



DENNIS J. HERRERA
City Attorney

MEMORANDUM

TO: HONORABLE TOM AMMIANO
FROM: DENNIS J. HERRERA
City Attorney
JULIA A. MOLL
Deputy City Attorney
DATE: January 7, 2004
RE: Application of Term Limits

San Francisco Charter Section 2.101 limits members of the Board of Supervisors to serving two successive four-year terms in office. Charter Section 13.110(f) provides that a two-year term resulting from the 2000 transition from citywide to district elections does not count as a full term for purposes of the limit imposed by Section 2.101. At the end of your current term, you will have served three successive terms: In 1994, you were elected citywide and served a four-year term; in 1998, you were re-elected, but because of the transition from citywide to district elections, you served only a two-year term; and in 2000 you were elected to represent District #9 for a four-year term. You requested an opinion from this office about whether Section 2.101 bars you from seeking reelection in 2004 as Supervisor for District #9.

Short Answer

Section 2.101 does not bar you from seeking reelection in 2004, because you will not have served two *successive* four-year terms – the transitional two-year term to which you were elected in 1998 broke the succession. California courts narrowly interpret term limits and other restrictions on the right to seek and hold elective office, and courts are highly unlikely to infer such limitations and restrictions where the legislation is not explicit. Here, there is no *explicit* provision that the two-year transitional term maintains the succession between four-year terms for purposes of the term limit. Even if a court were to find that the Charter is ambiguous concerning application of the term limit to your particular circumstances, and look to evidence of voter intent, there is no evidence that the voters intended a two-year term – caused by the one-time transition from citywide to district elections – to maintain the succession between four-year terms. Since there is no evidence of voter intent to resolve the issue, the court would likely apply the general rule that ambiguities about term limits and other restrictions on the right to seek and hold elective office must be resolved in favor of eligibility. For these reasons, we conclude that you may run for re-election in 2004 and, if re-elected, serve one additional four-year term starting in January 2005.

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Background***Charter Sections 2.101 and 13.110(f)***

Charter Section 2.101 limits the terms of members of the Board of Supervisors as follows:

No person elected or appointed as a Supervisor may serve as such for more than *two successive four-year terms*. . . . No person having served *two successive four-year terms* may serve as a Supervisor, either by election or appointment, until at least four years after the expiration of the second successive term in office.

(Emphasis added.)

Section 2.101 also provides, under specified circumstances, for “rounding up” a term that is less than four years to a full, four-year term for purposes of the “two successive four-year terms” limitation. The rounding up rules are stated as follows:

Any person appointed to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of this section, to have served one full term. . . . Any Supervisor who resigns with less than two full years remaining until the expiration of the term shall be deemed, for the purposes of this section, to have served a full four-year term.

As indicated above, the “rounding up” rules apply only if the Supervisor is *appointed* to complete *more than two years* of an unexpired term, or if the Supervisor *resigns* with *less than two full years remaining* in his or her term.¹

The voters adopted Section 2.101 on June 5, 1990 (Proposition N). Over six years later, on November 5, 1996, the voters approved a new system of electing Supervisors by district rather than citywide (Proposition G). Charter § 13.110. At the same time, the voters approved provisions designed to ensure an orderly transition to the new election system. Charter

¹ At the time the voters adopted Section 2.101, on June 5, 1990, there was a different rule concerning the terms of Supervisors appointed by the Mayor to fill a vacancy. At that time, if the appointment was made to a term with fewer than 29 months remaining, the appointee could serve the remainder of the term. If more than 29 months remained in the term of the vacated office, the appointee served only until the next scheduled election. On November 6, 2001, the voters changed the rules concerning appointments to fill vacancies. Under the amended rule, if an appointment is made to a term with fewer than 12 months remaining, the appointee may serve the remainder of the term. Charter § 13.101.5. If more than 12 months remains in the term of the vacated office, the appointee may serve only until the next election. *Id.*

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§ 13.110(f). Previously, all Supervisors were elected citywide to staggered, four-year terms. Under the new system, all 11 Supervisors were elected by district at the November 2000 general municipal election. *Id.* As a result, those Supervisors who were elected on a citywide basis in 1998 served two-year rather than four-year terms. After the November 2000 election, the Clerk of the Board drew lots to determine whether the Supervisors in even- or odd-numbered districts would serve a two-year or four-year term. *Id.* As a result of this process, Supervisors elected in 2000 in even-numbered districts served a two-year term that ended in January 2003, and Supervisors elected in 2000 in odd-numbered districts (including District #9) are serving a four-year term that will end in January 2005. Starting with the November 2002 general municipal election, all Supervisors once again are elected to serve four-year terms.

