



City of Oxnard

California

OFFICE OF THE
CITY ATTORNEY
305 W. THIRD STREET
486-2601, EXT. 207

June 10, 1974

Mrs. Linda Berg
3831 San Juan Avenue
Oxnard, California 93030

Dear Mrs. Berg:

You have inquired as to the power of the mayor to appoint members of boards and commissions.

Prior to April of 1974 the City Council selected members of boards and commissions pursuant to a policy adopted by the council on August 22, 1972. The Council encouraged citizens to submit their names as possible appointees to city boards or commissions. The city kept a file of these applications and the council selected appointees from this file during executive session. After selecting an appointee the city staff contacted the person to see if he would be willing to serve. Public announcement of the appointment then was made at the next council meeting following the confirmation. This procedure was followed despite the fact that some city ordinances provided that the members of the commission, the planning commission for example, shall be appointed by the mayor with the approval of the council.

In November of 1973 the voters of Oxnard decided to elect the mayor directly by vote of the people rather than having him appointed by a majority of the council. City voters selected the mayor during the April, 1974 municipal election.

The council met following the election to fill vacancies on boards and commissions. Several questions were raised as to the power of the council or the mayor to make appointments in view of the fact the mayor was elected.

Section 40605 of the California Government Code provides that in general law cities where the office of mayor is an elective

office pursuant to Section 34900 et seq. of the Government Code, the mayor with the approval of the City Council shall make all appointments to boards, commissions and committees unless otherwise specifically provided by statute. Oxnard is a general law city and does elect its mayor pursuant to Section 34900 et seq. of the Government Code.

The Attorney General of California in an unpublished opinion dated October 14, 1965, considered the mayor's power of appointment in regard to Section 34272 of the Health and Safety Code. This section deals with appointment of members of the Housing Authority and provides that the mayor, if elected by the people, shall appoint housing authority commissioners subject to confirmation of a majority of the members of the governing body. The mayor of Vallejo had refused to appoint a member of the housing authority although the city council had appointed this person to the commission. The Attorney General ruled that the appointment of this person by the council was invalid because the mayor had not appointed him.

The language of Section 40605 of the Government Code relating to the power of the mayor to appoint with the approval of the council is similar to that used in Section 34272 of the Health and Safety Code. I believe the situations are analagous, and that the city council of Oxnard cannot appoint a member to a board or commission unless that person also is appointed by the mayor, or unless some statute otherwise provides.

The next question is whether an ordinance is a statute, enabling the council to adopt an ordinance to provide a different scheme of appointment than that provided by Section 40605 of the Government Code. Ordinances are laws as are statutes. However, in my opinion the word statute as used in Section 40605 does not include the word ordinance, but refers to other statutes in the state laws providing for appointments to boards and commissions.

Section 65150 of the Government Code provides that when a city planning commission is created, the method of appointment of the members thereof shall be as provided by local ordinance. In my opinion this is a statute which would enable a city by ordinance to provide for a manner of selecting planning commissioners other than by appointment of the mayor with the approval of the council as required by Section 40605 of the Government Code.

Section 2-113 of the Ordinance Code of the City of Oxnard now provides that planning commissioners shall be appointed by the

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mayor with the approval of the council. I advised the council that it could amend this ordinance to provide that planning commissioners be appointed by majority vote of the council, and that this amendment would be consistent with Sections 40605 and 65150 of the Government Code. The council chose by a three to two vote in opposition to such an amendment not to amend the ordinance.

I also advised the council what other city ordinances providing for appointment of board and commission members were inconsistent with Section 40605 of the Government Code and needed to be amended because no other statute authorized a different method of appointment. These boards or commissions are as follows:

Artworks Commission
Housing Advisory and Appeals Board

The following board and commission members may be appointed by a majority of the council:

Community Relations Commission
Auditorium Authority
SCAT
VCAG

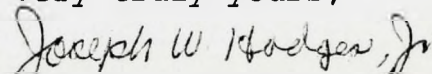
The following board and commission members now should be appointed by the mayor with the approval of the council:

Housing Authority (none appointed now)
Redevelopment Agency (none appointed now)
Library Board
Parking Authority

The council was advised that if it by a majority vote appointed a commissioner who was not appointed by the mayor, that commissioner might be a de facto officer, but his right to hold office could be tested in a law suit, and he might have to bear the cost of defending this suit.

I also advised the council that it could appoint members to boards and commissions at an executive session from which the press and public were excluded, and that this would not be a violation of the Brown Act.

Very truly yours,


Joseph W. Hodges, Jr.
City Attorney

JWH:def
cc: City Manager
City Council