ORDER OF DETERMINATION  
September 3, 2011

DATE THE DECISION ISSUED  
August 23, 2011

RAY HARTZ v LUIS HERRERA OF THE PUBLIC LIBRARY (CASE NO. 11054)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Public Library (the "Library") and City Librarian Luis Herrera violated Section 67.16 of the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words submitted by himself and other members of the public summarizing their public testimony. Mr. Hartz complains specifically about the minutes of the May 19, 2011 and June 16, 2011 general meetings of the Library Commission. Mr. Hartz further alleges that this violation occurred at the July 21, 2011 meeting of the Commission when it approved the minutes at issue in this complaint. Mr. Hartz further alleges that the violation is that of the Library and Mr. Herrera because the Library employs Commission Secretary Sue Blackman and Mr. Herrera supervises her work. Mr. Hartz further alleges that the above violation occurred after the Task Force referred Sunshine Ordinance Complaint 10054, a previous identical violation, to the Ethics Commission.

COMPLAINT FILED

On July 26, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

HEARING ON THE COMPLAINT

On August 23, 2011, Mr. Hartz presented his case to the Task Force. Library Commission Vice President Lee Munson and Secretary Sue Blackman represented the Library and City Librarian Luis Herrera.

Mr. Hartz testified that Mr. Herrera is Ms. Blackman’s immediate supervisor and it is his obligation to ensure she performs her duties according to the law, which includes complying with decisions made by the Task Force. Ms. Blackman, he said, presented two sets of minutes for approval to the Library Commission, knowing that his 150-word statements were included as addenda and not within the body of the minutes as the Task Force had ruled in an earlier case.
He said although he reminded the Library Commission of the Task Force’s decision, it
nevertheless approved the minutes as presented. The Task Force, he said, specifically
ordered Ms. Blackman to place the 150-word statement in the body of the minutes. Yet, he
said, she was instructed by her superior not to follow the law. He also reminded the Task
Force that it had voted 8-0 to put the 150-word statement in the body of the minutes and
that the City Attorney was to be informed of its decision.

Ms. Blackman testified she and Mr. Herrera are at-will employees who report directly to the
Library Commission. Mr. Herrera, she said, is her day-to-day supervisor but the policy
regarding minutes is set by the Library Commission and Mr. Herrera does not have a role in
it. She said the issue has already been addressed by the Task Force in a previous
complaint and that the matter was with the Ethics Commission pending a final outcome.
She said she was following the advice of the City Attorney’s Office which is that the 150-
word statement can be added as an addendum to the minutes. Mr. Munson said the
Sunshine Ordinance does not indicate specifically where the placement should be. All it
says is that the 150-word statement be included in the minutes, he said. He said the critical
statements repeated verbatim by certain members of the public on each agenda item
prevent an orderly flow to the minutes which then fail to reflect the events of the meeting.
Ms. Blackman further stated that the Library Commission would be considering whether to
add language to their minutes that clearly stated that the addendum was a part of the
minutes, in order to remove any potential confusion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After duly considering the testimony and other evidence presented, along with its prior
rulings on the issue, the Task Force found that an addendum is an attachment to a
document, not part of the document, and, accordingly, an addendum is not "in the minutes"
as required under the Ordinance. The Task Force found that the Ordinance states in
simple, plain language that the 150-word statement must be "in the minutes" and that
requirement is not satisfied by attaching the statement as an addendum at the end of the
minutes. The Task Force further noted that the statements should be within the body of the
minutes to prevent public officials from unlawfully abridging unwanted or critical public
comment.

DECISION AND ORDER OF DETERMINATION

The Task Force finds Luis Herrera of the Public Library in willful violation of Sunshine
Ordinance Section 67.16 pursuant to Section 67.34 for willful failure to include the 150-word
summary in the body of the minutes after a previous Order of Determination specifically
instructed the Library Commission to include such statements in the body of the minutes.

Mr. Herrera and the Library Commission shall make the changes necessary to include the
summaries within the body of the minutes to comply with this Order of Determination and
are instructed to appear before the Compliance and Amendments Committee on Tuesday,
September 13, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August
23, 2011, by the following vote: (Costa/Johnson)
CITY AND COUNTY OF SAN FRANCISCO

SUNSHINE ORDINANCE TASK FORCE

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson
Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan

Hope Johnson, Chair
Sunshine Ordinance Task Force

David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

c: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Library Commission Vice-President Lee Munson, Respondent
Commission Secretary Sue Blackman, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.