REPORT ON THE ROLE OF THE CITY ATTORNEY AS INDEPENDENT REPRESENTATIVE OF THE PEOPLE AND CITY OF SAN DIEGO

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I.

INTRODUCTION

The office of San Diego City Attorney was created by the voters in the general election on 7 April 1931. Under San Diego City Charter § 40 the City Attorney is the "the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties."[1] Moreover, under Charter § 40.1 the City Attorney "shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors."

On 2 November 2004 City Michael J. Aguirre was elected by the voters to be the San Diego City Attorney. City Attorney Aguirre took the position before and after his election that the City Attorney is independent and has a duty to protect the interest of all San Diego and not merely carry out the wishes of the City Council and City Manager. This opinion analyzes the role of the City Attorney as a representative of the people and City of San Diego.[2]

II.

BACKGROUND

A. THE 1929 CHARTER PROPOSAL

In 1929 voters in San Diego defeated a proposal to create a strong manager form of government, a proposal which included an appointed City Attorney. A San Diego newsman and muckraker, A.R. Sauer, who would go on to support a revised 1931 reform charter, captured the public mood in San Diego in 1930:

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[1] San Diego is a Charter City and as such was formed when citizens specifically framed and adopted a charter to establish the organization and basic law of the City. The California State Constitution guarantees to charter cities a large measure of "home rule," granting to them, direct control over local affairs. However, local ordinances may not authorize acts prohibited by state statute, nor prohibit acts specifically authorized by the legislature.

[2] Section 1 of the City Charter defines "The City of San Diego" as a "municipal corporation under the same name, with the boundaries as now established or as may hereafter be legally established." Under San Diego City Charter Section 3 Extent of Municipal Jurisdiction, "The municipal jurisdiction of The City of San Diego shall extend to the limits and boundaries of said City and over the tidelands and waters of the Bay of San Diego, and into the Pacific Ocean to the extent of one Marine League."

In all my life I never was so happy as I was in preparing the extra edition of the Herald which announced the defeat of the freeholders' charter. I was happy not only because the charter had been defeated and the way paved for a new and better instrument, but because that defeat was the sign of a new era in civic affairs here-an era in which the voice of the people is going to be heard, with a consequent silence on the part of the high-hatted Charlie boys who have been making fools out of the rest of us since Father Horton staked out the town. [Emphasis added.]

I love San Diego, and I have proved that love in nearly a half century of endeavor for my city. Last election day saw that endeavor bear its greatest fruit-the awakening of the common people of San Diego to a realization of their importance and their power.

One of the strangest things in the history of Southern California has been the fact that San Diego has permitted itself, almost without interruption, to be led around by the nose by a self-centered clique of bacterial growths whose only claim to fame was their overweening avariciousness. In every public movement which has arisen here, this bunch of nonpareils has seized control of the impelling factors, forced the Chamber of Commerce and the newspapers to do their bidding, and walked off with the spoils. As a consequence, we are overburdened with debt; our tax rate is a shameful thing, known the length and breadth of the land . . . .

For 20 years the same congregation of hypocrites and shams, with a sprinkling of honest men who were decidedly uncomfortable until they were released from their duties to the city, have Mussolinied us into more trouble than we really deserved. THIS SAME CROWD WAS THE CROWD WHICH DREW UP THE FREEHODERS' CHARTER.

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At last San Diego has united against the gang which has been in secret but unassailable control here, and, as I predicted, that unity resulted in a definite victory for the men and women who pay the bills. We have whipped them decisively, and we can whip them every time they raise their heads. ***

We are now riding high. We must demand a charter committee which will work WITH the people, and not AGAINST them. We want a charter committee which will begin its work by sitting back and doing only one thing-ASKING THE PEOPLE OF SAN DIEGO TO SEND THEM SUGGESTIONS. With these in hand, they can get down to business. They do not need lawyers on the committee-BUT THEY NEED ONE GOOD LAWYER TO GIVE AN O.K. TO THEIR WORK WHEN IT IS FINISHED. They need to incorporate in the charter WHAT THE

> PEOPLE WANT IN IT-and then they can rest assured that their charter will be accepted, that they will win instant and lasting commendation, and that they will accomplish something for the continuing good of the community.[3, 4]

It was within this reform context that a new City Charter Board of Freeholders was elected on 26 August 1930. The second charter committee followed the lead of Mr. Sauer and was rewarded by his enthusiastic support of the charter which was passed into law by the voters on 7 April 1931.

