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MEMORANDUM

TO: Members,
San Francisco Elections Commission

FROM: Julia A. Moll
Deputy City Attorney

DATE: June 27, 2005

RE: Relationship of Members of Elections Commission to Appointing Authority
and to Department of Elections Staff

QUESTIONS PRESENTED

Members of the Elections Commission have raised questions about the relationship between members of the Commission and (1) their respective appointing authority, and (2) the staff of the Department of Elections. This memorandum summarizes the general rules and principles governing these relationships. Please let me know if you have questions about this memorandum.

SUMMARY OF ADVICE

1. Members of the San Francisco Elections Commission are officers of the City. Accordingly, Commissioners owe a duty of loyalty to the City and must act in the best interests of the City. Although each member of the Commission is appointed by a different City official or body, the Commissioners neither represent nor owe a duty of loyalty to their appointing authority. Although Commissioners may keep their appointing authorities informed, and discuss non-confidential Commission business with their appointing authorities, Commissioners must use their independent judgment about what is in the best interest of the City.

2. The Elections Commission is charged with setting policy for the Department of Elections, and the Commission acts by majority vote of its members. The Director of Elections is charged with the day-to-day management and administration of the Department. The Commission must give its direction solely through the Director. Neither the Commission nor individual members of the Commission may give direction to staff or otherwise interfere with the administration of the Department by the Director. Individual Commissioners may seek information about the Department's operations from the Director and, *with the Director's consent*, from Department staff.

DISCUSSION

1. Relationship of Members of the Elections Commission to their Appointing Authorities.

The Elections Commission has seven members, each appointed by a different official or group of officials. The Mayor, the Board of Supervisors, the City Attorney, the District Attorney, the Public Defender, the Treasurer, and the Board of Education of the San Francisco Unified School District each appoint one member of the Commission. S.F. Charter § 13.103.5. The purpose of this structure is to ensure that the Commission is independent of any one official.

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To further this objective, Elections Commissioners are appointed to a fixed five-year term, and may be removed during their term only for official misconduct.¹ *Id.* The Charter provides a specific process for removal of an officer for official misconduct, and that process requires notice and a hearing.

Upon appointment, Elections Commissioners become officers of the City. An office is a public trust and all officers must exercise their duties in a manner consistent with this trust. Charter § 15.103. Accordingly, Commissioners owe a duty of loyalty to the City and must carry out their duties in a manner that serves the City's interests.

Although each member of the Elections Commission is appointed by a different City official or body, the Commissioners neither represent nor owe a duty of loyalty to their respective appointing authority. Although Commissioners may keep their appointing authorities informed, and discuss non-confidential Commission business with their appointing authorities, Commissioners must use their independent judgment about what is in the best interest of the City. Because Commissioners may be removed only for official misconduct, they cannot be removed merely for declining to confer with or follow the directives of their respective appointing authority. *See* S.F. Charter § 15.105.

2. Relationship of Members of the Elections Commission to Department of Elections Staff.

In a published City Attorney opinion issued to the Commission on the Status of Women, Opinion No. 2003-01, the City Attorney's Office set forth the general guidelines for the relationship of members of commissions to the Department Head and other staff. A copy of that opinion, which is available on the City Attorney's website, is attached. Also attached is a copy of a memorandum from the City Attorney to the Elections Commission, dated April 26, 2002, concerning the administration of the Department of Elections.

In summary, as the attached opinions explain, a commission, as a body, is charged with setting the policies of the department, and the department head is charged with the day-to-day management and administration of the department. The commission must give its direction solely through the department head. With respect to the role of individual commissioners, the opinions further explain that the Charter confers power on commissions, not individual commissioners. Individual members of a commission may not initiate or take actions in their official capacity without commission authorization. Individual members may not interfere with the day-to-day management of the department. While individual commissioners may make inquiries of the department head and, with the department head's permission, may seek

¹ Charter section 15.105(e) defines official misconduct as follows:

Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

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information from department staff, the department head is ultimately responsible to the commission as a whole for his or her decisions about responding to requests.

Applying these general principals to the Elections Commission, the Commission is charged with setting policy for the Department of Elections, and the Commission acts by majority vote of its members. The Director of Elections is charged with the day-to-day management and administration of the Department. The Commission must give its direction solely through the Director. Individual members of the Commission may not initiate or take actions in their official capacity without Commission authorization, and individual members of the Commission may not give direction to staff or otherwise interfere with the administration of the Department by the Director.

J.A.M.

cc: John Arntz
Shirley Rodriques