

## Elections and Local Appointment Lists

### Summary

Many elective position vacancies in various local districts are filled by appointment rather than by election. This is said to be because there is a lack of citizens interested in serving in these positions. Others say there is plenty of interest; it is just untapped by a poor publicity apparatus, which fails to give adequate notice of vacancies so that citizens can file for election. Appointments result from no filings.

Many positions on other boards, commissions or committees are not elective. Rather, they are filled by appointment only. Similarly, it is said that these positions receive poor publicity.

The California Legislature has addressed this latter issue by mandating the generation of local appointment lists. No such legislative remedy has been developed for better publicizing elective positions on local district panels.

### Background

The 2002-2003 Grand Jury received, late in its term, a citizen complaint from two Ventura County residents. The original complaint regarding certain appointment procedures to certain districts was expanded and supplemented over the ensuing months. The 2002-2003 Grand Jury expanded its inquiry to include all ten cities in the county and referred the matter to the successor 2003-2004 Grand Jury.

The citizens complained that the Ventura County Board of Supervisors made appointments to local boards, commissions, and committees without the Ventura County Elections Division (“Elections Division”) having given effective notice of such vacancies to the general public. This lack of proper public notice was said to violate California Government Code section 549170 and following, regarding the local appointments list, otherwise known as the Maddy Act requirement, named after the proposing state legislator. The complaint also questioned the appropriateness of appointing rather than electing persons to those positions. It was subsequently determined that the complainant was mixing the requirements of two separate processes and statutory schemes.

The complaining citizens succinctly describe their concerns as follows:

“Please [investigate] election procedures of the Elections Division of the Ventura County Clerk and Recorder to ascertain if Ventura County residents are being denied their rights [sic] to vote through a lack of notice and/or improper or excessive use of the appointment process.”

Specifically, the citizens asked for an inquiry in four areas:

1. The September 2002 appointment of three individuals to the Oak Park Municipal Advisory Council (MAC), (a) immediately before the November 2002 gubernatorial election, (b) to four year terms which did not start until the following January.
2. Twenty-five other appointments in September 2002, shortly before the scheduled November election.
3. The adequacy and practical utility (or lack thereof) of current public notice procedures used by the elections division to announce upcoming vacancies that could be filled by elections.
4. The board of supervisors' approval of the county clerk's recommendation on 23 September 2002 to make 28 appointments to various boards and commissions in lieu of elections.

The complainants make the following points in their complaint letter:

Elections Division policy regarding upcoming election publicity is to publish elections and appointment notices in a "paper of general circulation" within Ventura County. There were at the time of the complaint 12 such papers, known as "Adjudicated Newspapers of General Circulation in Ventura County." County policy is to publish "legal notices" in these papers as the need arises on a rotating basis among the 12 newspapers. Complainants point out that this oftentimes produces "bizarre and useless" publications. For example, the legal notices for the Oak Park MAC vacancies were published on July 12 and 19, 2002, only in the Tri-County Sentry, an Oxnard newspaper most likely not widely read in Oak Park or other east county communities. Complainants state that this policy "does not ensure that interested citizens will actually have access to the information where they live."

Complainants describe a conversation with an Elections Division official in which the official stated that state law requires that the vacancy notices be posted at the physical meeting site, or if there is no regular meeting site, then in the local "district" office. Regarding the Oak Park MAC posting in particular, the elections official stated that copies of the notice were entrusted for posting to one of the candidates for a MAC position. Ultimately, that candidate was appointed to that position because an election became unnecessary when fewer candidates filed than there were openings. Complainant states that there is no indication the notices given to the candidate were ever posted, and in any event, the practice raises a conflict of interest.

Complainants further point out that both the Oak Park free Acorn community newspaper (not on the adjudicated list) and the Thousand Oaks Star erroneously later reported that the appointees "ran unopposed" and were "reelected" and "ran for and won a seat..." on the MAC. The complainant concluded that even the newspapers are confused.

