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June 27, 2016

SENT VIA EMAIL

Michael Vigilia, Esq.
Antioch City Attorney
200 "H" Street
Antioch, CA 94509

Re: Town Square Initiative Processing

Dear Mr. Vigilia:

Thanks for your willingness to review this matter. Here is what is happening. On May 23, 2016, Joy Motts (one of my initiative clients) sent Antioch's city clerk and elections officer Arne Simonsen an email asking Arne when the Town Square ballot initiative has to be turned in.

Arne replied that we had 180 days in which to do so beginning on March 8, 2016:

"[b]ut to make the November 8th General Election, you would have to submit your petitions in mid-July in order for the signatures to be verified, which could take up to 28 days. The last day to place a Measure on the November 8th ballot is August 12, which means it would have to be on the August 9th Council meeting agenda." (Copy of email exchange attached as Exhibit "A").

To be on the safe side, my clients decided they would submit their signature petitions to Arne no later than June 30, 2016, which continues to be their goal. That would seem to provide more than enough time.

Joy Motts' Request for Assistance

However, last week on June 23, 2016, Joy Motts emailed me that she had just spoken with the Contra Costa County Elections Office, and that the representative there informed Joy that (i) the County Election folks were allowed up to thirty (30) days rather than twenty-eight (28) days to verify signatures; (ii) that those were business rather than calendar days; and (iii) they would need every bit of that time due to the large number of initiatives headed to ballot.¹ (See Exhibit "B").

¹ There is apparently an arrangement between the city and the county that county folks will verify signatures, although I have not been able to confirm this.

That same day, June 23, 2016, Joy sent Arne an email explaining what is happening and asking Arne for help. An automatic email reply from Arne's office said: he was out of town for four days; he would be checking his emails each evening; and to call Nickie Matasy at the city for immediate assistance. (Copy attached as Exhibit "C"). As reflected in Exhibit "C" Joy immediately forwarded her email for Arne to Nickie. (We never did hear back from Arne).

Nickie sent Joy two email replies. The first seemed to reflect a genuine interest in assisting us. (Copy attached as Exhibit "D"). The second, - - not so much. (Copy attached as Exhibit "E"). After reviewing both emails, I called Nickie myself, to find out whether city staff was going to assist in solving this problem, or whether we were essentially on our own. Among other things, we were (and are) unclear as to whether Antioch has a different rule than the County Elections folk concerning the outer time limit for verifying signatures.

While Nickie provided us with an attachment to her second email (copy attached as Exhibit "F") which contains an underlined portion saying "The Elections Official has 30 days from the date of filing to verify the signatures on the petition" - - we still do not know whether these are calendar or business days, and in any event - - by its own terms- - this underlined passage only applies to county initiatives. As to city initiatives, Nickie's same attachment says:

"Information on how to qualify a City initiative must be obtained from the Office of the City Clerk for the city in which the initiative is to be circulated."

So, in Arne's absence, and after speaking with Nickie, we still do not know (i) whether a 28 day outer limit applies in Antioch, and if so, (ii) whether it involves 28 calendar days or 28 business days, (although the context of Arne's email certainly seems to contemplate calendar days). Having concluded Nickie was not in a position to provide this level of detail, and having concluded she had lost her initial willingness to inquire further of other election folk in order to provide answers, I asked her to transfer me to your office, which she did.¹ At the conclusion of our conversation on Friday, you graciously agreed to review this letter, and provide feedback.²

Questions

Given the above, here are the questions we have of the city:

- Which outer limit verification rule applies in Antioch?

¹ While I am reluctant to be dealing with you directly, given Arne's past admonishment that I should not have gone directly to the interim city attorney previously to ask whether he would re-word a portion of his ballot summary, we have tried to contact Arne in this instance to no avail.

² I have since learned through my legal research that Elections Code § 9114, which provides an outer limit of thirty (30) business days to verify signatures, generally applies to California cities, but that some cities have adopted shorter periods of time. San Diego, for example, requires verification within thirty (30) calendar days.

- Is it Antioch's position that my clients are on their own concerning how to proceed?

