

MEMORANDUM OF LAW

DATE: December 2, 1988

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Recall Petition of Mr. Perrian Henry

You recently asked for an interpretation of San Diego Municipal Code section 27.2701 in light of a published notice of intent to recall Mayor O'Connor. For ease of reference we note Mayor O'Connor is currently serving out the unexpired term of ex-Mayor Roger Hedgecock, having been elected to do so on June 3, 1986. By virtue of receiving a majority of the votes in the June 7, 1988 primary, Mayor O'Connor was elected Mayor for a term of four (4) years, but that term does not commence until December 5, 1988. San Diego City Charter section 10; San Diego Municipal Code section 27.2020.

In light of this posture, you ask to which term, the unexpired term or upcoming term, does the six month restriction of Section 27.2701 apply.

Sec. 27.2701 OFFICIALS SUBJECT TO RECALL

Any elected official who has held office for six months or more, and against whom no recall petition has been filed within the preceding six months, may be recalled by a majority vote of the voters. Emphasis added

In interpreting this section in a January 25, 1985 Memorandum of Law (attached), then Chief Deputy Stuart H. Swett indicated that the restriction referred to the current term to avoid having a multiplicity of municipal elections.

This interpretation plainly governs the present situation. The pending notice of recall of necessity is addressed to the current term since it seeks to chastise the Mayor for actions during the current term. To apply the notice of recall to the prospective term beginning December 5, 1988 would violate the

very purpose for the six month restriction by subjecting the City to the prospect of an election within six (6) months of the beginning of the term. This is the very vice that Section 27.2701 seeks to avoid.

Hence we find that the six (6) month restriction of San Diego Municipal Code section 27.2701 applies to the current term of office. Therefore, Mayor O'Connor is subject to recall for the unexpired term which she currently is serving; she is not subject to recall for six (6) months after the beginning of her term

commencing on December 5, 1988.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:012(x043.2)

Attachment

ML-88-103