

MEMORANDUM OF LAW

DATE: August 15, 1985

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Oath of Office

By means of a recent memorandum, you asked if either the Charter or the Municipal Code prohibited the administration of the oath of office to a Council member after proper declaration of the results of the General Election, but before the first Monday after the first day in December. We understand that the Council member desires this by reason of an anticipated absence.

San Diego City Charter section 12 prescribes the term of office of a Council member to be four (4) years "from and after 10 a.m. the first Monday after the first day of December next succeeding their election ...." Further, Section 211 requires an oath of office as provided by the Constitution "... before entering upon the duties of his office ...."

These provisions are echoed in San Diego Municipal Code section 27.2020 which provides:

SEC. 27.2020 TERM OF OFFICE

The term of office for officers elected at a primary or general election pursuant to this article shall commence at 10:00 o'clock a.m. (local time) on the first Monday after the first day in December following their election or upon the taking of their oath of office, whichever event occurs later. The term of office for officers elected at a special election pursuant to this article shall commence at the time the Council adopts the resolution declaring the results of such election.

The Charter being silent on the exact time of the oath, this section indicates a legislative determination that the oath can be administered at a time other than on the first Monday after the first day in December.

While the oath remains a prerequisite even on successive terms 9 Ops. Cal. Atty. Gen. 96 (1947), we find no pertinent case, statute or provision that precludes the administration of

the oath at an earlier time. We must be quick to caution, however, that the early administration of the oath has no effect on the length of the Council member's term of office. San Diego City Charter section 12; San Diego Municipal Code section 27.2020.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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