November 19, 1990

REPORT TO THE COMMITTEE ON RULES, LEGISLATION, AND INTERGOVERNMENTAL RELATIONS
ETHICS/ELECTIONS REFORMS

At its October 3, 1990 meeting, the Rules Committee asked the City Attorney to prepare a report on five (5) topics pertaining to ethics and election reforms. These topics are described briefly as follows:

1. A description of how the "Orange County Campaign and Reform Ordinance," otherwise known as the "Tin Cup" (Time Is Now, Clean Up Politics) ordinance, adopted in 1978, actually works.
2. Copies of the "ethics package" recently adopted by the voters of the City of Los Angeles and any companion legislation adopted by the Los Angeles City Council.
3. Status report on the legality of public financing of local campaigns in the State of California.
4. Proposed language amending the San Diego Municipal Code to require local candidates to sign campaign literature.
5. Proposed language amending the San Diego Municipal Code to require all political consultants working on local campaigns to register with the City.

Each of these topics is treated separately below.

Mechanics of the "Orange County Campaign and Reform Ordinance"

The Orange County Campaign and Reform Ordinance was adopted on June 20, 1978, and was amended on October 27, 1981. A copy of the Orange County ordinance is enclosed as Attachment A-1 for your reference. The ordinance essentially requires the Orange County Clerk to create and publish a list of "major campaign contributors" to individual members of the Board of Supervisors ("Board") and also prohibits individual Board members from acting on certain governmental decisions involving their respective "major campaign contributors." The term "major campaign contributors" is defined in the ordinance.

Joyce Lane, Elections Analyst of the San Diego City Clerk's office, traveled to Orange County this past year and interviewed the persons who administer this ordinance. While there, Ms. Lane also obtained copies of forms Orange County uses to administer the ordinance. The procedure, including how the forms are used,

is explained briefly below.

At the outset, it is important to note that, unlike The City of San Diego, Orange County has no other restrictions on campaign contributions besides this ordinance. (Of course, both Orange County and The City of San Diego are subject to restrictions placed on campaign contributions adopted by the voters of the State of California in June 1988 as part of Proposition 73. But since these state-imposed restrictions are not at issue here, they will not be discussed.)

Although on the face of the ordinance the County Clerk is the official responsible for administering this ordinance, in fact the Registrar of Voters administers it with the help of a volunteer, Shirley Grindle. To create the list of potential "major campaign contributors," Orange County uses forms developed and required by the Fair Political Practices Commission ("FPPC"): the semi-annual and the pre-election campaign statements (FPPC Form 490).

The Registrar of Voters reviews three (3) schedules in each filed campaign statement: Schedule A (monetary contributions); Schedule B (loans); and, Schedule C (non-monetary contributions). Based on information in the campaign statements, the Registrar of Voters prepares a card for each donor/contributor, which includes the following information:

Name and address of donor/contributor
Date of contribution(s)
Amount of contribution(s)
Name of recipient Board member

A sample donor/contributor card with completed information is enclosed as Attachment A-2.

The ordinance establishes a threshold to determine when a campaign contributor becomes a "major campaign contributor." For

calendar year 1990, the threshold amount is $1,874.00, contributed over a period of forty-eight (48) months. This threshold increases in accordance with an index each calendar year. When a donor/contributor reaches the threshold level, the donor/contributor becomes a "major campaign contributor." Please note that under the Orange County ordinance, not only individuals but also partnerships and other forms of business entities may contribute to campaigns and therefore become "major campaign contributors." In fact, under the Orange County ordinance, a major contributor member of a corporation or a major contributor partner in a partnership may cause the corporation or partnership to be listed as a major contributor. However, a major contributor member of a corporation or a major contributor

partner of a partnership does not necessarily create a "major campaign contributor" out of that corporation or partnership, if the contributing officer or partner signs an affidavit stating that the contribution was made on behalf of the individual rather than on behalf of the corporation or partnership. Note also that under the Orange County ordinance, contributions of individual directors or officers of a particular corporation are presumed not to be combined to create a "major campaign contributor" out of that corporation, absent evidence that the director or officers entered into an agreement to contribute money to defeat the terms of this ordinance.

Once a contributor crosses the "major campaign contributor" threshold, the Registrar of Voters sends that donor/contributor a form created by Orange County especially for this ordinance. The form is called a "major campaign contributor" filing form. A blank form and instructions for filling it out are enclosed as Attachment A-3. The major contributor must file this form with the County within thirty (30) days. If the "major campaign contributor" fails to file this form in a timely fashion, the matter may be referred to the District Attorney for enforcement.

Based on the information from the campaign statement and the forms filled out by "major campaign contributors," every month the Registrar of Voters creates a list of all "major campaign contributors" and their business affiliations. The list shows the amounts contributed, the dates of contributions, and to whom monies were contributed. This list is distributed to all "major campaign contributors" and to each Board member, and is also posted. A copy of the April 4, 1990 list issued by the Orange County Registrar of Voters is enclosed as Attachment A-4 for your reference.

By telephone on November 16, 1990, Assistant County Counsel for Orange County Art Wahlstedt stated that in his recollection the Orange County ordinance had never been tested as to its legal sufficiency in a court of law. There are no reported cases arising out of a legal challenge to this ordinance.

