to the County Registrar.

QUESTIONS PRESENTED

1. Under the circumstances described above, can Mr. McCullough qualify as a candidate for mayor on the June 7 primary ballot, i.e., does he meet the minimum residency and registration requirements under San Diego Municipal Code (SDMC) Section 27.2023?

2. More specifically, does Mr. McCullough's status as a legally registered voter effectively terminate on the date he no

longer resides at the address listed on his affidavit of registration?

ANSWERS

1. Yes.
2. No.

LEGAL ANALYSIS

SDMC 27.2023 sets forth the residency and voter registration requirements to establish eligibility for candidates for City

Mayor in pertinent part as follows:

. . .

a. No person shall be eligible to hold the office of mayor . . . of the City, either by election or appointment, unless that person is, at the time of assuming such office, a resident and elector thereof and was a registered voter of the City at least thirty (30) days prior to the date nominating papers were filed by the candidate pursuant to Section 27.2111 governing the filing of nominating papers or 27.3209 governing the time for filing nominating papers of this Article. (Emphasis added.)

. . .

Under the above provisions Mr. McCullough need be a registered voter in the City of San Diego at least thirty (30) days before he files his nominating papers with the City Clerk's office. The Municipal Code does not speak to voter registration requirements. Those are established by state law under the California Elections Code (Elections Code).

A voter does not lose his registered status just because he moves. The facts do not indicate whether the move in question here is from one precinct to another or entirely within one precinct. If, on the one hand, the move is merely from one address to another within the same precinct, he need only fill out another voter affidavit of registration under Elections Code Section 305 or mail a letter-in-lieu-of affidavit to the Registrar under Elections Code Section 315. If, on the other hand, the move is to a new precinct within the same county, the voter should reregister in accordance with Elections Code Section 312.

Registration by affidavit is effective up to twenty-nine (29) days immediately before any election. Elections Code Sections 305 and 315. Assuming a voter moves from one precinct to another, once the County Registrar receives the new affidavit, registration at the old address is cancelled and registration at

the new address is effective. Elections Code Sections 301, 312.

From the facts presented Mr. McCullough appears to have been properly registered to vote in this City and was a resident of the City at the time he was issued nominating papers. The critical time to determine residence and voter registration status under the Municipal Code, however, is at the time of a candidate's assuming office, if there is a question of residency, and thirty (30) days prior to filing nominating papers, if there is a question of voter registration status.<sup>1</sup>

Therefore, in response to the first part of the first

question presented, it is premature under the San Diego Municipal Code to determine whether Mr. McCullough meets the minimum residence requirement because we have not yet reached the date specified in SDMC 27.2023. Unless his residence status changes, however, between now and the critical time established in the Municipal Code, it appears Mr. McCullough will meet this requirement.

In response to the second part of the first question, it is apparent that Mr. McCullough was a duly registered voter on February 9, 1988, thirty (30) days prior to March 10, which is the last date established for filing nominating papers; and, therefore, he meets the registration requirement of SDMC Section 27.2023.

State law governs the second question presented. Under the California Elections Code, a person does not lose his voter registration status merely because he moves. In order to vote he must register or mail a letter to the Registrar notifying the Registrar of his change of address. Unless the move occurs during the short period just prior to an election, a person may register to vote at any time. Therefore, the response to the second question is that Mr. McCullough's voter registration did not terminate on the date he moved to his new residence.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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1 This Municipal Code section stands in contrast to the State Elections Code requirements for determining eligibility for elective office. Elections Code Section 75. This section requires registration status be determined at the time nomination papers are issued to the person.