

MEMORANDUM OF LAW

DATE: May 7, 1991

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Use of City Seal

This is in response to your memorandum of April 17, 1991, regarding the legality of a mailing done by the "Prevent Los Angelization Now" (PLAN) Committee, specifically in regards to use of the official City seal. In lieu of reciting relevant facts pertaining to that mailing, a copy of all documents included in the mailing, including the envelope, that you transmitted to me are attached.

The City's law governing use of the City seal is set forth in San Diego Municipal Code (SDMC) section 21.01(b), which reads as follows: "No person shall use or allow to be used any reproduction or facsimile of the Seal of The City of San Diego for any commercial purpose unless previously authorized by the Council."

This section prohibits only "commercial use" of the City's seal, absent previous authorization of the City Council. By implication, use of the City's seal for non-official purposes is permitted. This view is supported by the legislative history of SDMC section 21.01, whose current language was adopted in 1968, by Ordinance No. O-9819 N.S. (adopted on June 11, 1968.) The City Clerk's official file concerning Ordinance No. O-9819 shows that the then City Council specifically considered and rejected limiting the use of the City's seal for official City purposes only.

Since the mailing does not appear on its face to have any commercial purpose, and there does not appear to be any outside evidence to show that it has a commercial purpose, I find no impropriety in the use of the City's seal in the mailing. The fact that the mailing contains a solicitation for contributions does not in and of itself constitute a "commercial" use. The solicitation appears to be solely for political fundraising purposes.

Although you do not set forth other specific legal questions, your memorandum also raises other questions about the mailing. One issue is whether the mailing properly identifies the sender as required by Government Code section 84305. This section reads in relevant part as follows:

- (a) Except as provided in subdivision
- (b), no candidate or committee shall send a

mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

Government Code section 84305(a)

In the present case, the name, street address and city of the committee sending the mass mailing were printed on the envelope and on at least one (actually several) of the inserts contained in the mailing. Wes Jordan, Graphics Supervisor of the City's Print Shop, confirms that the print size on the envelope and on the inserts is at least a 6-point type. Therefore, I find that the mailing conforms to the "mass mailing" sender identification requirements of Government Code section 84305.

The remaining issue is whether the following phrases appearing on the outside of the envelope are within legal limits:

- "OFFICIAL CITY OF SAN DIEGO ELECTION PETITION ENCLOSED;"
- "PLEASE RETURN WITHIN 48 HOURS;"
- "NOTICE TO RECIPIENT;"
- "Please complete the enclosed documents in accordance with section 27.2502-27.2531 of the San Diego Election Code, and return within 48 hours. Instructions and postage-paid reply envelope are enclosed."

Having researched relevant state and local law, I find nothing which prohibits this type of phrasing on the outside of political mailers. Although at first blush the phrase "Official City of San Diego election petition enclosed," appears to be misleading, indeed the mailing contains an initiative petition which has qualified for signature gathering under the City's initiative law. San Diego Municipal Code section 27.2501 through 27.2531. This information was confirmed with Joyce Lane, Elections Analyst of the City Clerk's office. Also, although the phrase contains strong language exhorting persons to return the enclosures within 48 hours, there is no express or implied threat accompanying the exhortation and careful reading of the materials shows that there indeed is no requirement, but rather a plea, to return the petition to the sender. The committee even includes a pre-paid addressed reply envelope.

In summary, I find the mailing does not violate SDMC 21.01 restricting the uses of the City seal, Government Code section 84305, containing sender identification requirements for "mass mailings," or other

provision of state or local laws.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:014(x043.2)

Attachments

cc Wes Jordan, Graphics Supervisor

Joyce Lane, Elections Analyst

ML-91-35