

MEMORANDUM OF LAW

DATE: September 9, 1988

TO: Councilmember Judy McCarty
FROM: City Attorney
SUBJECT: Restrictions on Addressing Community with
Regard to City's Growth Management Plan Ballot
Measure

Your memorandum of August 29, 1988 to Assistant City Attorney Curtis Fitzpatrick has been referred to me for response.

As factual background, you state that you would like to speak to community groups, both in and out of your district, about the City Council's proposition adding a Growth Management Element to the City's General Plan that the Council has placed on the November 1988 ballot (hereafter Growth Management Ballot Measure). Before you do so, you want our office to address the following questions:

- 1) Are there any restrictions that you, as an elected official, must be aware of in addressing the community on the Growth Management Ballot Measure?
- 2) Assuming you were to address a group regarding the Growth Management Ballot Measure, are members of your staff restricted in what they can do to set up the meeting? As an example, you ask whether your staff may properly assist you in scheduling and preparing any research for your speaking engagement.
- 3) Lastly, you ask to be advised of "any and all restrictions involved in addressing groups and providing them with information" regarding the Growth Management Ballot Measure, in light of the examples you describe.

The legal restrictions applying to the questions you raise fall into three general areas: 1) Restrictions on expenditure of public funds in relation to ballot measures; 2) Restrictions on political activity by Councilmanic staff personnel; and 3) Recent

restrictions placed on "mass mailings" by Proposition 73. Each of these areas is treated separately below.

Expenditure of Public Funds in Relation to Ballot Measure

The general rule is that public funds may not be used to promote the passage of a ballot measure in the absence of clear and explicit legislative authority. *Stanson v. Mott*, 17 Cal.3d 206 (1976). This office has opined on this issue several times in the past years. Three of the most recent examples are enclosed for your reference: City Attorney Opinion No. 81-13 by

then Senior Chief Deputy Curtis M. Fitzpatrick (now Assistant City Attorney) dated November 9, 1981; Memorandum to Armand Campillo, Park & Recreation Director, by Deputy City Attorney S. Patricia Rosenbaum, dated October 8, 1980; and Memorandum of Law to Jose Pena, then Assistant to the Mayor, by Chief Deputy City Attorney Jack Katz, dated January 29, 1980.

The opinion of November 9, 1981 points out examples of improper "campaign" expenditures: bumper stickers, advertising "floats" on television, radio "spots," dissemination at public expense of campaign literature prepared by private proponents or opponents of a ballot measure, and informational booklets with several simple exhortations to "Vote Yes" or describing what would happen "if you don't vote yes" (City Attorney Opinion No. 81-13, p. 1).

On the other hand, as pointed out in that opinion, public funds may be expended for "purposes of giving voters relevant facts to aid them in reaching an informed judgment" (City Attorney Opinion No. 81-13, p. 2). For a fuller discussion of what type of informational material may be given to voters, please see the attached opinion and memoranda.

Restrictions on Political Activity by Councilmanic Staff Personnel

A related but distinct issue from that set forth above is whether and to what extent the law places restrictions on the political activities of City employees, including Councilmanic staff personnel. Again, this office has opined on the issue several times in the past. Copies of the following memoranda on the issue are attached for your reference: Memorandum to Chuck Abdelnour, City Clerk, by Chief Deputy City Attorney Jack Katz, dated August 20, 1985; Memorandum of Law to then Councilman Bill Mitchell, from Chief Deputy City Attorney Jack Katz, dated

February 20, 1985; Memorandum to then City Manager Ray Blair from then Assistant City Attorney Robert S. Teaze, dated August 7, 1981; Memorandum to then Councilman Jim Ellis from then Assistant City Attorney Robert S. Teaze, dated June 20, 1975; and Letter addressed to then City Personnel Director A. A. Bigge, from then Deputy City Attorney (now Senior Chief Deputy) Stuart H. Swett, dated August 1, 1967.

Although these memoranda and letter address the questions raised by City employees participating in the re-election efforts of City Councilmembers, the legal principles set forth in these documents are the same. Essentially, City employees may engage in campaign activities (working for or against a ballot measure) on personal time. City employees may not, however, use City facilities, equipment or supplies in such activity. Also, City

employees may not use their offices, positions or titles in such activity (including the use of City title as identification in newspaper releases). City employees may use City time, supplies and equipment to set up public hearings and meetings designed to promote purely informational material on a ballot measure. See the above-cited memoranda and letter for more details about the restrictions placed on campaigning by City employees.

The rule is somewhat different for Councilmembers who wish to express their personal views on the pros and cons of a ballot measure. The rule was expressed in my letter to Mr. David Kreitzer, dated September 30, 1985, copy attached. In this letter I opine that a Councilmember's expressing his or her views in a letter on a particular ballot measure is not prohibited by the rule prohibiting expenditure of public funds for campaign purposes. This view must be narrowed, however, by the June 1988 passage of Proposition 73, which places several restrictions on the issuance of newsletters, "mass mailings" and the like, as discussed below.

Recent Restrictions Placed on "Mass Mailings" by Proposition 73

On August 23, 1988, this office issued a Report to the Honorable Mayor and City Council outlining the restrictions placed on, among other things, notices or invitations to public meetings about the Growth Management Element established by Proposition 73 and the Fair Political Practices Commission's (FPPC) emergency regulation. A copy of that report is attached for your reference. Under the proposition and regulation, a Councilmember may continue to send invitations to public meetings to discuss the pros and cons of upcoming ballot measures. An individual Councilmember's name or signature may not, however,

appear on the invitation if the number of invitations exceeds 199.

Additionally, under Proposition 73, a Councilmember may no longer mail letters expressing his or her stance on a particular ballot measure if the number of letters exceeds 199 and are in substantially the same language.

In summary, the law prohibits the expenditure of public funds to campaign for or against a particular ballot measure, but permits use of public funds to provide purely "informational" material about a measure. Also, the law prohibits City employees, including Councilmanic staff personnel, from using City time, supplies or equipment on behalf of or against a particular ballot measure, although, of course, the first amendment protects the right of both Councilmembers and City employees to express their personal views on a ballot measure.

The recently adopted Proposition 73 and the emergency regulation interpreting the proposition prohibit a Councilmember from sending 200 or more invitations or letters containing the individual Councilmember's signature or name to announce a public meeting on a ballot measure or expressing the Councilmember's view on the measure.

The distinctions in the issue of governmental expenditures are necessarily fine and the attachments necessarily lengthy since they deal with the delicate balance of government involvement in ballot issues. To be sure, it is a fine line between proper education and improper exhortation. While the voice of government can be heard, it cannot use the public treasury for amplification.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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Attachments

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