MEMORANDUM OF LAW

DATE: January 23, 1989

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Recall

You recently inquired whether existing Councilpersons who were elected city-wide could be recalled in their respective districts under the revised rules of Proposition E, which effectuated City Charter provisions to implement district elections. Moreover, your staff asserts that this is a presently pending issue and not a hypothetical question.

For clarity of reference, we note that Proposition E was an initiative measure that amended Sections 10, 12 and 23 of the San Diego City Charter for the purpose of establishing "district elections" as opposed to the prior elective method of nomination by district and election being held city-wide. Argument in Favor of Proposition E, Sample Ballot and Voter Information Pamphlet, General Election, November 8, 1988. Receiving a majority of the votes cast, Proposition E became effective thirty (30) days after the election. San Diego Municipal Code section 27.2526.

How the recall provisions of Section 23 affect the existing Councilmembers we believe is delineated in the amended language which in pertinent part provides:

> ... that for the recall of an elected officer who is elected by all of the electors of the City it shall require a petition signed by fifteen per- cent of the registered voters of the City at the last general election; and that for the recall of a Council member other than the Mayor it shall require a petition signed by fifteen percent of the registered voters of the Councilmanic District at the last general City election.
>
> San Diego City Charter section 23
> ┌emphasis addedσ

The first clause of the recall provisions plainly requires that an "elected officer" who is elected by all the electors of the City is not subject to recall unless a petition is signed by fifteen (15) percent of the registered voters of the entire city. The present City Councilmembers are clearly "elected officer(s)" who have been elected by all of the electors and hence are subject to this provision. While it is true that the second clause deals specifically with "Council member" and not "elected

officer," we find no distinction in this since "elected officer" is a broader term that plainly encompasses the latter. California Civil Code section 3536; San Diego City Charter section 10.

While the precise provisions of Section 23 deal with the petition to initiate the election and not the election itself, it would be totally anomalous to provide a city-wide petition yet only a district-wide election. First and foremost, statutory construction must be consistent with the intent of the electorate and absurd consequences must be avoided. Geftakys v. State Personnel Board, 138 Cal.App.3d 844, 860 (1982). Secondly, a recall election is a highly specialized election (San Diego Municipal Code sections 27.2701-27.2732) and not a general election as envisioned in Section 10.

Hence we construe Section 23 in harmony with the purpose of Proposition E and find that all elective officers presently elected city-wide are governed by the city-wide petition provision with a corresponding city-wide election, whereas elective officers who are elected by district will be subject to district petitions and district elections. We believe this is the clear import of Proposition E as fashioned in the revisions to Sections 10, 12 and 23.

JOHN W. WITT, City Attorney
By
Ted Bromfield
Chief Deputy City Attorney

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