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MEMORANDUM OF LAW

DATE: May 25, 2011
TO: Members of the 2010 Redistricting Commission
FROM: City Attorney
SUBJECT: Qualification of Commissioner Carlos Marquez to Serve on Redistricting Commission

INTRODUCTION

San Diego Charter section 5.1 states: "Each member of the [Redistricting] Commission shall be registered to vote in the City of San Diego."

At the end of the filing deadline for applications to the Commission in August 2010, the San Diego City Clerk sent the names of all applicants to the San Diego County Registrar of Voters (Registrar). The Registrar's office verified that each applicant considered for appointment was registered to vote in the City of San Diego.

Last week, members of the public questioned whether Redistricting Commission member Carlos Marquez is eligible to be a registered voter in the City of San Diego. At its May 19, 2011 meeting, the Commission asked our office to review the matter.

The Registrar has confirmed that Commissioner Marquez has been registered to vote in the City of San Diego throughout his tenure on the Commission. Mr. Marquez' voter registration was confirmed by the Registrar at the time of his appointment and was confirmed to our office this week.

QUESTIONS PRESENTED

1. Is the Registrar's confirmation that Mr. Marquez is registered to vote in the City of San Diego sufficient to meet the requirement of voter registration under Charter section 5.1?

2. May the City determine a Commission member's residency for purpose of voter registration?

3. What are the legal standards as to whether a voter is properly registered in the City of San Diego?

SHORT ANSWERS

1. Yes. The only question for the Commission and the City is whether Mr. Marquez is "registered to vote in the City of San Diego." The Commission and the City must recognize Mr. Marquez as a Commission member as long as he is registered to vote in the City and may not look beyond and determine whether he is properly registered to vote.

2. No. California law provides that the Registrar or a court may make the determination as to whether an individual is properly registered to vote. Our office has received information from Mr. Marquez and the Republican Party of San Diego County. After consulting with County Counsel and the Registrar, we have delivered that information to the Registrar. The City must abide by the Registrar's or court's determination on an individual's voter registration.

3. A voter lists his or her residence on the affidavit of registration to vote. Cal. Elec. Code § 2150. California law gives great weight to the voter's representation of his or her intent regarding his residency and domicile. California case law confirms that any doubt in the interpretation of the law is to be resolved in favor of the challenged voter.

As stated by the California Supreme Court in *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 578 (1971):

The registrar obviously has the power not to register someone who is not a resident of the jurisdiction. But California law gives great weight to the voter's representation of where his domicile is.

Whether Mr. Marquez resides in the City of San Diego for the purpose of voting and serving on the Commission is a question for the Registrar. Mr. Marquez states that he has accepted a job in Los Angeles and presently maintains residences in both San Diego and West Hollywood, but considers San Diego as his domicile. One can maintain two residences, but only one domicile. The issue is which residence is his domicile, i.e., his home and permanent residence.

DISCUSSION

I. SAN DIEGO CITY CHARTER SECTION 5.1 REQUIRES REDISTRICTING COMMISSIONERS TO BE REGISTERED TO VOTE IN THE CITY OF SAN DIEGO.

The San Diego Charter is the City's constitution and governs the Redistricting Commission. Charter section 5.1, which provides the legal framework for the Redistricting

Commission, states: “Each member of the Commission shall be registered to vote in the City of San Diego.” Thus, the *only* question for the Commission and the City is whether Mr. Marquez is “registered to vote in the City of San Diego.”

The Commission and the City must recognize Mr. Marquez as a Commission member as long as he is registered and may not look beyond to determine whether he is *properly* registered to vote. Only the Registrar of Voters or the courts may determine that issue. Cal. Elec. Code §§ 2102, 2142, and 2213.

At the time of his appointment, the Registrar informed the City Clerk’s Office that Mr. Marquez was registered to vote in the City. On May 23, 2011, the Registrar informed our office that his status as a registered voter in the City of San Diego has not changed. Based upon the Registrar’s determination, Mr. Marquez can serve as a member of the Commission.

This conclusion is based upon a review of Charter section 5.1. It is well-established each word of a statute should be given its plain meaning, unless the word is specifically defined in the statute. *Cruz*, 13 Cal.4th at 775; *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1238 (1992). “[I]f possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.” *Cruz*, 13 Cal. 4th at 782 (citation omitted). If the meaning is unambiguous, then the language controls, unless a literal interpretation would lead to an absurd result or a result inconsistent with the legislative purpose. *Cruz*, 13 Cal. 4th at 782-83; *Halbert’s Lumber, Inc.*, 6 Cal. App. 4th at 1239; *Castaneda v. Holcomb*, 114 Cal. App. 939, 942 (1981).

Charter section 5.1 is unambiguous. The plain meaning of “registered to vote” is clear. An individual either is, or is not, registered to vote in the City of San Diego. Merely being a resident of San Diego is not sufficient under the Charter to serve on the Commission. A Commission member must meet the qualifications to be an elector (*e.g.*, be at least 18 years of age at the time of the next election) and reside in the City of San Diego. The San Diego County Registrar of Voters is the election official who determines whether an individual may be registered to vote in the City of San Diego.

