

MEMORANDUM OF LAW

DATE: May 9, 1991
TO: Councilmember Ron Roberts
FROM: City Attorney
SUBJECT: "Ban the Ban"

You recently asked five questions regarding the alcohol ban at the beaches and certain City parks that is the subject of a qualified referendum petition. This office will respond to the questions in the areas with which we are familiar and refer the remainder to the appropriate department.

Question 1. What is the difference between the terminology "held in abeyance," "suspended" and "rescinded"?

Answer: "Abeyance" is a "condition of being undetermined or in a state of suspension or inactivity." Black's Law Dictionary 6 (5th ed. 1979); as such, the matter is inoperative.

"Suspend" in this context means "to discontinue temporarily, but with an expectation or purpose of resumption." Id. at 1297; in other words, whatever has been suspended can be and is expected to be reinstated.

"Rescind" means "to abrogate, annul, void, or cancel . . . to declare . . . void in its inception and to put an end to it as though it never were." Id. at 1175; as in a contract that is nullified and therefore of no force and effect.

Question 2. Assuming the number of signatures is sufficient and the City Council is re-quired to take action to reverse the ban, can the Council "suspend" the ban (instead of rescinding the ban) and set a Citywide election for June of 1992?

Answer: Since the referendum has qualified for the ballot, the City Council has two choices: (1) repeal the ordinance, or (2) place the ordinance on the ballot. San Diego Municipal Code section 27.2616. If the Council decides to place the ordinance on the ballot, "suspension" of the ordinance will be automatic until the election is held. The election must be held within eleven (11) months of the date the referendum petition is submitted to the Council, that is, on or before April 13, 1992. San Diego Municipal Code section 27.2616.

Question 3. Assuming the ban is overturned as a result of the signature drive, what are the re-strictions on the Council regarding future

regulation of drinking on the beach?

How long are these restrictions in place?

Answer: Assuming the Council either repeals the ordinance or the voters repeal it at an election, the prior law goes into effect. That prior law is contained in San Diego Municipal Code sections 56.54, 56.29 and 56.29.1, copies of which are attached. Although future Council action regarding the same subject matter would not be totally prohibited, the action must be taken in good faith and result in "essentially different" legislation. *Reagan v. City of Sausalito*, 210 Cal.App.2d 618 (1962). The Municipal Code does not place any time restrictions on when such "essentially different" legislation could be adopted. Therefore, we turn to the state Elections Code for guidance, which states that a similar ordinance cannot be enacted for "a period of one year after the date of its repeal by the legislative body or disapproval by the voters" (Elections Code section 4055) unless the matter is submitted to the voters. *Referendum Committee v. City of Hermosa Beach*, 184 Cal.App.3d 152 (1986).

Question 4. What rights do citizens have to check the signature count of the Clerk? For example, can a citizens group volunteer to verify every signature on the petitions? If so, what are the procedures?

Answer: Citizens have no right to check the signature count of the Clerk. Government Code section 6253.5. Therefore, a volunteer citizens group could not verify every signature on the petitions and there are no lawful procedures available to do so.

Question 5. Please provide a record of the cost of Police enforcement activities in the beach communities.

Answer: This question has been forwarded to the Police Department and will be answered by them as soon as possible.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

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Attachments

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