

MEMORANDUM OF LAW

DATE: March 16, 1988

TO: Councilmember Judy McCarty
FROM: City Attorney
SUBJECT: District 7 Annual Newsletter Text

This is in response to your memorandum of March 3, 1988, addressed to Ted Bromfield, Chief Deputy City Attorney, containing two questions regarding your upcoming newsletter. You have asked us to review the contents of the draft newsletter and identify any improper uses of City materials or funds. In particular, you have asked us to review the article regarding "Friends of Mission Trails Regional Park" and asked whether the solicitation of funds for this private, nonprofit corporation established to raise money for public facilities in Mission Trails Regional Park presents any legal problems.

An opinion was prepared on May 20, 1974, to former Councilman Jim Bates by this office on a similar question regarding the propriety of a councilmember's use of City facilities for soliciting complaints in his district. A copy of that opinion, No. 74-5, is attached for your reference. See especially pages 3 through 7 for discussion of applicable law to the questions presented. Analysis of the law will not be repeated herein. From the law cited in that opinion, it is apparent that, as a general rule, it is not improper for a councilmember to mail a newsletter periodically to the public to keep constituents informed of events concerning the City or district.¹

¹ Although not relevant at this time, you should be aware that the Political Reform Act (PRA) raises some questions about mass mailings. The PRA was adopted by the people in 1974 subsequent to the opinion prepared by this office cited above; it is codified in Government Code Sections 81000 et seq. Section 89001 governs mass mailings made by or on behalf of any elected officer to persons residing within the jurisdiction from which the elected officer was elected after certain nominating papers were filed in accordance with the elections code. Section 82041.5 defines "mass mailing" to mean two hundred or more identical or nearly identical pieces of mail and would include a newsletter such as you propose. However, the provisions in the Government Code do not appear to apply here because you are not running for office at this time.

We turn our attention now to the specific question you presented regarding the solicitation of funds for the private,

nonprofit corporation established to raise money for public facilities in Mission Trails Regional Park. As a general rule, a city and its officials are not lawfully permitted to spend public monies for publicity in the form of newspaper advertising, circulars and the like to advocate approval of bond issues. *Stanson v. Mott*, 17 Cal.3d 206 (1976); 45 Cal.Jur.3d Sec. 361. However, *Stanson* specifically recognized the educational authority of the government. By analogy, therefore, it would be improper for a councilmember to use public monies to advocate a solicitation for funds to assist a private group established to raise money for public facilities in a regional park but, certainly, can provide educational information regarding same. Hence, we recommend that you rephrase that portion of the proposed newsletter to reflect that you are providing information regarding this fundraising group. That may include telling the public where they may obtain further information about that group without specifically soliciting funds.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:fs:040:011:(x043.2)

Attachment

ML-88-28