

State of California



Fair Political Practices Commission

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August 13, 1984

Honorable Sam Farr
California State Assembly
State Capitol, Room 3120
Sacramento, CA 95814

Re: Your Request for Advice
Our No. A-84-204

Dear Assemblymember Farr:

Ricardo Nieto, Consultant to the Assembly Committee on Elections, Reapportionment and Constitutional Amendments has conveyed your request for our written advice regarding the application of Section 88006 of the Government Code to your Assembly Constitutional Amendment 76 (ACA 76). This section provides for a twenty-day period in which voters may review, and challenge in court, the voters pamphlet prior to its printing by the State Printer.

CONCLUSION

Without deciding whether the clearly mandatory provisions of Section 88006 can ever be circumvented, we conclude that the changes in the substance of Proposition 34 proposed by ACA 76 are subject to the twenty-day rule in Section 88006. If ACA 76 is chaptered and transmitted to the Secretary of State, she would be required to provide the public with the opportunity to examine the new version of the copy of the ballot pamphlet for a period of not less than twenty days prior to delivering the copy to the State Printer. This is required in order to afford the voters the opportunity to go to court to challenge the revised proposition or any of the accompanying analyses or arguments, as specifically provided for by Section 88006.

FACTS

The facts have been gleaned from conversations with your staff, Secretary of State's office and sponsors of the constitutional amendment in question. You introduced Assembly Constitutional Amendment 69 (ACA 69), which successfully passed

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through the Legislative process (Chap. 66, Res. 1984). This measure, to be placed on the ballot in November, proposes to amend Article XIII A of the California Constitution. This article is better known as Proposition 13.

Under Proposition 13, certain additions, modifications and alterations to real property are considered "new construction" and trigger a reassessment of the subject real property, usually resulting in higher property taxes to the owner.

ACA 69 would exempt from reassessment as "new construction" certain additions, alterations or rehabilitation of a "certified historical structure," thus eliminating reassessments which would otherwise be triggered by those modifications.

ACA 69 was sponsored by the California Heritage Task Force (CHTF), a body created by the Legislature to help preserve California's heritage. The idea for the legislation was presented to CHTF by the Preservation Fund, a private, membership organization also interested in this subject.

The purpose of ACA 69 is to create an incentive for homeowners of "certified historic structures" to improve and maintain their historic houses. As amended in the Senate, ACA 69 restricts the "new construction" exemption to

any addition to, or alteration or rehabilitation of, a certified historic structure which is an historically accurate reconstruction of once extant features or necessary for safety or handicapped access or required for safety codes.

Legislative Counsel's Digest,
ACA 69.

The measure was transmitted to the Secretary of State for placement before the voters in November. It has been designated Proposition 34. The Secretary of State must prepare the ballot pamphlet in accordance with the provisions of Chapter 8 (Sections 88000-88007) of the Political Reform Act of 1974 (the "Act").^{1/}

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise specified.

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Among the mandates contained in Chapter 8 is the requirement that:

Not less than twenty days before [she] submits the copy for the ballot pamphlet to the state printer, the Secretary of State shall make such copy available for public examination. Any voter may seek a writ of mandate requiring any such copy to be amended or deleted from the ballot pamphlet....

Section 88006.

This provision has been used numerous times by voters interested in the accuracy and clarity of ballot measures and their supporting and opposing arguments. These voters have gone to court seeking corrective changes; in some instances they have succeeded.

Based upon the various deadlines for allowing the State Printer to print the ballot pamphlet and for the Secretary of State to mail it to the voters, the twenty day period mandated by Section 88006 began on July 24, 1984, and is scheduled to end today with transmission of the ballot pamphlet to the State Printer occurring tomorrow, August 14, 1984. The absolute, last possible date for delivery of copy changes to the State Printer is August 20, 1984.

After ACA 69 was transmitted to the Secretary of State and was in the process of being prepared for the ballot pamphlet; attorneys for the Preservation Fund became concerned that the Senate Amendments had narrowed the scope of the exemption provided by ACA 69 too much, by limiting the alterations to those which were "an historically accurate reconstruction of once extant features," plus those necessary for handicapped access or for safety reasons. The Preservation Fund had sought a broader exemption when they originally proposed the idea. The Fund's attorneys brought their concerns to the attention of the CHTF who, in turn, brought the concerns to your attention.

