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MEMORANDUM

TO: RICHARD SHADOIAN
Member, San Francisco Elections Commission

FROM: JULIE MOLL
Deputy City Attorney

DATE: October 4, 2002

RE: Definition of "Elections Official"

You asked for a written opinion about whether the Director of Elections or the Elections Commission is San Francisco's "elections official" for purposes of the California Elections Code. For the reasons discussed below, we conclude that the Director of Elections is the elections official.

Background

The California Elections Code confers various powers and imposes various duties on an "elections official." For example, the elections official must (1) collect petitions and papers (§ 104); (2) verify petition signatures (§ 105); (3) furnish supplies to polling places (§ 19323); (4) prepare the voting equipment (§ 19321); and (5) notify the court of the filing of election contests (§ 16500).

Section 320 of the Elections Code defines the term "elections official" to mean "any of the following:"

- (a) A clerk or any person who is charged with the duty of conducting an election.
- (b) A county clerk, city clerk, registrar of voters, elections supervisor, or governing board having jurisdiction over elections within any county, city, or district within the state.

Discussion

The fundamental task of statutory interpretation is to determine legislative intent. *See White v. Ultramar, Inc.*, 21 Cal.4th 563, 572 (1999). To do so, courts look first to the language of the law, giving the words their ordinary, everyday meaning. *See Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238 (1992). If the language is ambiguous or uncertain, courts then turn to extrinsic evidence, including legislative history. *See id.* at 1239. Finally, courts read the words in a manner that makes them reasonable and avoids absurd results. *See id.*

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Here, section 320 states that the "elections official" is any person charged with the duty of conducting an election. The San Francisco Charter charges the Director of Elections with this duty.

Before 1976, the Charter did not state clearly who was in charge of conducting elections. The Charter provided for a Registrar of Voters, but also stated that the Chief Administrative Office was responsible for the activities of the Registrar of Voters. *See Diamond Int'l Corp. v. Boas*, 92 Cal.App.3d 1015, 1028-29 (1st Dist. 1979). In 1976, however, the voters amended the Charter to vest in the Registrar of Voters (now called the Director of Elections) the exclusive control over the conduct of elections. *See id.* at 1029. The voters made the change to ensure that "the vitally important functions of the [Director are] entrusted to the person duly appointed to that position, and that the [Director] is assured of independence of authority for the proper performance of duties." S.F. Voter Information Handbook, Ballot argument in favor of Prop. A (June 8, 1976).

Current Charter section 13.104 continues that exclusive authority. Section 13.104 vests in the Director of Elections "the day-to-day conduct and management of the Department [of Elections] and of voter registration and matters pertaining to elections in the City and County."

In contrast to the operations and management duties imposed on the Director of Elections, voters created the Elections Commission to "oversee" the Department of Elections. S.F. Voter Information Handbook, Digest of Prop E. [November 6, 2001]. Rather than conduct elections, the Commission "set[s] general policies for the Department of Elections and [is] responsible for the proper administration of the general practices of the Department . . ." S.F. Charter §13.103.5. In many respects, the voters simply substituted the City Administrator (the successor to the Chief Administrative Officer) with the new Elections Commission, without changing the powers or duties of the Director of Elections.

For these reasons, we interpret section 320 to mean that San Francisco's Director of Elections is the "elections official" for purposes of the California Elections Code. You suggested that section 320 is ambiguous, and that it can be interpreted in either of the following ways: (1) The "elections official" is any person charged with the duty of conducting an election or a governing board having jurisdiction over elections, or (2) The "elections official" is any person charged with the duty of conducting an election and a governing board having jurisdiction over elections.

As indicated above, if statutory language is ambiguous, courts will consider extrinsic evidence, such as legislative history. Furthermore, courts will read the ambiguous provisions in a manner that makes them reasonable and avoids absurd results. Here, the legislative history of section 320 clarifies that the "elections official" is any person charged with the duty of conducting an election or a governing board having jurisdiction over elections. Section 320 is derived from former section 15004, which provided: "Elections official' means any county clerk, city clerk, registrar of voters, elections supervisor, *or* governing board having jurisdiction over elections within any county, city, or district within the state." (Emphasis added.) In 1994, the Legislature reorganized the Elections Code, renumbering section 15004 as section 320. In reorganizing the act, the Legislature stated that "changes made to the Elections Code . . . have

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only technical and nonsubstantive effect." Cal. Stats 1994 ch. 920. Accordingly, the Legislature intended to include in the definition of elections official only one person or body.

Any other interpretation would lead to absurd results. As stated above, the State Elections Code requires the "elections official" to perform a range of tasks necessary to conduct elections. The Director of Elections and the Elections Commission cannot both perform these tasks. Instead, it is the Director who performs these tasks in the course of the day-to-day operation of the Department, and therefore is the elections official under section 320.

Although the Director of Elections is the "elections official" for purposes of the California Elections Code, the Elections Commission retains the authority to oversee the manner in which the Director of Elections runs the Department, conducts elections, and fulfills the duties imposed by State and local law.

Please let us know if you have any questions about this memorandum.

J.A.M.

cc: Members, San Francisco Elections Commission
John Arntz, Acting Director of Elections