Complainants further point out that appointments to elective positions leave the citizenry with no practical method to find out anything about an appointee's qualifications and suitability to serve in the position. Unlike candidates in an election who have to reveal themselves to obtain votes, appointees do not. There is not even a

ballot containing the appointee's name. Nor do potential candidates, once an election is deemed unnecessary, publish a candidate's statement. This robs the citizenry of the possibility of making any decision, much less an informed decision, about who should be controlling the infrastructure that deeply affects Ventura County residents.

Complainants continue that a vicious circle develops. Once the need for an election to a specific position evaporates, the position itself does not otherwise appear on the ballot. The very existence of the position (and therefore, notice of the possible opportunity to serve in the future) fades rapidly from the public consciousness.

Complainants describe a statement by an Elections Division official to the effect that when there are fewer candidates than vacancies, the board of supervisors routinely approves appointment of the candidates in lieu of election.

Complainants state that this is a genuine issue widely felt among the citizenry: The same Elections Division official recited receiving "quite a few" telephone inquiries upon publication of the board of supervisors' intent to appoint, wanting to know why there were to be no elections.

## **Methodology**

The 2002-2003 Grand Jury received a presentation on applicable statutory requirements from county counsel. The Grand Jury discussed the issues with the deputy clerk of the board of supervisors. It also dispatched inquiry letters to appropriate officials of the ten cities in the county. Each city was to furnish its previous and current local appointments list. Each city was also to furnish a copy of the current document, required by Government Code section 54973, which designates the public library with the largest service population within that legislative body's jurisdiction to receive a copy of the local appointments list (but without a statutory posting requirement). Responses from the county clerk's office and the cities arrived too late in the 2002-2003 Grand Jury term to be investigated. Accordingly, the matter was passed to the successor 2003-2004 Grand Jury for consideration as appropriate. The 2003-2004 Grand Jury reviewed documents gathered by its predecessor Grand Jury and interviewed Elections Division officials and officials in the clerk of the board of supervisors office. This report is the result of that effort.

The Grand Jury discovered that there are two types of boards, commissions and committees on which citizens can serve. The first are those that contain only appointive positions. These appointive boards, although not the subject of the complaint, raise similar issues regarding opportunity to serve and risk of fading from the public consciousness. The second type are elective boards, commissions and committees, which, ideally, are filled by elected candidates unless there are more vacancies than candidates, in which case appointments are made. It is this second type of board that was the subject of the complaint.

## Findings

- F-01.** The California Government Code contains a legislative declaration and finding that, “a vast and largely untapped reservoir of talent exists among the citizenry of the State of California, and that rich and varied segments of this great human resource are, all too frequently, not aware of the many opportunities which exist to participate in and serve on local regulatory and advisory boards, commissions, and committees .... [T]he general public of this state has traditionally been denied access to information regarding vacancies which occur on such boards, commissions, and committees, thereby denying most citizens and interest groups the opportunity to nominate, for consideration by the respective appointive powers, persons whose particular strengths, backgrounds, experience, perspective, and talents might contribute significantly to efficient and representative policy development and administration in local government.” (Cal. Gov. Code, § 54970 (a), (b))
- F-02.** The legislature further found and declared that, “all citizens of the state, regardless of their place of residence should have equal access to specific and current information about the many local regulating and advisory boards, commissions, and committees and equal opportunity to be informed of vacancies which shall occur thereon, so that they may pursue the opportunity to participate in and contribute to the operations of local government by serving on such boards, commissions, and committees.” (Cal. Gov. Code, § 54970 (d))
- F-03.** Every city council or mayor and every county board of supervisors in California must prepare a local appointments list annually, respecting every regular and ongoing board, commission and committee to which it appoints. The list must announce each term, which will expire during the following calendar year, the name of the incumbent appointee, the date of the appointment, the term expiration date and the necessary qualifications of the position. In addition, they must publish a list of all boards, commissions, and committees whose members serve at the pleasure of the city council, mayor or board of supervisors, as the case may be, together with the qualifications for each position. (Cal. Gov. Code, § 54972)
- F-04.** These lists must be made available to the public for no more than the reasonable, actual cost of copying. In addition, each list publisher must designate the public library within its jurisdiction with the largest service population to receive a copy of the list. (Cal. Gov. Code, § 54973)
- F-05.** Whenever an unscheduled vacancy occurs respecting these appointive positions, a special vacancy notice must be posted in the office of the clerk of the city council, mayor or board of supervisors which appoints to the position. Such notice must also be posted in the designated library and in other places designated by the appointing authority not earlier than 20 days before or later than 20 days after the vacancy occurs. The appointing authority may make a final replacement appointment after the vacancy notice has been posted for 10 days. (Cal. Gov. Code, § 54974)

