



Date: April 16, 2002

To: Mayor and City Council

From: Robert E. Shannon, City Attorney *RES*

Subject: Placement of Candidate Names on Ballot for 2002 General Election

This memorandum will address two issues which relate to the placement of candidates' names on the Mayoral ballot for the 2002 General Elections. Although the primary election results have not been finalized (they will be certified next Tuesday), this analysis will assume that Beverly O'Neill has received the most votes as a write-in candidate in the primary election, followed by Dan Baker and Norm Ryan, in that order.

1. Can Beverly O'Neill's name appear on the ballot for the general election?

No.

It is true that Section 202(b) of the Charter provides that where no candidate for the office of Mayor receives a majority of votes in the primary election, "... the two candidates receiving the highest number of votes ... shall be the candidates and the only candidates ... whose names shall be printed on the ballots ... at the general municipal election."

However, Charter Section 214 further provides, in pertinent part, that: "Notwithstanding any other previously enacted provision of law or this charter, the City Clerk shall not ... print or cause to be printed on any ballot ... the name of (any termed-out incumbent)."

Thus Section 214 creates an exception to the rule provided in Section 202, and expressly prohibits Beverly O'Neill's name from appearing on the ballot.

In 1997, this office came to the same conclusion in a written memorandum. Thereafter, Measure K was placed on the November 7, 2000 ballot. That measure stated that existing law prevented a termed-out candidate from appearing on the ballot in a general election, even if the candidate qualified for the general election by receiving the required votes in the primary election. If approved, Section 214 would have been changed to add the sentence, "[i]n the case of a general election, a write-

in candidate who was one of the two candidates receiving the highest number of votes in the primary election shall have his or her name printed upon the ballot to be used at the general election." Measure K was rejected by the voters, further reinforcing the intent of the Charter that a termed-out incumbent could not, under any circumstance, appear on the ballot in a general election.

2. Since Beverly O'Neill's name cannot appear on the ballot, should Norm Ryan be entitled to have his name on the ballot?

No.

Norm Ryan received the third highest number of votes in the primary election. As previously stated, Section 202 of the Charter provides that the two candidates receiving the highest number of votes in the primary, and only those candidates, shall be entitled to have their names printed on the general municipal election ballot. Beverly O'Neill was a qualified write-in candidate as provided by the State Elections Code, and therefore she is counted as one of the two candidates receiving the highest number of votes. Norm Ryan is not one of those two candidates and thus his name cannot be placed on the ballot.