

## **GENETICALLY MODIFIED ORGANISMS**

### **- San Luis Obispo County Counsel Legal Opinions -**

**June 14, 2004**

1. Federal and State laws may preempt local law(s)
  - a. “Express preemption” exists if federal or state laws expressly forbids local legislation on the same subject
  - b. In the absence of express preemption, federal or state laws may still preempt local legislation, if -
    - i. Federal or state laws provide comprehensive regulation of an entire field in a manner that would be defeated by local legislation, or
    - ii. Local legislation would be contrary to, or would substantially interfere with, federal or state laws
2. Federal, State, and Indian land are generally exempt from County regulation
3. Incorporated cities are sometimes exempt from County regulation, depending on the statutory framework applicable to the subject matter
  - a. In some cases, there are statutes authorizing cities to contract with the County to provide particular services for that city
4. County Counsel of SLO does not provide legal advice or suggestions to authors of proposed ballot initiatives
5. Pursuant to the California Elections Code, the County Counsel of SLO is required to prepare a “ballot title and summary for the proposed measure. The ballot title may differ from any other title of the proposed measure and shall express in 500 words or less the purpose of the proposed measure. In providing the ballot title, the county counsel shall give a true and impartial statement of the purpose of the proposed measure in such language that the ballot title shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.” Relevant State Statutes: CA Codes (elec9160-9168) and (elec9100-9126)
6. If the measure qualifies for the ballot, the California Elections Code requires the County Counsel to prepare an “impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.” That analysis is then printed in the ballot pamphlet preceding the arguments for and against the measure. Among the subjects that might be discussed by County Counsel are the following:
  - a. How the measure operates
  - b. How the measure relates to existing law, including potential conflicts with existing law
  - c. Constitutionality of the measure
  - d. Enforceability of the measure

7. Despite potential counsel assessment that an initiative has deficiencies, it may go to public vote. However, any interested party then has the right to legal action to seek to invalidate any or several parts of the initiative. Potential consequences include:
  - a. Judgment invalidating a specific clause of the measure, but upholding the remainder of the measure
  - b. Judgment invalidating the measure, in its entirety
  - c. “Stay” of parts, or the entire ordinance, by a judge pending legal outcome, or for a defined period