A 1930 news article written by the labor representative on the second freeholder board provided additional historical perspective on the charter process that took place between 1929 and 1931:

> Recognizing a pressing need for a change in our city government, the mayor in 1928 appointed a committee to investigate the problem. This committee recommended that a board of freeholders be elected to draft a new charter based on a more modern form of government.
>
> This charter, now known as the 1929 draft, was submitted to the electorate and after one of the most heated campaigns ever staged in this city it was voted down.
>
> A second board of freeholders was elected to draft another charter. This board decided to retain the rejected charter in structure and in type, but to make the suggested corrections and remove the objections raised against the defeated draft. After several months of hard work, during which a serious attempt was made to meet every objection raised against the defeated charter, the now proposed new document was completed. It is a modified city manager form of government. [5]

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[3] A.R. Sauer, *People Take Rule Into Own Hands And Should Keep It*, Opinion, The Herald newspaper.

[4] "The documents used in this report were retrieved from the City Clerk's archives and the San Diego Historical Society. The San Diego City Attorney's Office wishes to acknowledge the outstanding efforts made to locate these documents by the staff of the San Diego City Clerk's Office and the San Diego Historical Society."

[5] Ray Mathewson, *New Charter Provides For Many Changes, Modified City Manager Plan Proposed; Voters to Act April 7.*"

B. 1930-1931 NEW CHARTER BOARD OF FREEHOLDERS

Under the authority of the California State Constitution the common council of the City of San Diego held a special municipal election on 26 August 1930 for the purpose of choosing 15 San Diegans to serve on a "Board of Freeholders" in order to "frame, prepare and propose" a new charter for the City of San Diego. The 13 men and 2 women elected to serve on the charter Freeholders Board, in order of votes received were: (1) Emil Klicka, (2) J.C. Hartley, (3) Stephen Barnson, (4) Charles E. Anderson, (5) Henry W. Merkley, (6) Robert Graham, (7) Albert W. Bennett, (8) Judson A. Ferguson, (9) John W. Snyder, (10) Celia A. Dunham, (11) Nicholas J. Martin, (12) Edward N. Jones, (13) Charles O. Richards, (14) Raymond A. Mathewson, and (15) Ida B. Ranney.[6]

Seven of the freeholders "served on the 1929 freeholders' board, which recommended a council-city manager charter to the people, defeated by a narrow margin last December." [7]

Attorney James G. Pfanstiel described in a 12 September 1930 letter to Freeholder Board Chairman Nicholas J. Martin public sentiment favoring an elected city attorney. Mr. Pfanstiel was a member of the 1929 Board of Freeholders, that put forward the strong manager and appointed attorney form of government that was defeated by the voters in 1929[8] Mr. Pfanstiel was asked by Chairman Martin to enumerate the "various objections and criticisms" to the 1929 proposed city charter, which favored a strong city manager and appointed city attorney form of government.

In respect to whether the city attorney should be appointed or elected Mr. Pfanstiel explained:

> Some advocated with considerable degree of force that the city attorney should be elected by the people. The argument is that the city attorney is the attorney for the entire city and each and every elective and appointive officer thereof upon all questions pertaining to the municipality, and he should occupy an <u>independent position</u> so that his opinions may be uninfluenced by an appointive power.[9] [Emphasis added.]

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[6] City of San Diego Sample Ballot form for the 26 August 1930 Special Election for Freeholders.

[7] *San Diego's Home Town Page*, San Diego Sun, 1930 edition.

[8] *NEW CHARTER FOR S.D. GETS ENDORSEMENT Member of 1929 Board of Freeholders Approves City Proposal*, news article.

[9] Letter from James G. Pfanstiel to Nicholas J. Martin, 4 (12 September 1930).