When the Legislature reconvened on August 6, 1984, you introduced ACR 167 to withdraw ACA 69 from the ballot and also introduced ACA 76 to replace ACA 69 with a revised proposition. Because there no longer remains a twenty day period before the last possible date on which the Secretary of State must transmit the ballot pamphlet copy changes to the State Printer (August 20, 1984), the Commission, as the entity with primary

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responsibility for implementation of the Act (Section 83111), was asked whether the twenty-day rule in Section 88006 could be waived in this instance because only a "technical correction" was being sought.

The specific changes proposed by ACA 76 are as follows:

... "newly constructed" shall not include any addition to, or alteration or rehabilitation of, a certified historic structure including, but not limited to, any modification which ~~is~~ are ~~an~~ a historically accurate reconstruction of once extant features or necessary for safety or handicapped access or required by safety code requirements....

ANALYSIS

We base our conclusion, that an additinal twenty-day period would be required, on the clearly mandatory language of Section 88006, which provides for no exceptions. It further provides for a judicial remedy for any voter who can demonstrate that the proposition, analyses or arguments are "false, misleading, or inconsistent with the requirements of this chapter or the Elections Code...."

We further base our conclusion on the fact that the changes proposed by ACA 76 are substantive in nature. Their express purpose is to expand the scope of the exemption as set forth in ACA 69. The proponents of ACA 76 contend that ACA 76 more accurately reflects their intent than the amended version of ACA 69 which is set to appear as Proposition 34. They predict difficulties in interpretation of Proposition 34, if adopted, due to the wording in ACA 69. Specific examples of possible confusion have been given, such as repair or replacement of the roof of an historic structure utilizing roofing material which is not the same as was once extant on the structure. Other examples could be given.

However, the issue is not what the proponents intent was or is; in California legislative interpretation is based upon the language appearing in the bill, which expresses the intent of

the Legislature. The issue is whether the voters will have their opportunity to review the proposition, the analyses and the arguments and to challenge them in court if any voter believes there is an inaccuracy in the ballot pamphlet presentation.

The current Ballot Title and Summary for Proposition 34 (ACA 69) expressly includes reference to the fact that:

The exclusion applies to any addition to, or alteration or rehabilitation of, a certified historic structure which is an historically accurate reconstruction of once extant features, necessary for safety or handicapped access, or required by safety codes....

The Analysis by the Legislative Analyst for the ballot pamphlet likewise makes specific reference to this issue.

This exemption from reappraisal would not apply to all alterations or additions. It would apply only to alterations involving historically accurate reconstruction of features which were once a part of the structure, or alterations which are necessary either to provide safety or handicapped access or to comply with safety codes....

(Emphasis added.)

Given the desire of proponents of ACA 76 to expand ACA 69's limited exemption, if ACA 76 were successful in doing so, it would necessitate a change in both the Ballot Title and Summary and in the Analysis by the Legislative Analyst to reflect the exemption's expansion. Such changes require that the voters have an opportunity to review them pursuant to Section 88006.^{2/}

^{2/} If ACA 76 were adopted and the Analysis by the Legislative Analyst was not changed to reflect the new wording, a voter might wish to challenge the Analysis as "misleading" under Section 88006. In addition, the change proposed by ACA 76 may well result in the necessity to revise the Legislative Analyst's cost estimates contained in the Analysis appearing in the Ballot Pamphlet. This, too, could be the subject of a voter challenge under Section 88006.

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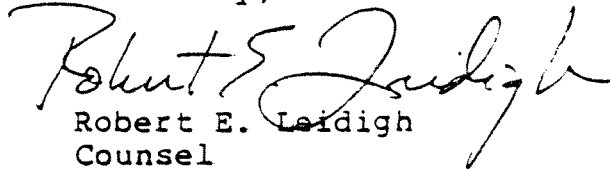
Lastly, we were also asked, at one point, whether our advice would change if ACA 76 merely inserted the word "or" into the text of ACA 69 as follows:

... "newly constructed" shall not include any addition to, or alteration or rehabilitation of, a certified historic structure or which is an historically accurate reconstruction of once extant features....

The insertion of the word "or" where shown above is an attempt to accomplish with one word the same objective which Legislative Counsel determined could best be accomplished by insertion of the words "including, but not limited to, any modifications...."^{3/} Our advice remains unchanged.

Should you have any questions regarding this advice, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

cc: Ricardo Nieto, Consultant, Assembly ER&CA Comm.
Lou Bromley, Consultant, Senate Const. Amend. Comm.
Anthony Miller, Chief Deputy, Secretary of State

^{3/} We have been advised that the proponents of ACA 76 originally sought this one-word change. However, Legislative Counsel felt that the purpose would be better expressed by the mere lengthy phraseology proposed in ACA 76.