

MEMORANDUM OF LAW

DATE: June 22, 1988

TO: Councilmember Bob Filner

FROM: City Attorney

SUBJECT: Proposition 73

Your memorandum of June 13, 1988, to John Witt regarding Proposition 73 has been referred to me for response. Because of the urgency of the matter, especially regarding the effective date of this initiative measure, we gave our oral opinion on the questions you presented by telephone on June 14 to your Executive Assistant, Allen Jones. This memorandum confirms and supplements that advice.

You have asked for an analysis of the measure, including an evaluation of the effect it has on a council office.

Proposition 73 was approved by the voters on June 7, 1988. A copy of the measure obtained from the ballot pamphlet is attached for your reference. The proposition contains two sections. Section 1 of the new legislation adds a chapter to the California Government Code containing the Political Reform Act and establishes limits on campaign expenditures for both state and local elected officials and prohibits the use of public funds for campaign expenditures. Section 2 of the measure sets major restrictions on mass mailings. This memorandum will discuss section 1 first.

Section 1 contains subparts, also called (unfortunately) sections, numbered 85100 through 85400. Section 85101 permits local governments to set their own campaign contribution limits, as long as those limits do not exceed the limits established in this measure. Since The City of San Diego has its own campaign expenditure limit for City offices, and these limits are lower than those contained in this measure, the new campaign contribution limits should not affect persons running for City office. Note, however, that they may affect a City elected official who runs for another office outside the City.

Given the language in section 85101, it is not clear whether some of the other provisions of new chapter 5 will apply to City elected officials. To make that determination will require more detailed analysis. You should be aware, however, that among other things this legislation prohibits transfers of money from one candidate's campaign account to another candidate's campaign account (section 85304); it also sets a \$1,000 limit on honoraria or gifts received for speaking or publishing (section 85400);

and, it also requires candidates to file a statement of intention to run for a specific office with the Fair Political Practice Commission (FPPC) before receiving or soliciting any campaign contributions (section 85200). Section 85104 also specifically provides that the provisions of this new "chapter" (apparently referring to chapter 5) will take effect on January 1, 1989.

In contrast with the effective date specified in the legislation for new chapter 5, Section 2 of Proposition 73, which deals with mass mailings and amends portions of existing statutes, is silent as to its effective date. Article II, section 10(a) of the State Constitution states that "an initiative statute ... approved by a majority of the votes thereon takes effect on the day after the election unless the measure provides otherwise."

Although there is an argument that Section 2 also would take effect on January 1, 1989, because of the language appearing in section 85104, the constitutional provision appears to apply here, because Section 2 of the measure amends two existing statutes of the Government Code, and has nothing to do with new chapter 5. Therefore, it is our view that the mass mailing provisions of Section 2 took effect the day after the election, June 8, 1988. This view is shared by the FPPC, according to staff attorney Lily Spitz.

Section 2 drastically amends the existing mass mailing provisions of the Political Reform Act. Specifically, it states: "No newsletter or other mass mailing shall be sent at public expense." (Gov't Code section 89001.) "Mass mailing" is defined to mean "two hundred or more substantially similar pieces of mail, but does not include a form letter which is sent in response to an unsolicited request, letter or other inquiry." (Gov't Code section 82041.5.)

On its face the mass mailing prohibition is very broad and appears to prohibit all government agency mass mailings. We believe, however, that a court would interpret this provision to

avoid such an absurd result in accordance with standard rules of statutory construction.

At a minimum, however, this prohibition on mass mailings prohibits the mailing of 200 or more newsletters or substantially similar pieces of mail by elected officials. The legislation specifically provides that mass mailings may not be "sent" at public expense. We understand that some are interpreting this to mean that only mass mailings where postage is paid by the City is prohibited. We believe this view is too narrow and that the legislation appears to prohibit the use of public monies to prepare mass mailings (e.g., print shop, typing, computer time,

etc.).

Pending the issuance of an interpretive regulation by the FPPC, we are attaching Advice Letter No. A-88-220 which details their current view of itemized public documents affected by Proposition 73. Of course, we will provide you the final regulation as soon as it is issued.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:mb:930.62:(x043.2)

Attachments

cc: Ms. Lily Spitz, Staff Attorney

Fair Political Practices Committee

ML-88-61