



OFFICE OF THE CITY ATTORNEY  
ROCKARD J. DELGADILLO  
CITY ATTORNEY

REPORT NO. R 0 6 - 0 1 3 0  
MAY 0 8 2006

REPORT RE:

FULL PUBLIC FINANCING OF CITY ELECTIONS

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 05-1536

Honorable Members:

At the Rules and Elections Committee Meeting of November 19, 2005, the Committee requested that the City Attorney report on the permissibility of using public funds for a full public financing system for City elections. The following responds to that request.

**Full Public Financing of Elections**

The California Supreme Court squarely addressed the issue of public financing of City campaigns in 1992 after the voters adopted a partial matching funds system of funding. *Johnson v. Bradley* (1992) 4 Cal. 4th 389. The City successfully argued to the Court of Appeal and the California Supreme Court that the California Constitution permitted the City, as a charter city, to use its own public funds to finance city political campaigns notwithstanding a contrary provision in the Political Reform Act.<sup>1</sup>

---

<sup>1</sup> On the related issue of spending limits, the US Supreme Court has upheld candidate spending limits as a condition of the candidate's acceptance of public funds. *Buckley v. Valeo* (1976) 424 U.S. 1, 54-59. The Supreme Court is currently considering whether the government may impose spending limits outside of a public funding system. *Randall v. Sorrell* (2002) 382 F.3d 91; cert. granted, 2005 U.S. LEXIS 5418 (Sept. 27, 2005).

As approved by the voters in 1988 as part of Proposition 73, the Political Reform Act, specifically Government Code section 85300, prohibits a public officer from expending and a candidate from accepting ". . . any public moneys for the purpose of seeking elective office." The Fair Political Practices Commission adopted a regulation interpreting the statute to prohibit only "the payment of public moneys, in the form of matching funds or cash subsidies, for the public financing of elections." 2 Cal. Code of Regs. § 18530. Following the adoption of Proposition H by the voters in 1990, which included authorization for the City's partial financing system, three petitioners including a State Assemblyman, a State Senator, and a City Councilmember, filed an action to enjoin the City from implementing the provisions claiming that the City was bound by the state law provision. *Johnson v. Bradley, supra*, 4 Cal. 4th 389.

The Supreme Court's decision upholding the City's partial matching funds system in *Johnson v. Bradley* was grounded in City's Charter authority in that the manner of electing city officers was a "municipal affair" and not a matter of "statewide concern" under Article XI, Section 5 of the State Constitution. Subsection (a) of Section 5 provides:

"It shall be competent in any city charter to provide that the city governed thereunder may *make and enforce all ordinances and regulations in respect to municipal affairs*, subject only to the restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

Cal. Constitution, Art XI, § 5(a), italics added.

The Court concluded that Proposition 73, which had been adopted by California voters and included section 85300, generally did evidence an intent by the voters and drafters of a statewide concern in the integrity of electoral process, but also concluded that the petitioners had failed to establish a convincing reason why prohibition on the use of local public funds for financing of elections impacted a statewide interest. The Court rejected arguments that the state had an interest in how local jurisdictions spent its own taxpayers' funds on public financing elections (and noting that payments received by the city from state or federal governmental agencies may not be used) or the funding of political campaigns of candidates who may have extreme views. Although the Court recognized the statewide interest in the integrity of elections, it rejected the argument that a ban on public funding served that goal. *Johnson v. Bradley, supra* 4 Cal. 4th at 411.

The Court's analysis similarly applies to a system of full public financing of elections. The City may provide for a system of full public financing of elections for City office notwithstanding the specific state law prohibition. Depending on the features of the system (which has not yet been developed) there may be other legal issues that arise under the Constitution or other laws. For example, as we have previously indicated, a system of full public financing of City elections would likely require an amendment to the City Charter, which now authorizes a system of partial public matching funds, rather than a grant of funds. See City Charter § 471. Related provisions of the Charter may also require amendment. This office will assist the City Council as it considers these issues.

### **Use of Public Resources in Such as Channel 35**

State law generally limits the use of public moneys and resources for campaign-related activities by a state or local governmental entity. *Stanson v. Mott* (1976) 17 Cal.3d 206; Cal. Gov't Code § 8314; Penal Code § 424. The courts have distinguished between the appropriate use of public funds to provide the public a balanced informational presentation of issues surrounding an election campaign, and the unlawful use of public funds by a government agency to take sides in an election campaign. *Stanson v. Mott, supra*; *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal. App. 3d 529.

A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office...; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process.

*Stanson v. Mott, supra*, 17 Cal.3d 219.

In order to meet this mandate, while providing more information to voters and considering possible First Amendment and Voting Rights Act issues, the City Council previously approved a pilot program of election programming on Channel 35. Channel 35 has provided election programming within established guidelines since the 2003 City elections. During the most recent 2005 City elections, Channel 35 invited all candidates to film a three minute candidate statement. The video of the statements and transcripts of the statements translated into the six non-English languages mandated by

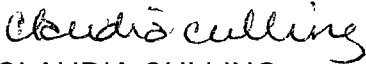
the Voting Rights Act were posted on the City's website. Currently pending before the City Council's Information Technology Committee, is a draft ordinance, approved as to form and legality, to formalize the City's policy regarding election programming on Channel 35. See Council File No. 05-1411.

Finally, we note that there has been some suggestion that the City's Cable Franchise Agreements be amended to mandate that cable companies provide additional candidate airtime. If the City imposes this requirement, then the principle requiring equitable treatment of candidates in cable broadcasts would also apply. Additionally, there may be other issues with the City's ability to utilize cable franchise agreements for this purpose given pending legislation that may preempt the City's ability to act in a regulatory capacity. This office will report on those issues separately should the City Council wish to explore that option further.

If you have any further questions, please contact Deputy City Attorney Renee A. Stadel at (213) 978-7100. Either she or another member of the office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By   
CLAUDIA CULLING  
Special Counsel - Municipal

cc: ✓ City Ethics Commission  
Gerry Miller, Chief Legislative Analyst

CC:RAS:dc