To interpret section 5.1 to allow the City to remove a Commission member based upon a finding that he is not *properly* registered in the City would be rewriting the Charter by legal interpretation. It would also defy the clear intent of section 5.1 to keep the City, the City Council, the Mayor and other City officials out of the Commission’s process and member selection as much as possible. The City Attorney gives legal advice, but does not sign off on the map. Consistent with that limited role, the drafters of the Charter amendment approved by the voters in 1992 to create an independent Redistricting Commission chose to use voter registration as a qualification rather than residency. This further enhances the independence of the Commission because voter registration is determined by an official outside of the City.

Based upon the plain meaning of Section 5.1 and legislative design, it is clear that the only determination the City can make is whether Mr. Marquez is a registered voter in the City of San Diego.

II. THE REGISTRAR OF VOTERS OR A COURT MAY MAKE THE DETERMINATION ON PROPER VOTER REGISTRATION.

The registration of a voter is permanent for all purposes during his or her life, unless and until the affidavit of registration is canceled by the county elections official for reasons specified in the code. Cal. Elec. Code § 2200. The Registrar may cancel a voter's registration where the Registrar determines the person is ineligible to vote. Cal. Elec. Code § 2201. The grounds for cancelling the registration include cases where the voter requests the cancellation, or upon death, mental incompetency, imprisonment or parole for conviction of a felony, and where there is "proof that the person is otherwise ineligible to vote." Cal. Elec. Code § 2201. An individual may file a lawsuit to compel a county elections official to cancel any registration made illegally or which should be canceled by reason of facts that have occurred subsequent to the registration. Cal. Elec. Code § 2213. If the voter whose registration is sought to be canceled is not a party to the action, the court may order him or her to be made a party defendant. *Id.* The county elections official and others against whom there are causes of action may be joined as defendants. *Id.* If a voter's domicile is an issue, however, the voter's representation of his or her intent is given great weight under California law (see discussion below).

Our office has received information from Mr. Marquez and from the Republican Party of San Diego County regarding issues that may be related to his voter registration. After consulting with the Office of San Diego County Counsel and the Registrar, our office has delivered all information received to the Registrar for a determination of Mr. Marquez' eligibility to vote in the City of San Diego. The City must abide by the Registrar's determination as to his voter registration status.

III. CITIZENS WHO REGISTER TO VOTE MUST DO SO AT THEIR PLACE OF DOMICILE AND, IF THERE ARE TWO RESIDENCES, THE VOTER'S EXPRESSED INTENT REGARDING HIS OR HER HOME IS GIVEN MUCH WEIGHT UNDER THE LAW.

The California Elections Code defines a "voter" as any elector who is registered under the Elections Code. Cal. Elec. Code § 359. An "elector" is defined as "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election." Cal. Elec. Code § 321. A voter lists his or her residence on the affidavit of registration to vote. Cal. Elec. Code § 2150.

California Elections Code section 349 defines "residence" for voting purposes:

- (a) "Residence" for voting purposes means a person's domicile.

(b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.

(c) The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

Accordingly, a person may have more than one residence, but may have only one domicile.

Determination of residence and domicile is further described in California Elections Code sections 2020 to 2035. "A person who leaves his or her home to go into another state or precinct in this state for temporary purposes merely, with the intention of returning, does not lose his or her domicile." Cal. Elec. Code § 2021(a). "A person does not gain a domicile in any precinct into which he or she comes for temporary purposes merely, without the intention of making that precinct his or her home." Cal. Elec. Code § 2021(b).

Mr. Marquez has stated that he has two residences: one in Los Angeles and one in San Diego. At the time of his appointment to the Commission, Commissioner Marquez was registered to vote in the City of San Diego and living in a residence on Mountain View Drive. On May 19, 2011, Mr. Marquez re-registered to vote at the San Diego County Registrar of Voters with an application that lists a residence on Park Boulevard in the City of San Diego. Mr. Marquez has stated that he considers this location in the City of San Diego to be his principal residence. In mid-April 2011, Mr. Marquez accepted a job with the HONOR Fund based in Los Angeles. He has advised our office that he has signed a one-year lease for an apartment in West Hollywood, as a second residence.

Where a voter has two residences, the voter must register in his or her "domicile". Domicile is the place of physical presence coupled with the intention to make that place one's permanent home. *Fenton v. Board of Directors*, 156 Cal. App. 3d 1107, 1113-14 (1984). It is "the fixed home of a party as understood by himself and his neighbors and friends." *Burt v. Scarborough*, 56 Cal.2d 817, 820 (1961). This is an issue of intent. California law gives great weight to the voter's representation of his or her intent. Any doubt in the interpretation of the law is to be resolved in favor of the challenged voter. As stated by the California Supreme Court in *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 578 (1971):


The registrar obviously has the power not to register someone who is not a resident of the jurisdiction. But California law gives great weight to the voter's representation of where his domicile is.

Jolicoeur, 5 Cal. 3d at 578.

Whether Mr. Marquez resides in the City of San Diego for the purpose of voting and serving on the Commission is a question of fact and law. The issue is which residence is his home and permanent residence. This question of fact and law must be initially determined by the County Registrar of Voters giving great weight to Mr. Marquez' representation that San Diego is his domicile. Accordingly, we are referring the matter of Mr. Marquez' domicile to the Registrar for a determination of his eligibility to vote in the City of San Diego. All information received by this office has been delivered to the Registrar.

JAN I. GOLDSMITH, City Attorney

By  _____
City Attorney

By  _____
Catherine M. Bradley
Chief Deputy City Attorney