

MEMORANDUM OF LAW

DATE: July 1, 1988

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Ballot Proposition Summary and Title

Your memorandum of June 20, 1988 to Chief Deputy City Attorney Ted Bromfield has been referred to me for response. For clarity of response, I have reorganized the order of the questions you have posed.

Although not explicit on the face of your memorandum, you are apparently prompted by the recent adoption of Elections Code section 4002.5 to ask several questions relating to responsibility for preparing ballot summaries and titles. Elections Code section 4002.5 purports to require all city attorneys, including those of charter cities, to handle the drafting of ballot titles and summaries on initiatives prior to their publication and circulation. The underlying query of your memo appears to be: does Elections Code section 4002.5 apply to The City of San Diego? The answer is "no."

Although new California Elections Code section 4002.5 purports to apply to all cities, it is part of a series of Elections Code sections that the legislature has said specifically do not apply to charter cities, such as San Diego, which have their own elections codes with provisions governing initiatives. California Elections Code section 4061. This opinion was clearly set forth by Ted Bromfield in his analysis of AB 2202, which became Chapter 767 of 1987 Statutes, later codified in part as Elections Code section 4002.5 (copy of bill analysis attached).

Although the office of the City Attorney is not required by the City's Election Code to prepare ballot titles and summaries for initiative measures, this office regularly prepares their equivalent as a necessary part of the ordinance calling for an election on an initiative measure pursuant to SDMC section 27.2522. This ensures that the City becomes involved only after the measure has qualified for the ballot.

There is no internal administrative appeals process available in the event someone is dissatisfied with the City Attorney's manner of phrasing the ballot language or title in the ordinance. If someone wishes to challenge the language as being false or misleading, he or she may do so by filing a petition for writ of mandate in superior court. California Elections Code section

10015. This happens to be the same procedure made available to challenge ballot titles and summaries prepared by general law cities attorneys under California Elections Code section 4002.7.

Lastly, you ask whether you should apply the procedures in California Elections Code section 4002.5 to initiative measures, especially initiatives amending the Charter. Absent clear policy direction from the Council and amendments to the City's own election code, our recommendation is not to follow California Elections Code section 4002.5, that is, do not submit initiative measures to this office prior to their publication and circulation for preparation of ballot titles and summaries. Continue your current practice of submitting initiative measures to this office for preparation of the elections ordinance, including the ballot title and language, after the initiative has qualified.

If you have any further questions, please do not hesitate to telephone me.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:mb:930:043.3

Attachment

ML-88-64