Charter Section 13.110(f), which contains the transition provisions described above, explicitly addresses the issue of term limits as follows:

Those members of the board of supervisors elected [to a two-year term] at the general election in 1998, and those elected at the general election in 2000 who only serve an initial two-year term, shall not be deemed to have served a full term for purposes of the term limit established in Section 2.101.

Previous Interpretations of Charter Sections 2.101 and 13.110(f)

This office first addressed the application of term limits to the two-year terms associated with the transition from citywide to district elections of Supervisors in a public opinion to Board Clerk Gloria Young on January 19, 2000. In that opinion, we concluded that neither the two-year term for Supervisors elected in 1998 nor the two-year term for Supervisors elected in 2000 should count as a term for purposes of Section 2.101. The focus of that opinion was the hypothetical situation in which a supervisor is elected to *both* a two-year term in 1998 *and* a second two-year term in 2000.²

At the time this office issued that opinion, we were not aware that the previous Board Clerk, John Taylor, had published guidelines on the application of term limits to the transitional two-year terms in *The Supervisor's Handbook* in April 1998 and in a memorandum to the Supervisors dated January 1999. Mr. Taylor had reached the opposite conclusion -- that a supervisor elected to *both* a two-year term in 1998 *and* a second two-year term in 2000 would be deemed to have served a four-year term for purposes of the term limit.

² This situation, although merely hypothetical at the time, in fact occurred. Gavin Newsom was elected Supervisor citywide in 1998, and elected Supervisor from District #2 in 2000. He was reelected Supervisor from District #2 in 2002. Because Gavin Newsom has since been elected Mayor, and will leave the office of Supervisor upon assuming the office of Mayor on January 8, 2004, we will not have to reach the question of how term limits apply to that situation.

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On May 23, 2000, after we learned that Mr. Taylor had published guidelines on this issue, this office withdrew our January 19, 2000 opinion. Acknowledging that the language of Section 2.101 was susceptible to different interpretations, and that reasonable arguments could be made in support of the different interpretations, this office deferred to Mr. Taylor's interpretation and guidelines.³

Mr. Taylor, the current Board Clerk and this office have not specifically addressed the question you raise, about application of the term limit to a supervisor who serves a four-year term, a single transitional two-year term and another four-year term.

Analysis

Under California law, courts narrowly interpret term limits and other restrictions on the right to seek and hold elective office. The California Supreme Court has long recognized that “the right to hold public office, whether by election or appointment, is one of the valuable rights of citizenship.” *Carter v. Commission on Qualifications of Judicial Appointments*, 14 Cal.2d 179, 182 (1939), citing *People v. Dorsey*, 32 Cal. 296 (1867). More recently, the California Supreme Court, citing *Carter*, described the right to hold public office as a “fundamental right.” *Zeilenga v. Nelson*, 4 Cal.3d 716, 720 (1971), citing *Fort v. Civil Service Commission*, 61 Cal.2d 331, 335 (1964). The *Carter* Court noted that “[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office.” *Carter*, 14 Cal.2d at 182. The longstanding principle articulated in *Carter* and *Dorsey* (in which the California Supreme Court declined to infer a requirement that candidates for District Attorney be licensed to practice law) is that any burden on the right to run for and hold office should be explicit rather than implicit. The question presented here is whether Sections 2.101 and 13.110(f) *explicitly* limit your ability to run for and serve an additional four-year term.

