

MEMORANDUM OF LAW

DATE: July 8, 1986

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Advisory Election

By means of a recent memorandum you posed the possibility of an advisory district election if a vacancy occurs in a Council office. Yet in the same memorandum you state that an election within thirty (30) days of a vacancy is "administratively impossible to conduct." You further inquire of the legality of a district-only special election.

An advisory election to assist in filling a vacant office that would not be conducted within thirty (30) days suffers both in law and logic. This office has repeatedly stressed that the obligation imposed on the City Council by San Diego City Charter section 12 is to attempt to fill the vacancy by appointment within thirty (30) days.

The pertinent provision of Section 12 of the Charter is as follows:

Any vacancy occurring in the Council shall be filled from the District in which the vacancy occurs by appointment by the remaining Council members; but in the event that said remaining Council members fail to fill such vacancy by appointment within thirty (30) days after the vacancy occurs, they must immediately cause an election to be held to fill such vacancy; provided, however, that any person appointed to fill such vacancy shall hold office only until the next regular municipal election, at which date a person shall be elected to serve for the remainder of such unexpired term. Emphasis added.

As we advised in San Diego City Attorney Memorandum of Law, September 12, 1978:

The section of the Charter which governs says that, if a vacancy occurs, it shall be filled by an appointment of a person from the district in which the vacancy occurs unless the remaining members of the Council are unable to agree upon a selection within 30 days. Should the remaining members of the

Council fail to agree after 30 days, they must immediately provide for an election to be held to fill such vacancy. In other words, the first consideration to be taken by the Council is a determination to attempt to fill the vacancy by appointment.

To facilitate this requirement, San Diego Municipal Code section 27.3101 et seq. was specifically added. Its requirements of noticing the vacancy (Section 27.3103), application for appointment (Section 27.3104) and required two (2) meetings for consideration of the appointment (Section 27.3105) all would be obviated by an advisory election. As we concluded in our Memorandum of Law cited above, the whole purpose of these sections was to establish an "orderly procedure" for both the Council and applicants to follow in filling a vacancy. To substitute an advisory election for this "orderly procedure" as required by Section 27.3101 et seq. flies in the very face of both the purpose and procedure of filling the vacancy and hence would be improper. Finding it legally improper, we need not discuss the myriad of practical problems not the least of which is who would be placed on such a ballot.

Your second inquiry regarding a district-only special election can be decided with equal dispatch. The San Diego City Charter provides a clear structure of electing council positions by district primary and city-wide general election. San Diego City Charter sections 10 and 12. While it is true that Charter section 12 simply uses the term "an election" to fill the vacancy, this general term must be held to embody the specific election scheme outlined by Sections 10 and 12 under the familiar legal doctrine of ejusdem generis which holds particular expressions, in this case the whole election scheme, qualify those that are general, in this case the phrase "an election."

This qualification is supported by San Diego Municipal Code section 27.2402 which provides:

**SEC. 27.2402 SPECIAL ELECTION**

If a special election is called by the Council to fill a vacant elective office, the election shall include a primary and general election and shall be conducted, as far as practicable, under the provisions of this Article.

The terms "primary election" and "general election" are given explicit meaning in Charter section 10 where in terms of council-members, primary election refers to district selection and general election refers to city-wide selection.

Further support for the requirement of city-wide selection is readily apparent from the defeat in 1969, 1973, 1980 and 1981 of proposals to provide for district-only elections. It would indeed be an anomaly to construe the term "an election" to mean a method of election rejected on four (4) separate occasions.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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