



CITY OF SAN JOSE, CALIFORNIA

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SAN JOSE ELECTIONS COMMISSION

Fred de Funiak, Chair
Michael Smith, Vice Chair
Leon Louie
Robert Shepard
Erica Cosgrove

SAN JOSE ELECTIONS COMMISSION MEETING MINUTES February 10, 2010

I CALL TO ORDER

The members of the San José Elections Commission convened at 5:32 p.m. in Room W-242 of City Hall, 200 E. Santa Clara Street, San José, CA 95113

PRESENT: COMMISSIONERS: Cosgrove, Shepard, Smith, de Funiak, and Louie

ABSENT: COMMISSIONER: None

STAFF PRESENT: Senior Deputy City Attorney Lisa Herrick
City Clerk Lee Price
Deputy City Clerk Michelle Radcliffe

II APPROVAL OF MINUTES

The following minutes were approved

a. January 13, 2010

III REPORT OF THE CHAIR

Chair de Funiak expressed appreciation to Assistant City Clerk Dennis Hawkins for extraordinary customer service.

IV REPORT OF THE CLERK/ATTORNEY

- A. Report on date set for Study Session on Instant Runoff Voting: April 29, 2010, in Room W262

City Clerk Lee Price announced that the date set for the Commission's Study Session on Rank Choice Voting (also known as Instant Runoff Voting) is April 29, 2010.

- B. Report on United States Supreme Court decision in *Citizens United v. Federal Election Commission*

Document Filed: C&L Newsletter: Update on Public Law, Los Angeles/Nevada County Wintoer 2010 (Page 3)

Senior Deputy City Attorney Lisa Herrick distributed a summary of the 160 page decision on Citizen's United v. Federal Elections Commission and provided an overview of the U.S. Supreme Court decision. Discussion ensued.

VI DISCUSSION ITEMS

- A. Received the subcommittee's report on "Pay to Play Regulations" for certain contractors

Chair de Funiak stated the subcommittee met with Bill Baron, Boardmember of the San Jose Chamber of Commerce/Chamber PAC. Mr. Baron indicated that he personally was not in favor of "Pay to Play" regulations clarified that although he was not speaking on behalf of the Chamber, thought the Board would agree. He explained that he would support disclosure. Chair de Funiak reported that the subcommittee also met with Bob Brownstein of Working Partnerships, USA, who does not support* "Pay to Play" regulations and shared concerns about how far the net should be cast. Discussion ensued.

Chair de Funiak also reported that he and Commissioner Shepard spoke with staff at the cities of San Francisco, Los Angeles, Oakland and San Diego. Commissioner Shepard reported that the City of San Diego does not have "Pay to Play" regulations because they allow candidates to accept contributions only from "individuals". Chair de Funiak stated he spoke with John Geitner in San Francisco who stated that since 1995, San Francisco

* See page 3 for correction.

has broadened their list of contractors through the initiative process and amendments by the Board of Supervisors. Chair de Funiak indicated he had spoken the Los Angeles City Ethics Executive Director, LeeAnn Pellan, who stated that the City of Los Angeles has looked at "Pay to Play" regulations, but has not chosen to pursue it because of the lack of desirability by the elected officials and the amount of the workload it would entail for enforcing the regulations. Chair de Funiak noted he would like to meet with Councilmembers Campos, Herrera, Pyle, and Kalra (who sponsored the joint memo recommending "Pay to Play" regulations) to gather more information. Discussion ensued.

Public Comment: Ben Field corrected Chair de Funiak and stated he believes Bob Brownstein does support "Pay to Play" regulations. Chair de Funiak agreed and corrected his report, for the record.

- B. Consider the Subcommittee's recommendation to propose to the City Council a revision to the Elections Commission Regulations regarding anonymous complaints as it relates to "good cause"

Document Filed: Memorandum from City Clerk Lee Price dated February 3, 2010 forwarding the subcommittee recommendation regarding anonymous complaints

Commissioner Cosgrove provided an overview of the subcommittee's proposal to amend Section E.6 of the Elections Commission's Regulations. Discussion ensued.

Motion: Upon motion by Commission Shepard, seconded Commissioner Louie and unanimously passed, the Commission approved the subcommittee's recommendation to amend Section E6 of the Elections Commission Regulations and directed staff to forward the amendment to the City Council for consideration.

- C. Continued discussion about City Council Referral to consider closing a potential loophole in lobbyist registration and disclosures

Document Filed: Memorandum from Senior Deputy City Attorney Lisa Herrick dated February 3, 2010 regarding lobbying regulations for nonprofit organizations

Senior Deputy City Attorney Lisa Herrick provided an overview of the memo and matrix comparing other cities' lobbying laws as it relates to non-profits. Discussion ensued regarding the definition of "control" as established by the Internal Revenue Service (IRS) regulations.

Public Comment: The following spoke in opposition to imposing lobbying regulations on nonprofit organizations: Sandy Perry (Deliverance Ministry); James Zahradka (Law Foundation of Silicon Valley); Terrie Iacino (Catholic Charities); Reverend Dan Cambridge (First Christian Church); and Ben Field (South Bay Labor Council).

Mayor's Office Public Information Officer Michelle McGurk noted that IRS forms have two definitions for 501(c) (3) corporations and are complex. She stated that the Mayor's proposal was an attempt to simplify the language. Antonio Guerra from the Mayor's Office clarified that the Mayor's recommendation does not "target" Working Partnerships, as alleged by some of the public speakers.

Commissioner Smith asked if the City Attorney's Office could provide a legal analysis of the IRS definition of "control." Chair de Funiak indicated an interest in knowing what the issue is that needs to be resolved.

Commissioner Smith suggested that the following discussion is needed at the next meeting: 1) What is the issue and what does the Commission need to do; and 2) Define "control". Senior Deputy City Attorney Lisa Herrick advised that the Commission should also review the current lobbyist ordinance to better understand the regulations and proposal. Commissioners agreed to independently review the ordinance and "Frequently Asked Questions" posted on the City Clerk's website. This item was continued to March.

- D. Continued discussion about the City Council Referral to consider whether the Voluntary Expenditure Limits should be adjusted.

Chair de Funiak reported he has not yet worked on the survey questions and stated he'd like to speak with Alex Stuart and MGT of America, Inc. for guidance. Chair de Funiak asked the City Clerk to determine if there was any available funding in the Commission's budget to pay MGT of America for assistance with the survey.

VII MEETING SCHEDULE AND AGENDA ITEMS

The next Regular meeting scheduled for March 10, 2010, was canceled and rescheduled for March 18, 2010. The following items will be placed on the March agenda: 1) Election of Chair and Vice Chair; 2) Receive the Subcommittee's report on "Pay to Play Regulations" for certain contractors; 3) Continued discussion about the City Council Referral to consider closing a potential loophole in lobbyist registration and disclosures; and 4) Continued discussion about the City Council Referral to consider whether the Voluntary Expenditure Limits should be adjusted.

VIII PUBLIC COMMENTS

Ben Fields, South Bay Labor Council, thanked the Commission for their work.

IX ADJOURNMENT

The meeting adjourned at 7:29 p.m.



FRED DE FUNIAK, CHAIR

ATTEST: 

LEE PRICE, MMC
CITY CLERK and SECRETARY TO THE COMMISSION