

June 13, 2001

REPORT TO THE COMMITTEE ON RULES,
FINANCE AND INTERGOVERNMENTAL RELATIONS

ELIGIBILITY OF INDIVIDUAL APPOINTED TO FILL VACANCY IN CITY OFFICE
TO RUN FOR NEXT SUCCEEDING TERM

INTRODUCTION

During discussion of the City Clerk's proposed amendments to the City's Election Code at the May 23, 2001, meeting of the Committee on Rules, Finance and Intergovernmental Relations [Rules Committee], questions arose about the differences in laws governing filling vacancies in elective City offices. In particular, the Rules Committee wanted to know why an individual appointed to fill a vacancy in either the Mayor or City Attorney's office was permitted to run for the next succeeding term for that office, whereas an individual appointed to fill a Council vacancy was not permitted to run.

The Rules Committee asked the City Attorney to provide the Committee with an analysis of the laws governing the issue. In addition, the Rules Committee asked the City Attorney to advise them on what the City Council could do to make the treatment of appointed City officeholders consistent in their ability to run for succeeding terms.

This report is in response to these requests.

ANALYSIS

I. Current Language

The governing law for filling vacancies in City elective offices is located in the San Diego Charter. An individual appointed to fill a vacancy on the City Council is expressly prohibited from running for that office in the next succeeding term. San Diego Charter 12(h)(1)(A). In contrast with this restriction on appointees to Council vacancies, the Charter does not prohibit an appointee filling a vacancy in the Mayor's office from running for that office in the next succeeding term. San Diego Charter 24. The Charter also imposes no similar restriction on appointees to the City Attorney's office. San Diego Charter 40. The precise language of each applicable Charter section is set forth in the attached chart.

II. Legislative History

A detailed legislative history of the relevant Charter sections is set forth in the attached chart. A summary is presented here.

We traced the City Charter's history of the treatment of vacancies in office from 1931, the year the current City Charter was adopted. In 1931, the language for filling vacancies in both the Mayor and Council offices was substantially the same. There was no prohibition against an appointee running for office in the next term. The provision governing filling vacancies in the Mayor's office has never changed since 1931.

In contrast, the procedures for filling vacancies in Council offices has changed several times: in 1990, 1992, and 1994. There was no restriction on an appointee running for office until the 1994 amendments to the Charter. The 1994 amendments imposed the current prohibition against an appointee running for the same office for the next succeeding term.

Even though the City Attorney has been an elected position since adoption of the 1931 Charter, the Charter contained no provision governing filling a vacancy in that office until 1943. The Charter has never been amended to change the procedure adopted in 1943 for filling a vacancy in the City Attorney's office. There is no prohibition against an appointee to the City Attorney's office running for office in the next term.

III. Must a Prohibition on Running for Office following an Appointment be by Charter Amendment or Municipal Code Amendment?

In addition to asking the City Attorney to provide a legal analysis of laws governing filling vacancies in City offices, the Rules Committee asked the City Attorney to advise them on how the laws on the eligibility to run for office following appointment could be made consistent.

As a general rule, a charter acts as a limit on authority, not a grant of authority. *Taylor v. Crane*, 24 Cal. 3d 442, 450 (1979). Under this general rule, the City Council has plenary authority to adopt an ordinance placing restrictions on an appointed officeholder's ability to run for office in the next succeeding term, unless limited by the Charter, constitution or some other superseding law.

If, on the one hand, the Council wants to eliminate the prohibition against an appointed Council member from running for office, the Charter would have to be amended, because the prohibition is expressly stated in the Charter. A simple Municipal Code amendment would be insufficient, because any provisions in the Municipal Code eliminating the prohibition would clearly be invalidated by the limiting language of the Charter.

If, on the other hand, the Council wants to add a prohibition that precludes an appointed Mayor or City Attorney from running for office, it is less clear whether a Charter amendment, as opposed to a Municipal Code amendment, is necessary. There is nothing express in the Charter or in the Charter history that would limit the Council's authority to adopt such an ordinance. However, the California Supreme Court has recognized a strong public policy favoring an individual's right to run for public office, and has characterized the right to hold public office as "valuable, fundamental and one that is subject to First Amendment protection." *Canaan v.*

Abdelnour, 40 Cal. 3d 703, 714 (1985) (striking down city ordinance banning write-in candidacy). *But see Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212 (1993) (upholding term limits for city council members adopted into a city charter).

CONCLUSION

The Charter would have to be amended to make consistent the City's policies governing an individual's eligibility to run for office following appointment to fill a vacant position in an elective City office. The Charter would clearly have to be amended to eliminate the express prohibition against an appointed Council member from running for the next succeeding term. In light of the strong public policy favoring eligibility to run for and hold public office, and in an abundance of caution, we recommend that the question of whether individuals appointed to fill vacancies in the office of Mayor or City Attorney should be prohibited from running for the next succeeding term also be placed before the City's voters in the form of a Charter amendment.

Respectfully submitted,

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CASEY GWINN
City Attorney

CCM:mr
cc: City Clerk
Attachment
RC-2001-21