

yymmdd

DATE: August 4, 1989

TO: Joyce Lane, Office of the City Clerk

FROM: City Attorney

SUBJECT: Designation of Candidate's Occupation on Ballot

This is in response to your memo of August 1st. First, you query whether Deputy Mayor McCarty may list herself as "Councilmember and Deputy Mayor" on the ballot. Second, you query whether Kenneth R. Kay may use the term "Retired" after the designation "San Diego Firefighter".

San Diego Municipal Code (SDMC) section 27.2201 reads in relevant part as follows:

A candidate who is running for the same elective office which he then holds shall have printed on the ballot, immediately underneath his name, at his option, the word "Incumbent" or not more than four words designating such elective office, or any other words not exceeding four in number designating the principal profession, vocation or occupation of the candidate.

Candidates for office other than the incumbent may have printed on the ballot in like manner words, not exceeding four in number, designating the principal profession, vocation or occupation of the candidate. The City Clerk shall not permit a designation which would suggest an evaluation of a candidate, such as "outstanding," "leading," "expert," "virtuous," or "eminent." At the time a candidate files his Statement and Affidavit of Nominee, if he desires that his principal profession, vocation or occupation be designated on the ballot, he shall also file with the City Clerk a statement

indicating his principal profession, vocation or occupation in not more than four words. Such statement shall be filed on a form provided by the City Clerk and shall contain a declaration by the candidate of the truth thereof. The statement shall be signed under penalty or perjury. The City Clerk shall not be required to verify a candidate's designated profession, vocation or occupation. No

candidate shall assume a designation which would mislead the voters. . . .

Under this SDMC section, since Mrs. McCarty is a current City Officeholder, she may use either the term "Incumbent" or up to four words designating her office. She currently serves not only as Councilmember but also as Deputy Mayor of the City. Therefore, she is entitled to use the four word description she has chosen.

The San Diego Municipal Code section cited above is silent as to the use of the term "Retired". However, the legislative history of Section 27.2201 reveals that the City Council once considered, but chose not to adopt, an amendment to this SDMC provision which would have expressly precluded someone from using the term "Retired" in the statement of occupation on the ballot. From this legislative history, we concluded in a previous Memorandum of Law to the City Clerk, dated March 28, 1988 (copy attached), that the terms "former" and "ex" were permitted descriptive terms for the designation of candidate's occupation on ballots. For similar reasons we conclude that the term "Retired" may be used as part of the designation of candidate's occupation on the ballot.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:014(043.2)

Attachments

ML-89-76