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Cerritos City Attorney responds to claim of term limit issue in current election

In response to an article published in the "Los Cerritos Community News" on Friday, February 17, 2017 and a letter received by the City Clerk's Office on the same date claiming that a Cerritos City Council candidate running in the current election has violated the City Charter's term limits, Cerritos City Attorney Mark Steres has issued the following statement:

"The exact question raised by the letter received by the City Clerk on February 17, 2017, and by the article on February 17, 2017, in the 'Los Cerritos Community News' has already been addressed by the California Attorney General in 2004 (Attorney General Opinion No. 04-907). The California Attorney General concluded that the Cerritos City Charter imposes only a two-year period of ineligibility prior to serving the next term of office. The California Attorney General ruled that following two consecutive terms of office, a former council member may run for election at the next municipal election that follows in two

(more)

years. As such, the former council member is eligible to run for City Council at the upcoming April 11, 2017 election. This interpretation of the Cerritos City Charter has been applied consistently by the City Clerk's office since the term limit proposition (Proposition H) was adopted by the voters in 1986.

The specific question asked to the Attorney General in 2004 was the following: Are Paul Bowlen and John Crawley unlawfully serving as members of the Cerritos City Council due to seeking reelection within two years of serving two consecutive terms on the city council contrary to the provisions of the city charter?

The following are excerpts from the California Attorney General Opinion (No. 04-907):

"The City of Cerritos ("Cerritos") is a charter city. Pursuant to the city charter, 'any council member who has served two consecutive four year terms shall not be eligible, for a period of two years, to seek reelection or be appointed to the Cerritos City Council.' Citizens for Fiscally Responsible Government ("Relator") alleges that Paul Bowlen and John Crawley ("Defendants") have violated this city charter provision by seeking reelection without waiting the requisite two years after serving two consecutive terms on the city council. Relator requests that we grant leave to sue in quo warranto to remove Defendants from office. Relator's application is denied.

Defendant Bowlen was elected to two consecutive terms on the city council, 1989-1993 and 1993-1997, and was reelected to

the city council for the terms 1999-2003 and 2003-2007. Defendant Crawley was elected to two consecutive terms as a member of the city council, 1991-1995 and 1995-1999, and was reelected to the city council for the term 2001-2005.

Relator construes the city charter as prohibiting a city council member who has served two consecutive terms from taking any steps toward becoming a candidate within the next two years. Relator asserts that 'to seek' reelection, as specified in the city charter, is not the same as being 'elected to' or 'serving on' the council. The term 'seek' commonly means 'to try to acquire or gain.' (Webster's 3d New Internat. Dict. (2002) p. 2055.) This interpretation of the city charter effectively imposes a four-year period of ineligibility between the end of the second consecutive term and the beginning of the person's next term.

Defendants, on the other hand, maintain that the city charter makes a council member, who has served two consecutive terms, ineligible for only two years before being able to begin serving his or her next term of office. Defendants' interpretation of the city charter effectively requires only one two-year election cycle before serving the next term.

The principles to be applied in interpreting the language of a city charter are the same rules that apply to any other voter-approved measure such as a proposed constitutional amendment. (See Woo v. Superior Court (2000) 83 Cal.App.4th 967,

974; Currieri v. City of Roseville (1970) 4 Cal.App.3d 997, 1001.) The primary goal in construing voter-approved measures is to effectuate the intent of the electorate. (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 975.) A recognized aid in ascertaining voter intent is the ballot pamphlet containing the information and arguments relied upon by the electorate in adopting the language in question. (Raven v. Deukmejian (1990) 52 Cal.3d 336, 349; Woo v. Superior Court, supra, 183 Cal.App.4th at p. 976.)

In this case, the 1986 ballot pamphlet contained the city attorney's analysis of Proposition H, which stated in part:

'The proposed measure would amend the City's charter to limit the number of consecutive terms which a person may serve on the City Council. After serving two consecutive four-year terms, a person could not serve on the Council, whether by election or appointment, for two years. At the end of that two-year period, such a person would again be eligible to become a member of the Council, and could again serve a maximum of two consecutive terms.' (Los Angeles County Sample Ballot and Voter Information Pamp., Gen. Elec. (Nov. 4, 1986), analysis of Proposition H by city attorney, p. 24.)

Two aspects of this analysis by the city attorney are noteworthy. First, the analysis describes the effect of the charter amendment in terms of a person's eligibility to 'serve'

on the city council and not in terms of the person's eligibility to take preparatory steps toward reelection, such as establishing a campaign committee or filing the necessary papers to become a candidate. Second, the analysis refers to the ineligibility period as 'two years,' and not four years.

From this ballot pamphlet material, it is clear that the charter provision makes a candidate ineligible only for actual service on the city council for a two-year period. Cerritos voters were not told that the effective period of ineligibility would be four years. Consequently, we believe that the voters' intent in adopting Proposition H was to allow former city council members to take office after a two-year hiatus.

We find support for our construction of the Cerritos City Charter in well-established principles affirming the right to hold public office. Holding public office is a fundamental aspect of citizenship and may be curtailed only when the law clearly so provides. (Carter v. Com. on Qualifications, etc. (1939) 14 Cal.2d 179, 182; People ex rel. Foundation for Taxpayer & Consumer Rights v. Duque (2003) 105 Cal.App.4th 259, 265- 266; Lungren v. Davis (1991) 234 Cal.App.3d 806, 830-831; Helena Rubenstein Internat. v. Younger (1977) 71 Cal.App.3d 406, 418; 79 Ops.Cal.Atty.Gen. 243, 247-248 (1996).) Any ambiguity affecting the right to hold public office is resolved in favor of the eligibility to serve. (Carter v. Com. on Qualifications, etc., supra, 14 Cal.2d at p. 182; People ex rel. Foundation for

Taxpayer & Consumer Rights v. Duque, supra, 105 Cal.App.4th at p. 266; Woo v. Superior Court, supra, 83 Cal.App.4th at p. 977; Helena Rubenstein Internat. v. Younger, supra, 71 Cal.App.3d at p. 418; 79 Ops.Cal.Atty.Gen., supra, at p. 247.) Here, application of these principles calls for construing the Cerritos City Charter as imposing only a two-year period of ineligibility prior to serving the next term of office.

Relator's application for leave to sue in quo warranto is therefore DENIED."

The link to the California Attorney General Opinion can be accessed at https://oag.ca.gov/system/files/opinions/pdfs/04-907.pdf?.

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