

DATE: January 4, 1989

TO: Mike Haas, Elections Officer, City Clerk's
Office
FROM: City Attorney
SUBJECT: Applicability of State Law Governing Charter
Amendments to The City of San Diego

You asked by telephone whether state law governing charter amendments applies to The City of San Diego, a Charter City. The question arose out of a memorandum dated June 8, 1988, addressed to Patricia Tennyson, Director of Intergovernmental Relations Department, from Chief Deputy City Attorney Ted Bromfield, regarding Assembly Bill 4074, which was enacted in 1988 and has been published as 1988 Statutes Chapter 357. A copy of that memorandum and the new statute are attached for your reference. Essentially, the statute amends both the State Elections Code and Government Code relating to the process of amending local governmental charters. Mr. Bromfield's memorandum analyzes the provisions of this statute; that information will not be repeated here.

For the reasons set forth briefly below, it is concluded that state laws regarding amendments of City Charters contained in both the State Elections and Government Codes apply to The City of San Diego.

First, San Diego City Charter Section 223 states that:

This charter may be amended in accordance with the provisions of Section Eight, Article Eleven, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution.

Since this charter section was adopted, Section 8, Article 11, of the State Constitution has been amended and renumbered; the equivalent section is now found at Section 3, Article 11.

The general laws of the state implement this constitutional provision.

A particularly well-reasoned and persuasive court opinion emerging from the First District Court of Appeal states that regulation of the charter amendment process in California is a matter of statewide concern and is governed exclusively by general laws which supersede conflicting provisions, if any, of a city charter. *District Election Etc. Committee v. O'Connor*, 78 Cal. App. 3d 261, 271-274 (1978), hrg. denied, Cal. Sup. Ct. (1978). Even if a charter contains provisions establishing

procedures for the use of the initiative and referendum, such as does The City of San Diego, this case stands for the proposition that the charter amendment process established by general state law would prevail over contrary charter provisions or ordinances adopted pursuant thereto. This case is also authority for the proposition that 1988 Statutes Chapter 357 (AB 4047) applies to The City of San Diego.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:tmv:fs:014(x043.2)

Attachments

ML-89-3