

yymmdd

DATE: September 1, 1989
TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Filing Deadline for Charter Amendment
Initiative (Superseded by ML-2000-6)

This is in response to your memorandum of April 18, 1989. In that memorandum you ask on what date an initiative petition for a charter amendment must be filed under Election Code section 4090. This section states that the petition must be filed no later than 200 days from the date the "Notice of Intent" was published.

BACKGROUND

You tell us that an organization called "Citizens for Independent Redistricting" published a Declaration of Intent to circulate a Charter Amendment Initiative petition on April 4, 1989. The 200th day from the date the Declaration of Intent was published falls on Saturday, October 21, 1989.

LEGAL ANALYSIS

At the outset, we note that the procedure for amendments to the San Diego City Charter brought by initiative petition is governed by state law, not City ordinances, pursuant to Charter section 223. This stands in contrast to other initiative procedures for other local legislative acts, which are governed by the City's Election Code. See Charter section 23.

Therefore, California Elections Code section 4090 governs the time and method of filing an initiative petition for amendments to the San Diego City Charter. This section states in full:

4090. Time and method of filing petition.

The petition shall be filed with the clerk by the proponents, or by any person or persons authorized in writing by the

proponents. All sections of the petition shall be filed at one time and no petition submitted subsequently shall be accepted by the Clerk. The petition shall be filed not more than 200 days after the date on which the notice of intent to circulate was published or posted, or both (emphasis added).

Division 5, Chapter 3, of the California Elections Code, in which section 4090 is located, does not specify whether Saturdays, Sundays and holidays should be counted when determining filing deadlines under this statute. Section 60 of the California Elections Code, however, provides the rule governing holidays and deadlines for the entire state Elections

Code. It reads as follows:

60. Provision due to holidays.

Notwithstanding any other provision of law, if the last day for the performance of any act provided for or required by this code shall be a holiday, as defined in Chapter 7 (commencing with section 6700) of Division 7 of Title 1 of the Government Code, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

Under this Elections Code section, if the required date for filing the petition falls on a holiday, as defined by Government Code section 6700 et seq., then the petition may be filed on the next business day, that is, Monday, October 23, 1989, in this case.

Since in the instant situation, the 200th day falls on a Saturday, the question is whether Saturday and Sunday are holidays under Government Code section 6700 et seq.

Government Code section 6700(a) states that every Sunday is a state holiday. Whether Saturday is a holiday under these Government Code sections is more problematic. Government Code section 6702 states in relevant part that "every Saturday from noon to midnight is a holiday as regards to transaction of business in public offices of the state and political subdivisions where laws, ordinances, or charters provide that public offices shall be closed on holidays . . ." Section 6704 further provides in relevant part that "the legislative body of

any city or district may, by ordinance or resolution, provide that every Saturday is a holiday as respects the transaction of business with public offices of such cities or districts except that provision shall be made for the continuance of essential public services such as police and fire protection . . ."

The San Diego City Charter contains no provision stating that City offices are to be closed on holidays. There are no City ordinances or resolutions that do so either. San Diego Municipal Code section 21.04 specifies City holidays, but Saturdays are not included. There appears to be no other ordinance, resolution or written policy that specifies when City offices are to be open, nor is there any other ordinance, resolution or policy specifying that Saturdays are City holidays.¹

If the question were to be answered solely under Government Code section 6700, it seems that Saturday is not a holiday for purposes of extending the time to file the initiative petition. Since Saturdays are not "holidays" in the City of San Diego

within the meaning of Government Code section 6700, we conclude that section 60 of the Elections Code would appear to require filing the initiative petitions on or before Saturday, October 21st.

Examination of the question presented would not be complete without analysing whether Code of Civil Procedure section 12(a) and (b) also apply.

Code of Civil Procedure section 12(a) states in relevant part:

If the last day for the performance of any act provided or required by law to be performed within a specified period of time shall be a holiday, then such period is hereby extended to and including the next day which is not a holiday. The term "holiday" as used herein shall mean all day on Saturdays, all holidays specified in sections 6700 and 6701 of the Government Code, . . . and . . . all days which by terms of section 12(b) are required to be considered as holidays (emphasis added).