- F-06.** Many opportunities exist for Ventura County citizens to serve the community on local boards, commissions and committees. Citizens who desire more information can visit their local district supervisory office for more information.
- F-07.** On 21 January 1992, the Ventura County Board of Supervisors designated the Simi Valley library for the purpose of receiving the local appointments list.
- F-08.** The Ventura County Board of Supervisors routinely publishes the list required by California Government Code § 54972 (a) of vacancies within its appointing authority and sends it to the county library located in Simi Valley. The Grand Jury was provided a copy of lists and transmittal correspondence for the years 2001-2004 inclusive. All contained the same information fields with the same format.
- F-09.** A reading of the county vacancy list discloses that it does not comply with the clear wording of the statute. The statute requires that the list contain the necessary qualifications of each vacancy listed. The county vacancy list contains no such qualification descriptions.
- F-10.** In addition to the deficiencies described in F-09, the county vacancy list contains numerous positions whose terms expired up to four years ago, further confusing the reader and giving the appearance of needing an update.
- F-11.** The Ventura County Board of Supervisors attempts to comply with section 54973 and subsection (b) of section 54972 of the California Government Code, which require that the local appointments list sent to the designated library also include a listing of all board positions and their required qualifications, simply by providing a copy of the current Ventura County Directory (“Directory”) to the designated library.
- F-12.** A review of the contents of the Directory reveals that it was manifestly designed and published for purposes other than informing the public in a simple and concise way what Ventura County board, commission and committee positions are established, and what are the necessary qualifications for those positions. The Directory, comprising 233, 8½ by 11 inch pages, contains a multitude of information having no relation to the purpose of the local appointments list. Any reader relying solely upon the Directory would be hard pressed to locate and understand what appointive positions exist and what are their qualifications. Further study reveals that the only qualification discovered was that of specific district residence. In addition, it was nearly impossible by reference to the Directory to determine with any confidence which were appointive and which were elective positions.
- F-13.** Nine of the ten cities located in the county have an established practice of publishing a local appointments list which meets the minimum requirements of the statute. The tenth city initiated such procedure upon Grand Jury inquiry.
- F-14.** Only two cities, Moorpark and Camarillo, demonstrated designation of a library prior to the Grand Jury inquiry. Five of the remaining took appropriate action to accomplish library designation upon receiving our inquiry. The remaining three, Oxnard, Simi Valley, and Thousand Oaks,

although they report sending the local appointment list to a library, have failed to supply the Grand Jury with a formal designation. Thousand Oaks claims compliance with the statute simply by sending the list to all of its libraries but without taking the effort to designate a library as required by a plain reading of the statute.

