

Office of
The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: July 30, 1993

TO: Helen L. Heim, Deputy Waste Management Director -
Services Division

FROM: City Attorney

SUBJECT: I Love A Clean San Diego Recycling Hotline

In a memorandum dated July 8, 1993, you asked our office whether the I Love A Clean San Diego, City funded, Recycling Hotline ("Hotline") may be used to ask citizens who call the Hotline whether they would vote to repeal the 1919 People's Ordinance ("People's Ordinance"). The Hotline may be used to poll citizens who call the Hotline regarding whether they would support a futuristic ballot measure purporting to repeal the People's Ordinance.

This office has previously opined in Opinion No. 81-13, dated November 9, 1981, by then Senior Chief Deputy City Attorney Curtis M. Fitzpatrick (attached), that the City may not take any action regarding the expenditure of public funds to promote the passage of a ballot measure. "A city may expend public funds only as authorized by constitutional or legislative enactment." *Stanson v. Mott*, 17 Cal.3d 206, 213 (1976). And, if the authority to expend funds to disseminate information is general, the power to promote (emphasis added) must be in "clear and unmistakable language." *Id.* at 216; *Mines v. Del Valle*, 201 Cal. 273 (1927). However, public funds may be used for educational purposes. The City may incur expenses while providing voters with "relevant facts to aid them in reaching an informed judgment when voting upon the proposal." *Id.* at 220.

Consequently, personnel responsible for the Hotline may not in any way promote the repeal of the People's Ordinance nor identify or imply that City services will be scaled down or be discontinued if the People's ordinance is not repealed. There is no language found in the Charter or Municipal Code that would allow the City to advocate one side or the other regarding

repealing the People's Ordinance. In other words, people who call the Hotline may be polled regarding whether they would vote to repeal the People's Ordinance. An objective explanation of the People's Ordinance may be provided to the caller. Finally, relevant and objective facts may be disseminated to the caller to assist them in reaching an informed opinion regarding the pros and cons of repealing the People's Ordinance.

Our office is willing to assist you as it relates to reviewing the information that will be disseminated to callers of the Hotline. Don't hesitate to call if you have any further questions.

JOHN W. WITT, City Attorney

By

Elmer L. Heap, Jr.

Deputy City Attorney

ELH:smm:134

MS-93-1

Attachment

cc Richard L. Hays, Waste Management Director

Robert Epler, Assistant Waste Management Director