



COUNTY OF LOS ANGELES  
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RAYMOND G. FORTNER, JR.  
County Counsel

March 21, 2006

TO: SUPERVISOR MICHAEL D. ANTONOVICH, Mayor  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE BRATHWAITE BURKE  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR DON KNABE

FROM: RAYMOND G. FORTNER, JR.  
County Counsel

RE: **LACERA Election Resolution**

On March 7, 2006, Bruce Perelman appeared before your Board to voice his concerns regarding LACERA elections. In addition to his oral comments, Mr. Perelman presented your Board with an undated memorandum entitled "LACERA RESOLUTION RECOMMENDATIONS" which incorporated an earlier letter to your Board dated February 23, 2006, entitled "NECESSARY REVISIONS TO LACERA ELECTION RULES IN 2006 TO PREVENT CORRUPTION." Your Board requested that my office, in conjunction with the Chief Administrative Officer, report back to you with a copy to Mr. Perelman.

LACERA elections are conducted "in a manner determined by the board of supervisors." To this end, in advance of each election your Board adopts a resolution governing the conduct of the upcoming election.

In his February 23<sup>rd</sup> letter, portions of which are rephrased in his undated memorandum, Mr. Perelman asserts that monies from a "single special interest group" threaten to undermine the integrity of the election process, and complains that "most ballots mailed to employees just go into the trash." Specifically, Mr. Perelman posits 12 recommendations.

Recommendation number 1 asks that the resolution be amended to double the number of words starting with capital letters allowed in the candidate's statement. This recommendation presents no legal issue. We note that the only restriction contained in the current resolution utilized by your Board is that the candidate statement, which becomes part of the official ballot, is limited to 200 words.

Recommendation number 2 asks that the resolution be amended to encourage employee organizations to hold candidate debates. This recommendation presents no legal issue, and would be a matter of policy for your Board.

Recommendation number 3 asks that the resolution be amended to limit "independent expenditures" in any calendar year to \$2,000, to require that all expenditures be reported to the County, and that any organization exceeding the \$2,000 expenditure be punished by a fine of 50% of the organization's annual budget. Mr. Perelman offers no other details regarding this suggestion.

It bears noting that nothing in the Government Code granting your Board authority to determine the manner of LACERA elections speaks to imposing such limits and we think legislation would be required.

Recommendation number 4 asks that the resolution be amended to provide that each candidate be given 1,000 words and one-half a page in the County Digest to be distributed to all employees in the week prior to the mailing of official ballots, and recommendation number 5 asks that the resolution be amended to provide that candidate statements be reprinted in the County Digest in the month official ballots are mailed.

Further, recommendation number 6 asks that the resolution be amended to provide that the County email copies of all candidate statements to all County email addresses on the same day that official ballots are mailed, and recommendation number 7 asks that the resolution be amended to provide that the County email copies of the one-half page Digest statement to all County email addresses 15 days following mailing of the official ballots.

On its face, we see no legal bar to dissemination of ballot materials through any established County communication system, as long as all candidates are allowed to participate. The efficacy of Mr. Perelman's suggestions, however, is a matter to be determined by your Board. In any event, these recommendations seem contrary to the intent of the provisions in the current form of the resolution generally making it impermissible to use County resources in the context of a campaign.

Recommendation number 8 asks that the resolution be amended to provide that "organizations" be prohibited from using "agents, or planning to use agents, to systematically remove campaign materials which are posted in a manner consistent with the rules on County bulletin boards, during the election" and asks that such conduct be considered a crime and that fines be imposed.

The current resolution utilized by your Board provides that candidate misconduct may lead to imposition of administrative discipline and warns that a candidate may also be subject to criminal culpability. As in any election, criminal conduct such as trespass and vandalism are already prohibited.

Recommendation number 9 asks that the resolution be amended to provide that "[p]ersons who are not employees of the County be prohibited from using county resources, including space in County facilities, or other County property for campaigning purposes related to the LACERA elections."

It has long been recognized in California that the free speech clause of California's Constitution extends to public areas on public property. (*In re Hoffman* (1967) 67 Cal.2d 845, at pp. 850-851; *People v. Fogelson* (1978) 21 Cal.3d 158, 167, fn. 9.) Any blanket prohibition on political speech in such areas, as seemingly proposed by Mr. Perelman, would not, in our view, pass constitutional muster. Rather, any such restrictions would have to be drafted to govern the time, place and manner of the speech, not the content, and would apply equally to non-County employees and employees engaged in speech during non-work hours.

With respect to use of other undefined County resources, we note that the current resolution utilized by your Board specifically warns that "[a]ny County employee who is a candidate in this election is a candidate in his or her personal capacity, and may not use County time or County resources to further his or her campaign or election." Moreover, as it is impermissible to utilize County resources to support or oppose a candidate, no individual, whether or not a candidate and/or a County employee, may utilize County resources for these purposes.

Recommendation number 10 asks that the resolution be amended to provide that all restrictions on the use of County resources which apply to candidates also apply to all other County and non-County employees. While we see no legal reason this cannot be stated in the resolution, there is also no legal reason why it need be stated. (See, recommendation number 9.)

Recommendation number 11 is a restatement of recommendation number 3.

Recommendation number 12 asks that the resolution be amended to prohibit bulletin boards reserved for union postings from being used to post LACERA election materials. It is the union, not the County, which controls what is posted on union bulletin boards. This is an issue which would have to be raised in the context of collective bargaining.

If you have questions concerning this matter, please contact me, or Senior Deputies Judy Whitehurst at (213) 974-1845 or Halvor Melom at (213) 974-1834.

RGF:HSM:mv

c: David E. Janssen  
Chief Administrative Officer

Joanne Sturges, Acting Executive Officer  
Board of Supervisors

Bruce Perelman