If Antioch is operating under a 28 day outer limit rule (and assuming these are calendar days) we are in great shape. So long as my clients turn in their petitions by June 30, 2016 as planned, the city will have plenty of time to verify signatures and agendize this matter for the August 9, 2016 City Council meeting.

If Antioch is operating under a 30 business day outer limit rule as indicated by the County Elections representative, we are already within the 30 business day period, and because County Election folks have apparently said they will need every bit of these 30 days to verify our signatures, our measure may not make the November ballot.

If the latter is the case, I am asking the city to help us make sure our measure is not derailed in this fashion, especially given Arne's misinformation which my clients have reasonably relied on. Here are some possibilities:

1) The city can work with the county to make sure that our signatures are counted in time to place our initiative on the August 9, 2016 City Council Agenda, in order to meet the August 12, 2016 ballot deadline. This could involve a combination of (i) beginning to verify the great bulk of our signatures which we can turn in immediately; (ii) requesting the county to assign more employees to verify signatures; (iii) offering the services of city staff to do some of this work; and (iv) employing the use of independent contractors to augment the verification process (something my clients would be willing to contribute funds towards);

2) The City Council can agendize our initiative for City Council action on August 9, 2016, and in the event the signature verification process has not been completed by that time, take its action on our initiative subject to a "condition subsequent" that such action shall be null and void unless sufficient signatures have been verified by August 12, 2016 (which is only 3 days later);¹

3) In the event the city nonetheless feels the second suggestion would require too much staff work without sufficient assurance that the petitions will be determined to have enough signatures, the City Council can agendize a Special City Council Meeting on August 11, 2016, in order to hold the required hearing on this measure, only after it has been determined that the measure has a sufficient number of signatures; or

4) The city can do nothing in which case it will have an opportunity (together with the county) to explain to the court why it has essentially chosen to block

¹ Thirty business days beginning June 30, 2016, takes us out to August 11, 2016, which is the day before the August 12th ballot deadline. Therefore, this "condition subsequent" approach would allow adequate time, even under the 30 business day scenario, so long as we submitted our petitions by June 30th. Also, given the contentiousness of this initiative, it is highly unlikely that staff is going to go to great lengths to determine whether the city should make this measure its own, which is essentially the purpose of the August 9, 2016, agenda item.

this initiative. An independent investigation of the city clerk may follow as a matter of course to determine whether Arne's misstatements were intentional. Further, in the event this initiative is not able to be placed on the November ballot, the city will likely face a CEQA challenge as previously detailed by letter to City Council, even before a vote on the initiative has taken place. That would seem to be an enormous waste of resources for everyone involved.

Anyone who knows me understands that I consider litigation a sign that both parties have failed. Having said that, my clients will be able to meet the following two requirements set forth in Elections Code § 13314 concerning whether an elector may seek a writ of mandate to address neglect in the elections process: (1) the neglect is in violation of this code or the Constitution; and (2) issuance of the writ will not substantially interfere with the conduct of the election.

As a reminder, the California City Clerk's Association describes the role of the city clerk as follows:

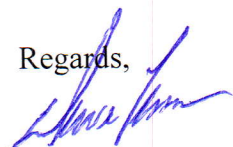
"Thousands of statutes and regulations exist which protect democracy and provide a system of 'checks and balances.' It is the city clerk's responsibility to ensure compliance with these laws, which are complex and constantly changing and evolving. The city clerk, as the local official, must have the professional education, training, and knowledge necessary to understand and administer these laws. The city clerk is your partner in democracy." [Emphasis added].

Summary

I am available to speak further once you have reviewed this letter. The timing is obviously crucial, and we have lost several days already. Accordingly, I would appreciate hearing back from you no later than tomorrow, Tuesday, June 28, 2016 by close of business, even if you do not have complete answers from your clients by that time. If I haven't heard from you by then, I will assume that your client has decided not to respond to this letter.

Again, thanks for your willingness to review this letter, and congratulations on your appointment as the new Antioch City Attorney!

Regards,



Dave Larsen

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