

MEMORANDUM OF LAW

DATE: July 18, 1990

TO: Councilmember Judy McCarty
FROM: City Attorney
SUBJECT: Constituent Inquiry Card and "Mass Mailing"
Restrictions

Your memorandum of June 19, 1990, to City Attorney John Witt has been referred to me for response. You have asked for advice about whether a "constituent inquiry card" (sample copy attached to your memorandum) meets Proposition 73's "mass mailing" restrictions and, if not, what changes may be made in the card to bring it into conformance with that law.

FACTS

It will be useful to spell out the relevant characteristics of the card. On one side of this 6 by 8 inch card are printed the City seal and your name and title as Councilmember of District 7. Also on the same side is the following message: "Dear Neighbor: As your representative on the City Council, I am interested in knowing about your concerns. Please call my office at 236-6677, or mail the card if I can be of service." Following that message is your signature and several lines for people to write their concerns and provide their name and address.

On the other side of the card your name again appears along with your title and address at the City Administration Building. There is also a place designated for affixing a postage stamp in case people want to mail the card to you.

APPLICABLE LAW

Proposition 73 was adopted by vote of the People of the State of California in June, 1988. Among other things, Proposition 73 contained restrictions on "mass mailings" by elected officials, as follows: "No newsletter or other 'mass mailings' shall be sent at public expense." The Fair Political Practices Commission (FPPC) adopted regulations in December, 1988, implementing this

provision. These regulations were amended substantially in December, 1989. A copy of the December, 1989, regulation is attached for your convenience.

Under the regulations three (3) tests must be met in order for a document to be prohibited as a "mass mailing": 1) at least 200 copies of a substantially similar document featuring an elected officer are mailed or delivered per month; 2) the elected officer whose name is on the document is affiliated with the agency producing the document; and, 3) any public money is used

to mail or deliver the document or more than \$50 of public money is used to design, produce, or print the document. The term "features an elected officer" means that the item includes the officer's photograph or signature, or otherwise singles out an elected officer's name or office. Although there are exceptions built into the regulation, none of them appears to apply to the facts presented and discussion of them will therefore be omitted.

ANALYSIS

From the face of the constituent inquiry card, your name is clearly featured in three places (two on one side; one on the other), one being your signature. Your office is also "featured" three (3) times (again, twice on one side; once on the other). Because of these six instances featuring your name and elected office, the card possibly fits squarely into the prohibition. Your memo does not state whether you intend to mail or distribute 200 or more of the constituent inquiry cards per calendar month. If you in fact mail or distribute 200 or more per calendar month, the card may not be designed, produced or printed at public expense if the cost of doing so exceeds \$50; and, no public money may be used to mail or distribute it to a person's place of business or residence.

If you intend to distribute more than 200 of these cards per calendar month and costs of production exceed \$50, the card as it reads may not be produced or distributed using public money.

To eliminate the problem, you must ensure that the card does not fit the definition of a "mass mailing" as defined above. One such way, of course, is to ensure that fewer than 200 cards are distributed per month.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:013(x043.2)

Attachments

ML-90-82