1Former San Diego City Charter section 221 designated the dates and times City offices were to be kept open---from 8:30 a.m. to

5:30 p.m. every day except legal holidays. However, this section did not specify what days were legal holidays. This section was repealed by the voters on September 17, 1963.

This section applies also to sections 659, 659a, 946, and 975 through 982, and the periods of time severally therein prescribed or provided for, and to all other provisions of law, however stated or wherever expressed, providing or requiring an act to be performed on a particular day or within a specified period of time. The mention of these sections is not intended and shall not be construed to exclude the application of this section to such other provisions of law, whether the latter are expressed in this or any other code or statute, ordinance, rule, or regulation (emphasis added).

Code of Civil Procedure section 12(b) provides in relevant part:

Section 12(b). Same: Public office closed for whole day: To be considered as

holiday

If any city . . . office . . . is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under sections 12 and 12(a).

The question is: Do Code of Civil Procedure sections 12(a) and 12(b) apply to extend the timelines for filing petitions under Elections Code section 4090?

As discussed above, Elections Code section 60 states that holidays as defined by the Government Code should be counted to determine the appropriate date for filing initiative petitions. Does that mean that a statute outside the Government Code may not be examined to determine the answer? We think not. Code of Civil Procedure section 12(a), paragraph 2, quoted above, expressly applies to all other laws. Therefore, by its own terms it applies to Elections Code section 60, and therefore, Elections Code section 4090. We do not interpret Elections Code section 60 to limit application of the Code of Civil Procedure, especially in light of the express language in Code of Civil Procedure section 12(a).

As applied to another section of the Elections Code, Code of Civil Procedure section 12(a) has been construed by the California Supreme Court not to extend the time allowed to perform when an act is to be performed "not less" than or "not more" than a given number of days before a designated time. *Steele v. Bartlett*, 18 Cal. 2d 573 (1941). In *Steele*, the court examined former section 9760 of the Elections Code, which stated that nominating papers had to be filed not later than twelve o'clock noon on the thirty-first day before the election. *Steele v. Bartlett*, 18 Cal. 2d 573. In that case, six of eleven candidates for two vacant City Council seats filed their nomination papers on a Monday, thirty days before the election. The thirty-first day had fallen on a Sunday that year.

Citing *Griffin v. Dingley*, 114 Cal. 481, 483 (1896), and *Hutchins v. County Clerk*, 140 Cal. App. 348 (1934), the *Steele* Court said:

While sections 12, 12(a), and 13 of the Code of Civil Procedure and Political Code serve to extend one day the time within which or upon which an act may be done when the last day therefor falls on a Sunday or holiday, said sections are without application and do not extend the time for an act that must be

performed "not less" than or "not later" than a given number of days before a designated time. In the latter situations it is held that to permit such an extension would be to nullify the legislative intent that the act must be performed more than a designated number of days before the event specified.

Steele v. Bartlett, 573 Cal. 2d at 574.

The language at issue in *Steele* is analogous to the language at issue in Elections Code section 4090. Under the view of the California Supreme Court expressed in *Steele*, the initiative petition should be filed with the City Clerk's office no later than Saturday, October 21, 1989.

This view is shared by the California Attorney General in a 1962 opinion construing former Elections Code 14667 (providing the time limits in which absentee ballots were to be received) in light of Government Code section 6707 and Code of Civil Procedure section 12(a). 39 Op. Cal. Att'y Gen. 718 (1962). At that time, Elections Code section 14667 (since repealed) provided in full:

"All ballots cast under the provisions of this chapter shall, in order that they may be counted, be received by the clerk from whom they were received not less than three days before the date of the election in which they are to be counted."

In that opinion, the Attorney General determined that since the election was on a Tuesday, the ballots had to be received by the clerk not later than the prior Saturday, during the hours the clerk's office was open for business. The Attorney General further opined that "if the clerk's office . . . was not open for business on such Saturday, the ballots should be mailed so as to be received not later than the Friday preceding the election."

Applying the reasoning of the *Steele* court and the 1962 Attorney General's Opinion to the present question, since the San Diego City Clerk's office is not open on Saturdays, the initiative petition should be filed with the City Clerk no later than the regular close of business hours on Friday, October 20, 1989, so as to meet the statutory requirement. None of these statutes appears to require you to stay open on Saturday for purposes of receipt of the petition.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:930(x043.2)

ML-89-86