

Legal reasonings differ

By Tom Friesen
Staff Writer

NIPOMO — A puzzling paragraph in the county counsel's impartial analysis of Measure C provided the first hint that the Nov. 5 election results could be subject to

reversal.

But the county counsel's legal reasoning differs from that of Art Shaw, the attorney for the Community Services District who advised the district directors that the voters

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349-325 rejection of state water could be overturned.

The ballot question itself was clearcut: "Shall the Nipomo Community Services District participate in the State Water Project?"

In legal writing, the word "shall" is considered a strong one, carrying the force of command, as opposed to "may," which connotes some choice.

But the ballot analysis states: "Although the district's ordinance provides that the election on this measure will be binding on the district and its board of directors, it is not clear whether or not the decision of the district's voters will be legally binding on the district."

Deputy County Counsel Jac Crawford said the author of the analysis, Deputy County Counsel Ray Biering, was concerned that the voters' decision may be considered an executive or administrative one rather than a legislative action.

The issue is a complicated one that gets into case law, Crawford said, explaining that when a governmental body is contracting for goods or services it is using an executive or administrative power.

If the vote is considered to be one that authorizes or forbids the signing of a contract with the state, "the ultimate decision is an executive one. I think that's what we were concerned about here," Crawford said.

There is some legal debate about whether or not (an executive power) can be legislatively assigned. It isn't clear," Crawford said.

There have been no court deci-

sions that deal directly with the issue, he said. "It would require quite a bit of research" before an attorney could advise the board whether it could reverse the voters' decision.

Crawford said an attorney would have to be very confident about his decision because of the likelihood of a lawsuit being filed.

"I'm fairly confident," Shaw said after the directors overturned the vote Tuesday night.

He said that if the voters' decision were considered to be an executive or administrative action, it could clearly be overruled.

But he said that might not apply to the Community Services District because it is San Luis Obispo

County which will actually make the decision about contracting with the state.

Shaw said his advice that the board could overturn the vote was based on the reasoning that "if a legislature adopts a law, it can repeal the law."

With their 4-1 vote, the directors repealed a section of the ordinance they'd passed earlier this year. That section said the Nov. 5 vote would be binding on the district.