

MEMORANDUM OF LAW

DATE: June 11, 1986

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Timing of Mayoral Inaugural

By means of a recent memorandum you recited the general requirements preceding the filling of an office by means of a special election. Stating several assumptions, you asked for the legal guidelines that must be met.

We note that after an election Section 27.2206 of the San Diego Municipal Code requires a canvass of returns and a certification of the results to the Council. The California Elections Code, however, allows a maximum of twenty-eight (28) days for this to be accomplished. California Elections Code section 17088.

The term of the office filled by a special election begins at the time the Council adopts the resolution declaring the results of the election. San Diego Municipal Code section 27.2020. While the term begins, the candidate authorized to fill the office may not occupy the office until certain requirements are fulfilled.

SEC. 27.2404 DECLARATION OF RESULT

The candidate receiving the highest number of votes at a special election called by the Council to fill a vacant elective office shall be declared elected for the unexpired term of his predecessor and shall assume his office as soon as he has complied with applicable requirements of the law imposed on candidates at general elections.

San Diego Municipal Code section 27.2404
Emphasis added.

As specified in the Charter, each officer must be issued a certificate of election or appointment where relevant and subscribe to an oath of office.

After the result of an election for any office is declared, or when an appointment is made, the City Clerk, under his hand and official seal, shall issue a certificate therefor, and shall deliver the same immediately to the person elected or appointed, and such person must within ten

days after receiving such certificate file his official bond, if one be required for his office, and take and subscribe to the oath of office required of him by this Charter, which oath must be filed with the City Clerk.

San Diego City Charter section 10

Every officer or member of a Committee, Board or of a Commission of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation as provided by the Constitution or General Law of the State to be filed and kept in the office of the City Clerk.

San Diego City Charter section 211

Thus before the officer may assume his or her duties, the certificate of election (or appointment) must be issued and the person must then take the oath of office within ten (10) days. You will note that while the oath must be taken, filed and kept in the office of the City Clerk, the City Clerk is not the only person who can administer the oath. Hence Mayor-elect O'Connor's desire to have the oath administered by Justice Edward T. Butler is perfectly proper.

By outlining the canvass, declaration of results, term of office and prerequisites to occupying the office, we trust we have provided the appropriate legal guidelines requested.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:012(x043.2)

ML-86-67