

CITY OF OAKLAND



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June 16, 2006

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BY FAX AND U.S. MAIL
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David MacDonald
Acting Registrar of Voters
c/o Richard Winnie
County Counsel
1221 Oak Street, Ste. 450
Oakland, CA 94612-4283

Alameda County Counsel Opinion of June 14, 2006, to Registrar of Voters

Dear Mr. MacDonald:

We appreciate the opinion by Richard E. Winnie, Alameda County Counsel, to you, dated June 14, 2006, "Re: Definition of 'Votes Cast'" and feel that the question presented is a close one.

The County Counsel is correct that this issue turns on an interpretation of Oakland municipal law. The Oakland municipal law on this point differs from state law. We are informed that it has been for years the custom and practice to include the votes cast for "unqualified" write-in candidates in tabulations for Oakland municipal elections.

When interpreting municipal election law, or election law at any level of government, we must be mindful of the fundamental and cherished American principle of giving every voter a say in who serves in our elected public offices. Accordingly, election law should be liberally interpreted in a manner that seeks to make every vote count. Election law should not be so narrowly construed as to disenfranchise voters—even if some of those voters cast their votes tongue in cheek.

Section 3.08.140 requires a runoff if there is no majority.

3.08.140 Election of candidates.

Any candidate receiving a majority of the vote cast for all candidates for that office at the municipal nominating election shall be declared elected. If at any such

election there is any office to which no person was elected, then the two candidates for such office receiving the highest number of votes for such office shall be the candidates, and the only candidates, for such office whose names shall be printed upon ballots to be issued at the second or general municipal election; provided that, in any event, all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such second election. The candidate receiving the highest number of votes cast for all candidates for that office at the second or general municipal election shall be declared elected. (Oakland Municipal Code, emphasis added.)

The ordinance calls for the calculation to involve the votes cast for “all candidates” for that office. The ordinance does not distinguish between votes cast for qualified or unqualified persons, but states “all candidates.” Had the City Council when it passed section 3.08.140 intended to exclude votes cast for unqualified persons, it could have done so. But it did not.

In this election, some individuals exercised their rights, voted and expressed a preference and opinion about the mayoral election by writing in a name on the ballot. We cannot lightly erase the exercise of those rights; especially when the language of section 3.08.140 is less than clear regarding how write-in votes are to be considered. To use an unclear statute—a technicality--to strike a voter’s voice, would be a change in the prior custom and practice in Oakland elections regarding how to consider write-in ballots. Accordingly, in determining the “majority” in Oakland Municipal Code section 3.08.140, all ballots cast for mayor should be included.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John A. Russo', written in a cursive style.

John A. Russo
City Attorney

CC: Ron Dellums for Mayor committee
De la Fuente for Mayor committee
City Clerk

MTM:ww