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Did council vote violate state law?

Neal Ross | Sonoma Valley Sun

Two sets of rules govern elections in California – and while last week’s Sonoma City Council decision is clearly legal under one of them, the other leaves room for interpretation.

The council voted 3–2 in two actions Aug. 20: the first canceled November’s city election, the second appointed incumbent Mayor Joanne Sanders and candidate Laurie Gallian to the two available seats. Sanders, as a sitting councilmember, provided the tie-breaking vote.

That’s allowed under section 10229 of the California Election Code, when the number of candidates for a governing body equals the number of seats at the end of the official filing period. Assistant Registrar of Voters Gloria Colter said last week that the code doesn’t prevent incumbents from voting to appoint themselves.

“My thinking, of course, is they’re their own governing body,” Colter said, pointing out that split decisions could otherwise be the political norm in such cases.

But California’s Political Reform Act of 1974, which defines conflicts of interest and authorized the Fair Political Practices Commission (FPPC) to investigate them, prevents elected officeholders from deriving material benefit from their decisions. Section 18705.5 defines “material” as “at least \$250 in any 12-month period.” Last November, the Sonoma City Council unanimously approved a long-discussed ordinance granting councilmembers a \$300 monthly stipend.

Although the Political Reform Act offers several exceptions to the no-material rule, FPPC Executive Director Roman Porter said Monday that he could not comment on the specifics of any potential dispute. “Generally, decisions that affect the salary of a public official are not deemed material unless that decision includes appointing, hiring, or firing the official or member of their family,” Porter said.

But City Manager Linda Kelly said Monday that no one’s drawing the council stipend yet – and won’t until later this year.

“That doesn’t kick in for any of them until December,” Kelly said, explaining that the ordinance only takes effect when the first newly elected councilmember takes office. “Once one of them is in, all of them are in.”

Kelly said the council’s options had been researched by City Attorney Tom Curry prior to the Aug. 20 meeting. Both Sanders and Gallian submitted their nomination papers on Aug. 8, the last eligible filing date, and Sanders said Tuesday that she’d consulted Curry around that time as to whether or not she should recuse herself from a potentially election-canceling vote.

“The city attorney told me that I could participate, and I followed his direction,” Sanders said.

“Had he told me otherwise, I wouldn’t have participated.” Curry said Monday that the question of material benefit depended on the Political Reform Act’s section 82030, which defines both conflict-of-interest income and such exemptions as “salary ... social security, disability, or other similar benefit payments received from a state, local, or federal government agency.”

“I’m comfortable this makes sense, because if we had to consider income from the government we would have a problem with the council voting themselves a salary at all,” Curry said.

“There’s an express inclusion for salary you get by reason of being on the council – since it isn’t considered quote income, that ends the inquiry.”

Not according to Bob Stern, current president of the Center for Governmental Studies, former FPPC general counsel and one of the Political Reform Act's authors.

"It certainly raises conflict of interest questions under (section) 18705.5," Stern said Monday. "I can understand what the city attorney said, he was talking about salary – but (the Act does) talk about appointing oneself, or appointing someone to the position."

Stern said that the question would be easier to answer if the election had been canceled for the sole intent of appointing an incumbent – instead of a lack of candidates. He added that the stipend's non-existence at the time of the vote didn't change the law's application.

"The bottom line, basically, is with a 3–2 vote she should have abstained. With a 5-0 vote nobody would have cared," Stern said. "Maybe she was following what the city attorney said, but ethically she should have abstained."