

Election Cancellation – Conflict of Interest

Summary

On August 20, 2008 the Sonoma City Council voted to cancel the municipal election that the City of Sonoma had called for November 4, 2008. The tie-breaking vote was cast by a person who had a personal interest in the decision. The City Council's action to cut short the democratic process in such circumstances was incompatible with its obligation to protect important rights of its citizens and to promote confidence that its decisions are being made solely in the public interest.

Reason for Investigation

The Grand Jury received a complaint alleging impropriety in the Sonoma City Council's action canceling its election.

Background

At its July 2, 2008 meeting, the Sonoma City Council adopted resolutions calling the November 4, 2008 General Municipal Election and requesting that Sonoma County consolidate the election with the Statewide General Election. The purpose of the Municipal Election was to elect two members of the City Council for four-year terms.

When the initial nomination period ended on August 8, only the Mayor, of the five-person City Council had filed the necessary papers indicating her intention to run. Since the other incumbent did not seek reelection the nomination period was extended by law, to August 13. By the close of the extended nomination period, only the incumbent Mayor and one other person had complied with the legal requirements to be nominated.

The next day, the City Clerk filed a Certificate required by the California Elections Code, stating that there were not more persons who had qualified to be nominated as candidates, than offices to be filled. This matter was calendared for the City Council meeting on August 20. Prior to that meeting, the City Attorney advised the Mayor at her request, that she did not have a "financial interest" in the matter, and therefore the Political Reform Act of 1974 did not require her to disqualify herself from voting on it. The City Attorney subsequently confirmed this verbal advice regarding absence of financial interest in a Memorandum dated August 26, 2008.

When the matter was heard on August 20, the City Council was informed that under the Elections Code it had two courses of action available to it with respect to the City Clerk's Certificate. They could either cancel the election and appoint the two nominees to the City Council, or they could vote to hold the election. If they failed to take any action at all, the election would be held as scheduled.

The City Council received public testimony about this issue with several speakers both in favor of, and opposed to cancellation of the election. Many of those in favor of cancellation cited an election cost savings to the City, estimated by the City Clerk to be between \$7,000 and \$8,000, as one of the reasons for their position.

After complying with certain procedural requirements, the City Council voted on a resolution to cancel the election. After the first four Council members had voted, there were two votes in favor and two votes opposed. The Mayor cast the tie-breaking vote to cancel the election and to appoint herself and the other nominee to the City Council.

Investigative Procedures

- Review of the relevant Sections of the Political Reform Act of 1974, Section 81000 et. seq. of the California Government Code
- Review of California Elections Code Section 10229
- Review of Sonoma City Council Agenda Summary for Item 6C on August 20, 2008
- Review of Minutes of Concurrent Special Meetings of Sonoma City Council and Community Development Agency dated August 20, 2008
- Review of audio tape (incomplete) of same Meetings
- Review of DVD recording of same Meetings
- Review of Memorandum dated August 26, 2008 from the Sonoma City Attorney to the Mayor and City Manager, confirming his verbal advice that the Mayor did not have a financial interest in the decision to cancel the election

Findings

F1 The City Council was specifically informed by the City Clerk at the August 20 meeting that under the Elections Code, the period for persons to file papers to run as a write-in candidate was from September 8 through October 21. Cancellation of the election would eliminate their opportunity to do so.

F2 The City Council was also specifically informed by the City Clerk at the August 20 meeting, that at least one person had communicated the intent to file papers to run as a write-in candidate.

F3 The Mayor of the City had a personal interest in canceling the election. This was confirmed during the meeting when she pointed out the work that she had done during the nomination period, to obtain the required signatures and to file the necessary papers on time.

Conclusions

The Political Reform Act of 1974 prohibits conflicting **financial** interests in governmental decisions, and does not address **personal** interests. While not illegal, the action of the Sonoma City Council to cancel the election that it had called for November 4, 2008, was nonetheless a decision that did not appear to put the public interest first. The right to vote on the persons who seek a public mandate to govern us is one of our most important constitutional rights. Any governmental action to restrict or eliminate that right should be taken only with the utmost caution and due regard for the electorate. Unfortunately, when such an important decision is allowed to be made in circumstances where personal interest is also directly involved, this high standard has not been met.

The point is not whether a write-in candidate would have been successful in the election. The point is that a decision to eliminate such an important right should not be made by the vote of a person who directly benefits from it.

The failure was that of the City Council as a body and not just the person who cast the tie-breaking vote. As members of the City Council and guardians of the public trust, it should have been incumbent on all of the Council members, to prevent the decision from being made under tainted circumstances.

In arriving at these conclusions, we are fully mindful that the actions were taken following advice from the City Attorney. The Mayor's disqualification was not legally required because she did not have a financial interest as defined in the law. However, we do not believe that this answer meant that the other significant issues raised by canceling an election in these circumstances could be ignored by the City Council. **The absence of illegality should not be the highest standard to which the actions of our public officials are held.** If that were the case, all that we would need would be laws and lawyers to tell us what is the right thing to do, and we could dispense with such considerations as ethics, public interest, and other matters of mere policy.

In America today there is a growing fear and concern as to the efficacy and validity of the political process. The very cavalier way in which the Sonoma City Council cancelled its local election can only add to this growing unease. The most sacred right we all share is the right to exercise our voice and this is accomplished by voting.