- F-15.** The local appointment lists generated by each of the ten cities are very readable and understandable even though they vary greatly in sophistication, content, detail and format. However, the list generated by Moorpark does not comply with the statute: it does not list necessary position qualifications but rather invites the reader to contact the city clerk for further information.
- F-16.** The Elections Division must become involved in the election process for districts and agencies whose “Principal [creating] Act” so provides and whose secretary provides the division with necessary statutory information in a timely manner. (Cal. Elections Code, § 10501, et. seq.) These elections may be held at any time set in accordance with the Principal Act. Declarations of candidacy forms must become available 113 days and must be filed 88 days before the election.
- F-17.** If, by the 83<sup>rd</sup> day before the district election, not enough qualified candidates file for each open position (or group of positions to be elected at large) and if no petition signed by 10 percent of the voters or 50 voters, whichever is less, to hold an election has been filed, then the election official will inform the board of supervisors who must appoint the candidates to the positions. If no candidate files for an elective position, the board of supervisors shall appoint a person who is qualified. (Cal. Elections Code, § 10515)
- F-18.** The district must reimburse the Elections Division its actual costs associated with servicing the district election. (Cal. Elections Code, § 10520)
- F-19.** If a district has scheduled an election during a period when no other elections in that portion of the county are scheduled, the Elections Division may authorize the district to perform any or all of the functions of the Elections Division respecting that election. Conversely, the county elections official and the board of supervisors can perform the duties of the district secretary and the district board, respectively. (Cal. Elections Code, § 10519)
- F-20.** There appears to be no general requirement that the board of supervisors or the Elections Division publicizes the district election except as mandated by the district and its Principal Act.
- F-21.** In the most recent calendar year, only two of the several elective bodies requested election assistance from the Elections Division.
- F-22.** The district involved had available to it the option to take its newspaper publication notice out of the regular rotation set up by the county department which contracts for “legal notices” for all county offices, including the Elections Division. The district, like most other districts in the recent past, chose not to, to avoid the additional processing costs involved.

## Conclusions

- C-01.** There exists in California a strong public policy favoring citizen involvement in the processes of government at all levels, but especially the local level. (F-01, F-02)
- C-02.** The generation and publication of local appointment lists containing specified information were mandated to overcome a perceived lack of publicity given to open opportunities for citizen service on local boards, commissions and committees. (F-03, F-04, F-05)
- C-03.** This local appointment list is mandatory for cities and counties. (F-03)
- C-04.** The local appointment list published by the Ventura County Board of Supervisors needs improvement to bring it into compliance with the requiring statute. (F-08, F-09, F-10, F-11)
- C-05.** The local appointment list published by Moorpark needs improvement to bring it into compliance with the requiring statute. (F-14)
- C-06.** In the case complained of, complainant's allegations respecting the method of newspaper publicity used by the Elections Division on behalf of the Oak Park MAC were substantiated. (F-17, F-19, F-21)
- C-07.** The district governing board holding the election is responsible to the voters in its district for the adequacy of publicity surrounding the election. It has the responsibility and authority to contract for whatever publicity and "legal notice" publication it deems sufficient to apprise its voters of the election and candidate qualifications. The Elections Division will provide what the district is willing to pay for. (F-17, F-19, F-21)
- C-08.** The board of supervisors is required by statute to appoint existing candidates to elective positions when an election is deemed to be unnecessary under the statute. If there is no candidate for an elective position, the board of supervisors must appoint a qualified person. (F-16)

## Recommendations

- R-01.** The board of supervisors should review its current local appointment list generation procedures and content for compliance with existing statutory requirements and make changes where necessary to bring its list into compliance.
- R-02.** The board of supervisors should review current policy regarding the rotation of purchase orders for publication of legal notices among the several recognized newspapers of general circulation to determine whether rotation is appropriate, given the differing publicity needs of different types of "legal notices" including notices of local elections.
- R-03.** The board of supervisors should take whatever policy action is necessary to insure that, when the Elections Division is servicing a district election, useless election publication decisions such as described in the complaint do not occur again.

- R-04. The City of Moorpark should review current city practice to correct an apparent non-compliance with statute regarding the publication of qualifications for appointive positions.
- R-05. The City of Thousand Oaks should review the legal viability of the city's current position that designation of a library for local appointment list purposes is unnecessary.

### Responses

Recommendations	R-01	R-02	R-03	R-04	R-05
<b>Responses Required from:</b>					
Board of Supervisors	X	X	X		
City Council, City of Moorpark				X	
City Council, City of Thousand Oaks					X