The fundamental task of statutory and charter interpretation is to determine the intent of the legislative body in enacting the measure. See *White v. Ultramar Inc.*, 21 Cal.4th 563, 572 (1999). To determine legislative intent, a court must first examine the language of the measure, giving its words their ordinary, everyday meaning. *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238-9 (1992). Only if the language is ambiguous or uncertain may the

³ In a public memorandum dated November 30, 2000, this office stated:

Questions concerning application of the term limit are not simple. There could be a reasonable basis for concluding that the term limit does apply to the transitional two-year terms, and there could be a reasonable basis for the opposite conclusion. Given this uncertainty, and the fact that courts give considerable weight to the interpretation of the agency charged with administration of a law, we defer to the published interpretation of the Clerk [of the Board of Supervisors].

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court consider legislative history. *Id.* If the language of a ballot measure is ambiguous or uncertain, the court may consider ballot arguments and certain other materials presented to the voters. *Hodges v. Superior Court*, 21 Cal.4th 109, 113-115 (1999).

Here, a court would begin by examining the language of Charter Sections 2.101 and 13.110(f). As indicated above, Section 2.101 provides that Supervisors are limited to serving “two successive four-year terms.” The ordinary, everyday meaning of this provision is that Supervisors are limited to serving two four-year terms that *follow each other without interruption*. See *Merriam-Webster OnLine* <<http://www.m-w.com>> (“1. Following in order: following each other without interruption”). Section 13.110(f) provides that when a Supervisor is elected to a two-year term in either 1998 or 2000, the term shall *not* be rounded up to a full, four-year term for purposes of the limitation in Section 2.101. The ordinary, everyday meaning of this provision is that the transitional two-year terms resulting from the change from citywide to district elections of Supervisors shall not count as a back-to-back four-year term under Section 2.101. Based on the language of these Charter sections, we conclude that a Supervisor who served a transitional two-year term may serve two, additional, successive four-year terms. In your case, the Charter would permit you to run for and serve an additional four-year term in 2004. Given that you were first elected in 1994, you could serve as Supervisor for 14 successive years.

One might argue that, even though the Charter explicitly states that a transitional two-year term does not count as a full, four-year term for purposes of the term limit, one should seek to impose term limits in the broadest way possible to serve the will of the voters, and that a two-year term should not break the succession between two four-year terms. But there is no basis in the Charter language for such a rule and, as indicated above, California courts are unlikely to infer any rule that limits the right to seek or hold public office.

Even if one were to argue that Section 13.110(f) is ambiguous on this point, and look beyond the Charter language to evidence of voter intent, such evidence does not support a contrary result. As indicated above, if the language of a ballot measure is ambiguous, a court may consider ballot arguments and certain other materials presented to the voters to determine legislative intent. *Hodges*, 21 Cal.4th at 113-115. When the voters adopted Section 2.101 in 1990, there is no question that their intent was to limit each Supervisor’s term of service to roughly eight years. See *Voter Information Pamphlet*, Official Argument in Favor of Proposition N, p.114.

Nonetheless, the question here is what the voters intended six years later, in 1996, when they separately adopted Section 13.110(f). The voters could have regarded district elections as a fresh start for the Supervisors. It is certainly possible that, going forward, the voters intended to give Supervisors elected by district the full “two successive four-

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year terms” contemplated by Section 2.101. Unfortunately, the materials included in the City’s Voter Information Pamphlet do not resolve questions about how the voters intended term limits to apply during the transition to district elections.

But even if the Charter language is ambiguous as to whether a two-year term should break the succession between two four-year terms, the California Supreme Court has stated that any such an ambiguity must be resolved in favor of eligibility to hold office. *Carter*, 14 Cal.2d at 182. Here, the evidence of voter intent does not dictate a contrary result.

For all of these reasons, we conclude that a court is highly unlikely to *infer* a limitation on the right of an otherwise qualified person to seek and hold elective office, especially where the Charter does not explicitly limit this right and the evidence of voter intent regarding Section 13.110(f) is inconclusive. As discussed above, it is well established that eligibility to hold public office should not be curtailed except by explicit provisions of law, and “ambiguities are to be resolved in favor of eligibility.” *Carter*, 14 Cal.2d at 182, *citing Dorsey*, 32 Cal. at 296.

D.J.H.
J.A.M.

cc: Gloria Young, Clerk, Board of Supervisors
John Arntz, Director of Elections