

June 25, 1998

REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

APPOINTMENT OF AN INDEPENDENT STRATEGIC PLANNER/BUDGET ANALYST

At the May 28, 1998, meeting of the Select Committee on Government Efficiency and Fiscal Reform, the Budget Review Subcommittee recommended that an independent Strategic Planner/Budget Analyst be appointed by the City Council. This recommendation was approved by the Select Committee and forwarded to the Rules Committee which approved it at the meeting of June 8, 1998. At both meetings, my office advised that such an appointment would likely require a Charter change. Our advice was based on the fact that a similar appointment in 1974 was deemed invalid by the superior court as violative of the separation of powers doctrine. *Hubbard v. The City of San Diego*, Superior Court No. 358163.

In June 1972, the City employed a consultant on a contractual basis to serve the City Council as an economic analyst and consultant. The employment contract of the consultant was extended until the City Council adopted ordinances creating a new City department called the Department of Legislative Analyst. The department created a legislative analyst position which was responsive only to the Council and independent of the administrative branch of the City. The ordinances defined the powers and duties of the Legislative Analyst to include but not be limited to:

1. Gathering, organizing, and analyzing data and information relative to matters requiring legislative action, such as transportation, mass transit, C.P.O. and regional governmental organization, land use development and programs, and municipal expenditures and revenues.
2. Providing a formal, comprehensive annual budgetary analysis, including an in-depth program analysis prior to Council action as set forth in Section 71 of the City Charter.
3. Providing comparative studies of other cities as they relate to municipal operations.
4. Providing comparative analysis of the impact and feasibility of various programs and suggestions presented to the Council for legislative action.
5. Performing related work as directed by the Council.

The court pointed out that Sections 27 and 28 of the City Charter provide that the Manager shall

be the chief administrative officer of the City. Section 28 states:

It shall be the duty of the Manager to supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter; to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; to keep the Council advised of the financial condition and future needs of the City; to prepare and submit to the Council the annual budget estimate and such reports as may be required by that body.

. . . The Manager, as Chief Budget Officer of the City, shall be responsible for planning the activities of the City government and for adjusting such activities to the finances available. To this end he shall prepare annually a complete financial plan for the ensuing year and shall be responsible for the administration of such a plan when adopted by the Council. He shall be charged with the bringing together of estimates covering the financial needs of the City, with the checking of these estimates against the information relative to past expenditures and income, with the preparation of the budget document and supporting schedules and with the presentation of the budget to the Council. He shall have the power, with the approval of the Council, to employ experts, or consultants to perform work or give advice connected with the Departments of the City when such work or advice is necessary in connection therewith.

In analyzing the evidence presented, the court concluded that the activities of the Legislative Analyst “have in substantial measure been duplicative of and have fallen within the Charter mandated authority and duties of the City Manager.” The court found that “A perpetuation, however, of the position of Legislative Analyst, either contractually or upon a city departmental level, as an arm of the legislative branch of government, independent of the City Manager, is violative of the separation of powers doctrine.”

We believe that the responsibilities of the proposed Strategic Planner/Budget Analyst are sufficiently similar to the invalid legislative analyst position as to be subject to the same challenge. However, a Charter change authorizing such a position would cure the defect.

We have also been asked to comment on possible avenues and alternatives to establish a Strategic Planner/Budget Analyst within the current City Charter, such as appointing a Committee Consultant or appointing someone under the City Auditor. These alternatives do not overcome the requirement that the position must report to the City Manager. It is not where the Strategic Planner/Budget Analyst is placed but the fact that the proposed duties are solely within the province of the City Manager under sections 27 and 28 of the City Charter. The position may, of course, be created to serve under and report to the City Manager under the current City Charter.

A proposed Charter amendment is attached for your consideration.

Respectfully submitted,

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City Attorney

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Attachment

RC-98-12