"Ethics Package" Adopted by City of Los Angeles

The voters of the City of Los Angeles adopted Proposition H relating to ethics and campaigns at the municipal election on June 5, 1990. Proposition H amended the Los Angeles City Charter to, among other things, create a City Ethics Commission with appointed members confirmed by the City Council, authorize appointment of a special prosecutor, change conflict of interest rules for City Commissioners, limit certain campaign contributions, require partial public financing of campaigns for

elected offices, limit campaign spending of candidates accepting public funds, and prohibit outside employment of elected City officials. Enclosed as Attachment B-1 is an excerpt from the City of Los Angeles voter's pamphlet (pp. 16-50) containing Proposition H and arguments for and against the proposition.

Also attached are copies of two ordinances adopted by the City Council of the City of Los Angeles pertaining to the Charter Amendment:

1. Ordinance No. 165,607, which provides detailed regulations concerning public financing of campaigns for elective city offices, imposes limitations on campaign contributions and imposes limitations on expenditures by candidates accepting public funds. This ordinance becomes operative on July 1, 1991, since Proposition H passed. (See Sec. 49.7.31 of the ordinance.) This ordinance is enclosed as Attachment B-2.
2. Ordinance No. 165,618, which regulates ethics and conflicts of interest for municipal officers and employees, portions of which become operative on January 1, 1991, and other portions become operative on July 1, 1991. (See Sec. 4, p. 35 of this ordinance.) This ordinance is enclosed as Attachment B-3.

A third ordinance (No. 165,617) repealing certain portions of the Los Angeles Administrative Code was also adopted and became effective once Proposition H was adopted. It does not affect matters at issue here and is not enclosed.

Status of Public Financing of Local Campaigns

In his report to the Rules Committee of June 19, 1990, at p. 3, the City Attorney briefly outlined the State of California law at that time on public financing of local campaigns. For your convenience, a copy of that report is enclosed as Attachment C-1 to this report. Since that report, the Sacramento County case has been decided. County of Sacramento v. Fair Political Practices Commission (Cal. Ct. App. 3d Dist., August 1, 1990), 90 Daily Journal D.A.R. 8525. In that case, Sacramento County had a Charter provision that provided for partial public financing of county election contests. The county sought a writ of mandamus to prohibit the State Fair Political Practices Commission from enforcing Government Code section 85300, which was adopted by the people in June 1988 as part of Proposition 73 and which prohibits public financing of state and local campaigns. The court denied the writ. In so doing, the court held that campaign financing of both state and local elections is a matter of statewide concern

and therefore campaign financing was beyond the purview of county regulations. County of Sacramento v. Fair Political Practices Commission, 90 D.A.R. at p. 8525.

In short, the Third District Court of Appeal upheld Government Code section 85300, which prohibits public financing of both state and local campaigns. Although the Sacramento case is limited by its facts to prohibiting charter counties from regulating campaign financing, there is strong dictum in it to indicate that charter cities also would be prohibited from providing for public financing of local campaigns.

Meanwhile, as stated in the June 19th City Attorney report (p. 3), Los Angeles voters have adopted charter provisions which provide for partial public financing of city election contests. According to Los Angeles Assistant City Attorney Anthony Alperin, the viability of this new charter section is being litigated in light of Government Code section 85300. A hearing on this case is set for December 1990. We will keep you informed of the status of the Los Angeles litigation.

By way of information only, if it had passed in the November 1990 election, Proposition 131 would have substantially repealed Proposition 73 and would have permitted public financing of both state and local campaigns.

Proposed Language to Require Candidates
to Sign Campaign Literature

In accordance with Rules Committee direction of October 3rd, we have prepared proposed language amending the San Diego Municipal Code to require candidates to sign campaign literature. A copy of this draft language is enclosed as Attachment D-1 to this report.

We point out that the draft language requires the signature of a candidate on campaign literature distributed by a candidate or a controlled committee. No attempt has been made to require the candidate to sign campaign literature distributed by persons or committees who are not controlled by the candidate (i.e. the true "independent expenditure." Government Code section 82031). We believe that to require the candidate to sign "independent expenditure" mailings would impermissibly restrict an independent person's or committee's constitutional right to make independent expenditures on behalf of candidates. F.E.C. v. National Conservative PAC, 470 U.S. 480 (1985); Buckley v. Valeo, 424 U.S. 1 (1976).

We note that although there is no "candidate signature" requirement currently in state or local law, state law now requires that a mass mailing by a candidate or controlled

committee contain the name of the candidate or the candidate's controlled committee. Government Code section 84305. Also, any independent mailing must state who paid for the mailing and that the mailing is not authorized by any candidate or elected official. Government Code section 85600; San Diego Municipal Code section 27.2951.

Proposed Language to Require Campaign Consultants to Register with the City

At its October 3rd meeting, the Rules Committee asked the City Attorney's representative to meet with the Mayor and Councilmember Wolfsheimer to receive their direction as to the substance of an ordinance requiring consultants to register with the City. The City Attorney has made repeated unsuccessful attempts to arrange this meeting since October 3rd. The City Attorney will return with proposed language after receiving further direction.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:(043.1)
Attachments
RC-90-60