

MEMORANDUM OF LAW

DATE: October 19, 1988

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Signature Requirements

This is in response to your memorandum of August 2, 1988 regarding the basis for establishing the number of signatures required to qualify an initiative, referendum or recall measure for the ballot.

You ask which of the two, the November 8, 1988 or November 7, 1987 election, is the basis for establishing the number of registered voters/signatures. Specifically, you are uncertain as to the status of the November 8, 1988 election due to the results of the June 1988 primary. In that primary, both the Mayor and City Attorney were elected by a majority, thereby dispensing with the need for a municipal general election runoff on November 8, 1988.

The question of signature requirements turns on the type of election called. In order to determine the classification of different elections, the San Diego Municipal Charter ("Charter") and the San Diego Municipal Code ("Code") must be read together. Code section 27.2003 provides the following definition of the standard to be used: "When a stated percentage of voters is required, that percentage shall be computed as of the date of the next preceding municipal general election..." emphasis provided "General election" is then defined in that same section as: "...the election at which officers for elective office are chosen unless such officers are chosen at the primary election." emphasis provided

Since the Mayor and City Attorney were chosen during the June 1988 primary, the November 1988 elections cannot be defined as "general" under the Code. This analysis is further supported by definitions set forth in section 10 of the Charter which provides in pertinent part:

The regular municipal primary election shall be held on the third Tuesday in September in each odd-numbered year, and the general municipal election shall be held on the first Tuesday after the first Monday in November of the same year, or, if either of these days falls on a legal holiday, then the election shall be held on the next succeeding day which is not a legal holiday; provided, however, that commencing with the

year 1984 the elections to the offices of Mayor and City Attorney shall be held every four (4) years. The municipal primary election for these offices shall be held on the same date in each election year as the California State primary election and the general municipal election for these offices shall be held on the same day as the California State general election for that year. All other municipal elections which may be held under this charter shall be known as special municipal elections. emphasis provided

The June 1988 election was the "municipal primary," and due to the conclusive results, no "general municipal election" is required in November 1988. Accordingly, the November 1988 election must be defined, as per Code section 27.2003, as a "special election," that is, "...any election other than a primary or general election."

An election must be a "general" election to serve as the basis to establish the number of registered voters. This point is illustrated in Charter section 23 which bases the number of signatures required on a "...percent of the registered voters of the City at the last general City election...." emphasis provided The intent to differentiate between the types of elections is apparent by the specific definitions set forth in section 10. The election on November 7, 1987 is the "last general city election" or "next preceding municipal general election" as defined in both the Code and the Charter. As such, it serves as the proper basis to determine the number of registered voters, thus the number of signatures, needed to qualify an initiative, referendum or recall measure for the ballot.

If you have other questions of law regarding signature requirements, please do not hesitate to ask our office.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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