

CITY AND COUNTY OF SAN FRANCISCO

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January 22, 1990

OPINION NO. 90 - 01

SUBJECT: Administrative Powers of the
Parking and Traffic Commission

REQUESTED BY: Rina Cutler
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Department of Parking and Traffic

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Question Presented

Do individual members of the Parking and Traffic Commission have authority to oversee, direct, make suggestions, or otherwise participate in the day-to-day administration of the Department of Parking and Traffic?

Conclusion

Members of the Parking and Traffic Commission have no powers as individuals over the day-to-day administration of the department. The San Francisco Charter prohibits individual members of boards and commissions from dictating, suggesting, or interfering with "appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions" of the chief executive officer of the department. Commission members may exercise their powers to manage and control their departments only through participation in deliberations and votes of the commission. Except for the purposes of inquiry, the Commission must deal with administrative affairs exclusively through the chief executive officer of the department.

Analysis

Charter Section 3.698 creates the Parking and Traffic Commission and the Department of Parking and Traffic. That section empowers the Commission to "manage and control the Department of Parking and Traffic." "[T]he Department of Parking and Traffic shall be administered by a director who shall be appointed by and serve at the pleasure of the Parking and Traffic Commission." (Charter Section 3.698-2.)

Like most other Charter provisions creating boards and commissions, Charter Section 3.698 does not itself draw a line between the authority of the Commission and the authority of the chief executive officer of the Department, the Director. Charter Section 3.500, subd. (i), governing boards and commissions generally, provides in relevant part:

Except for the purpose of inquiry, each board or commission, in its conduct of administrative affairs under its control, shall deal with matters solely through its chief executive officer.

Each board or commission relative to the affairs of its own department, shall deal with administrative matters only in the manner provided by this charter, and any dictation, suggestion or interference herein prohibited on the part of any members of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the power of hearing and inquiry as provided in this charter.

This section embodies two concepts. First, it establishes a chain of command that governs the operation of departments under commissions. The commission sets policy and communicates that policy to the executive director, who in turn is responsible for its execution. (See also Charter Section 3.501 [enumerating powers of department heads and making each department head responsible to the commission under which he or she serves for the administration of the department].) The commission shall deal with administrative matters solely through its chief executive officer. ^{1/ [next page]} Except for purposes of inquiry, the commission may not directly question or address subordinate officers or employees of the department. All questions, suggestions or instructions must be transmitted through the chief executive officer of the department.

The second concept embodied in Charter Section 3.500, subd. (i) is a prohibition enjoining individual members of boards or commissions from dictating, suggesting or interfering in administrative matters. Such prohibited interference "shall constitute official misconduct. . . ."

Notably, there is no prohibition in Section 3.500 against a commission dictating administrative policy for its department, so long as the board or commission proceeds in the manner provided by the charter. Under Charter Section 3.500, subd. (f), a board or commission may act only at a noticed meeting attended by a quorum of the commission or its committees, and only by means of a vote of the commission or its committees.

So long as a commission complies with these Charter requirements, it enjoys broad authority to address administrative matters within its own department. The commission, however, must defer to the chief executive officer's exclusive authority to perform the duties of a department head under Charter Section 3.501. If the executive officer is not persuaded by the commission's instructions on a particular administrative matter, the commission may either accept the director's decision or remove the director.

The requirement that boards and commissions deal with administrative matters solely through the chief executive officer does not apply to actions taken pursuant to a commission's power of inquiry. Charter Section 3.701 provides, in relevant part:

[A]ny board or commission appointed by the mayor relative solely to the affairs under its control, may . . . inquire into matters affecting the conduct of any department or office of the city and county, and for that purpose may hold hearings, subpoena witnesses, administer oaths and compel the production of books, papers, testimony and other evidence. . . .

(See also Charter Section 3.500(i) [excluding inquiries from

^{1/} "Administrative affairs" include "appointments, promotions, compensation, disciplinary action, contracts, requisitions for purchases or other administrative recommendations or actions" of the department's chief executive officer. (See former Charter Section 22; Charter Section 2.401.)

the rule that commissions must deal with administrative matters solely through the department's executive officer].) The commission's power of inquiry includes the authority to call any department officer or employee before the commission to answer questions regarding the operations of the department. But if the commission wants to make changes in departmental operations as a result of those inquiries, it must still address its directives to the department's chief executive officer.

The president of a board or commission does not enjoy any greater authority in this regard. Charter Section 3.698 does not create an office of president of the Parking and Traffic Commission. Rather, Charter Section 3.500, subd. (b), empowers each board or commission "to appoint one of its members as president." The Charter does not specify the president's power or duties, but provides, in relevant part:

Each board and commission appointed by the mayor, or otherwise provided by this charter, shall have powers and duties as follows: . . .

To prescribe reasonable rules and regulations not inconsistent with this charter for the conduct of its affairs, for the distribution and performance of its business, for the conduct and government of its officers and employees, and for the administration, custody and protection of property under its control and books, records and papers appertaining to its affairs. . . .

(Charter Section 3.500, subd. (a).)

Generally, commission rules simply authorize the president to preside at commission meetings. Article 7, Section 1 of the Interim Rules of the Parking and Traffic Commission is typical:

The Chair shall preside at all meetings of the Commission. The Chair shall have the right to appoint all committees and assign members and shall perform all other duties necessary or incidental to the office. The Chair shall have the right to call meetings of the Commission and to set the time, date and place of such meetings, consistent with Section 2, Article 8 of these Regulations.

Rina Cutler

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The president of the Commission has no greater authority over administrative affairs than any other individual member of the Commission; a rule granting the president such authority would conflict with the Charter and be void.

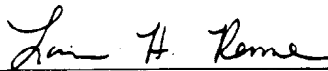
Respectfully submitted,

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