

MEMORANDUM OF LAW

DATE: April 21, 1995

TO: Councilmember George Stevens

FROM: City Attorney

SUBJECT: San Diego City Charter Section 127

QUESTION PRESENTED

You have requested an interpretation of San Diego City Charter ("Charter") section 127 as it relates to the roles and responsibilities of the Civil Service Commission ("Commission") and the Personnel Director in fixing standards of efficiency and recommending certain measures for City employees.

SHORT ANSWER

Charter section 127 assigns to the Personnel Director the responsibility for establishing standards of efficiency and productivity for City departments. No role is specifically delineated for the Commission in this section. The Commission may only address those areas through its general role in evaluating and addressing Commission related issues, and in its supervision of the Personnel Director.

BACKGROUND

Civil Service Commissioner Robert Otilie provided you a letter and a copy of his remarks made to the Commission at the December 8, 1994, Commission meeting. In his remarks, Commissioner Otilie indicated that the role of reviewing standards of efficiency and productivity of City employees is "unquestionably" assigned to the Commission under the auspices of Charter section 127, although his letter acknowledges the responsibility lies with the Personnel Director. You have inquired about the Commission's role vis-a-vis the Personnel Director's.

ANALYSIS

The City working structure is set up and bound by the requirements of the Charter. Article V of the Charter addresses the Executive and Administrative Services. Charter section 37 of Article V delineates the duties of the Personnel Director. It defines the parameters of the Personnel Director's role vis-a-vis the Commission. Article VII of the Charter specifically addresses the Commission. The duties of Charter section 37 are reiterated in Article VII at sections 116 and 127. The three sections are inextricably intertwined and essentially provide that the performance of all administrative duties related to enforcement of the Civil Service provisions be carried out by the Personnel Director.

The Commission's role, pursuant to the Charter, is rulemaking and/or quasi-judicial. This follows the basic division of powers usually found in administrative law.

Charter section 127 places responsibility for standards of efficiency and productivity directly with the Personnel Director. It provides:

The Personnel Director shall fix standards of efficiency and recommend measures for coordinating the work of the various Departments and for increasing individual, group, and departmental efficiency. It shall be the duty of the Personnel Director to fix a minimum standard of conduct and efficiency for each grade in the service, and whenever it shall appear from the reports of efficiency made to the Personnel Director for a period of three months that the conduct and efficiency of any officer or employee has fallen below such minimum that fact shall be reported to the authority responsible for the appointment of such officer or employee.

Charter section 127 grants no authority to the Commission to fix the standards for efficiency. Rules of statutory construction indicate that "the ordinary meaning of 'shall' or 'must' is of mandatory effect, while the ordinary meaning of 'may' is purely permissive in character." *Long Beach Police Officers Assn. v. City of Long Beach*, 46 Cal. 3d 736, 743 (1988). Thus, the duties enumerated in Charter section 127 are mandatorily assigned to the Personnel Director. Nothing in Charter section 127 acts as a grant of authority to the Commission and absent such a grant, no authority can be presumed.

Pursuant to the dictates of Charter section 127, the Personnel Director has established standards of efficiency and conduct for each job classification. Standards for each class are enumerated in the class specifications. Additionally, the Personnel Director has established efficiency reports and a performance rating system to ensure that City employees are held to the standards found in the class specifications and other Civil Service rules. These managerial tools, as proposed by the Personnel Director and adopted by the Commission, are outlined in Civil Service Rule XII. Thus, standards have been established and implemented by the Personnel Director as required by Charter section 127.

The Commission's primary source of authority vis-a-vis the Personnel Director is found in Charter section 116. Charter section 116 provides that the Personnel Director is appointed by the Commission. It also provides that the Personnel Director shall perform all duties

prescribed by the Charter, by ordinance or by the Commission. It is through this section, rather than through the performance of specific duties, that the Commission participates in the formulation of standards of efficiency and conduct.

Additionally, a broad grant of oversight power is vested in the Commission through Charter sections 115 and 118. Charter section 115 provides: "This Commission shall have supervision over the selection, promotion and removal of all employees of the City subject to the Civil Service provisions of this Charter." Similarly, Charter section 118 provides in part: "The Civil Service Commission shall recommend to the City Council all rules and amendments thereto for the government, supervision and control of the classified service." These sections allow the Commission to review the existing policies and procedures whenever the Commission deems it necessary to do so. Moreover, the Commission may recommend revisions based upon changes they perceive in the work force, or in the needs of the City, as well as changes in managerial policies mandated in the Memoranda of Understanding, or any other conditions that might warrant a change in existing procedures.

CONCLUSION

The Charter clearly grants the responsibility for the formation of standards of efficiency to the Personnel Director. The Commission may not, therefore, directly participate in drafting such standards. The Commission may, however, participate in this process through use of its power to review and evaluate Commission related issues and in its supervisory capacity over the Personnel Director.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:300(x043.2)

cc Rich Snapper

ML-95-30