



Memorandum

Date: March 15, 2000
To: Judie Sarquiz, City Clerk
From: Dennis A. Barlow, City Attorney
Subject: Petition for Restore Our Airports Rights Initiative

The purpose of this memorandum is to address the compliance of the above-referenced petition with the requirements of state law, including the Elections Code. On March 14, 2000, the Initiative proponents submitted for filing the petition for the Initiative entitled "A Measure Imposing Conditions on the Burbank City Council's Authority to Approve Entitlements, Financing and Construction Related to the Burbank-Glendale-Pasadena Airport" (the "Initiative Petition"). Our office has reviewed the Initiative Petition for compliance with state law requirements, including Elections Code sections 9200 et seq. We believe that the Initiative Petition fails to comply with Elections Code section 9207, which states that "each section of the petition shall bear a copy of the notice of intention"

DISCUSSION

Elections Code section 9207 states in pertinent part:

"Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney."

The Elections Code permits initiative proponents to submit a petition in sections, provided that each section complies with the statutory requirements. *Elections Code* § 9201. In *Myers v. Patterson* (1987) 241 Cal.Rptr. 751, the First District Court of Appeal held that an initiative petition that did not bear a copy of the notice of intention on each section failed to comply, actually or substantially, with the statutory requirement.

Judie Sarquiz, City Clerk
ROAR Initiative Petition
March 15, 2000

In *Myers*, initiative proponents submitted a petition that did not include a copy of the notice of intention and the city registrar thereafter rejected the petition on that basis.

Id. at 752.

Analyzing the predecessor provision to section 9207, the court noted that the city registrar's duty in that case included "the ministerial function of ascertaining whether the procedural requirements for submitting an initiative measure have been met." *Id.* at 754-755 (citing *Farley v. Healey* (1967) 67 Cal.2d 325, 327). Because the petition failed to bear a copy of the notice of intention, the *Myers* court rejected the proponents' contention that the city registrar was bound to accept it for filing:

"Did defendant's duties as registrar of voters require him to, in effect, disregard section 4005's [now 9207] notice requirement and accept the petition? The answer is clearly, 'No.' We conclude, in fact, that just the opposite is true, that he had a duty to *reject* the petition."

Myers, supra, 241 Cal.Rptr. 751 (emphasis in original).

As we view the Initiative Petition, it was submitted in sections, with each section being one double-sided page¹. Each Petition section includes the ballot title and summary, the text, signatures, and the declaration of the circulator. We do not see anywhere on each section a copy of the notice of intention to circulate the Petition prepared pursuant to Elections Code section 9202. We also note that in our discussions with your office you likewise have not been able to find the notice of intention on the Petition.

Importantly, the court also concluded that the petition did not "substantially" comply with the statutory requirements. *Myers, supra*, 241 Cal.Rptr. at 755-756. The court rejected the proponents' assertion that the notice does not serve any significant informational propose. As it pertains to section 9207, "substantial compliance" "means *actual* compliance in respect to the substance essential to every reasonable objective of the statute." *Id.* at 755 (emphasis in original)(citation omitted).

¹ We note that there is no authority in the Elections Code as to whether or not double-sided pages are permitted or whether the text of the initiative is on the "first page" of the Petition, as required by Section 9201. We make no opinion as to those issues but only make the observations.

Judie Sarquiz, City Clerk
ROAR Initiative Petition
March 15, 2000

In particular, the court noted two salutary purposes for the requirement set forth in section 9207. First, the notice of intention often includes a statement of reasons for the proposed initiative which provides additional information about its contents to potential signers. *Ibid.* Even though the particular notice of intention in that case would have added little to the title and summary, the court stated that the informational purpose of the statute was clear. Second, the notice of intention identifies the proponents of the initiative and allows potential signers to decide whether or not to sign the petition based upon who the proponents are. *Ibid.*

Similar informational purposes are evident in section 9207. Section 9202 permits a notice of intention setting forth the reasons in up to 500 words. Even if the notice of intent would not add much to the other part of the petition, *Myers* supports the proposition that potential voters had the right to see what reasons the proponents offer for the initiative. More noticeably, the Initiative Petition does not name the initiative proponents, which *Myers* concludes is one of the basic purposes of the requirement that each section contain the notice. Potential signers should be notified who is proposing the measure and failure to *actually* meet this informational purpose negates any claim that a petition substantially complies with the law.

We note that, ultimately, you have the sole authority to accept or reject the Petition. We merely note what the law requires. *Myers* clearly states that an election official has a duty to *reject* a petition that does not “bear a copy of the notice of intention.” Based upon *Myers*, we must advise that there is the potential that you will be subject to legal challenge in the event you determine that the each section of the Petition does not bear a copy of the notice and you accept it for filing nonetheless. A copy of the *Myers* opinion is attached for your reference.

CONCLUSION

We conclude that, based upon our review, the Initiative Petition submitted by the proponents of the Restore Our Airport Rights Initiative does not comply, actually or substantially, with the requirements of Elections Code section 9207. We also advise that an election official has a duty to reject an initiative that does not comply with the requirement set forth in section 9207.