Ray Mathewson, the labor union representative on the Freeholder Board, described the role of the independent city attorney in a proposal he submitted to the Freeholder Board in which he recommended a "Strong Mayor –Council" form of government:

> The duty of the city attorney is to give legal advice to every department and official of the city government on municipal matters. He also must act as the representative of the various departments before the courts. He should occupy an independent position so that his opinions would not be influenced by any appointive power. For this reason he should be elected by the people. If elected, the city attorney is in a position of complete independance (sic) and may exercise such check upon the actions of the legislative and executive branches of the local government as the law and his conscience dictate.[10] [Emphasis added.]

The 1930-1931 Freeholder Board did not adopt the Strong Mayor-Council form of government but they did adopt the proposal for an independent elected city attorney, which the voters adopted on 7 April 1931. The advocates for an elected city attorney had to surmount several obstacles. For example, on 11 November 1930 the Board of Freeholders considered whether the city attorney should be elected or appointed. Motions to elect or appoint the city attorney failed on 7 to 7 tie votes.[11] The Board then turned to the legal community for help, issuing a public invitation asking the San Diego Bar to attend the Board's next meeting the following night 12 November 1930:

> There was further discussion regarding City Attorney and his qualifications, and the Newspaper reporters were requested to invite the members of the Bar to be present at the Wednesday night meeting to express any views they might have regarding the City Attorney's appointment or election, and the Secretary was instructed to invite Judge Shelley J. Higgins, Judge M.W. Conkling, Attorney James G. Pfanstiel and Dean Charles E. Peterson of the State College.[12] [Emphasis added.]

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[10] Ray Mathewson, Rough Draft of A proposed "STRONG MAYOR-COUNCIL FORM OF GOVERNMENT," at 2.

[11] A news article entitled *CHARTER CLAUSE LETS MANAGER PICK TREASURER Freeholders Approve Method Of Selection Contained in Proposed 1929 Draft* described the 7 to 7 tie vote: "An attempt to dispose of the city attorney section was made, however. Al Bennett made a motion that the city attorney be elected by the people. A vote of seven to seven was cast and the motion was defeated. Then Col. E. N. Jones made a motion that the city attorney be appointed by the council. Again the vote was seven to seven."

[12] Board of Freeholders meeting minutes, 11 November 1930 at 2.

A news article the next day (12 November 1930) described the events before the Board regarding the election or appointment of the city attorney:

> Local attorneys are invited to attend the meeting of the board of freeholders in the director's room of the San Diego Museum, Balboa park, tonight at 7 o'clock, to help the charter framers solve this questions:
>
> > **Under the new charter, should the city attorney be elected by the people or should he be chosen by the council?**
>
> With John Synder out of the city, the board found itself first standing 7 to 7 on this question, when it met at 7 o'clock and after seven motions of one sort or another, still stood 7 to 7. As the net result of this supposedly lucky number, the press was asked to extend an invitation to local attorneys to attend tonight's meeting and express their views. [13]

The thinking of the freeholders who favored a city attorney elected by the people was also discussed in the 12 November 1930 news article:

> Those of the freeholders who favor election by the people feel that the city attorney should be <u>a check</u> on the council and the city manager, and that only his election by the people will give him the <u>necessary independence</u> of action.
>
> Those who favor this selection by the council feel that a more competent lawyer can be induced to take this important office if he is not required to go to the trouble and expense of an election campaign, and that he is, basically, <u>the council's lawyer</u> and should be one who can work in harmony with the council and manager.[14] [Emphasis added.]

On 12 November 1930 the Board of Freeholders adopted a motion "that the city attorney be elected by the people,"[15] rejecting the idea that the City Attorney was "only the council's lawyer."[16] The minutes of the 12 November 1930 Freeholders Committee recorded the fact that several attorneys from the City attended the meeting and supported the idea of an elected city attorney:

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[13] *LAWYERS ARE ASKED TO AID FREEHOLDERS 7 to 7 Deadlock On City Attorney Will Be Put To Attorneys*, news article.

[14] *LAWYERS ARE ASKED TO AID FREEHOLDERS 7 to 7 Deadlock On City Attorney Will Be Put To Attorneys*, news article. (See fn. 13.)

[15] Board of Freeholders meeting minutes, 12 November 1930, at 2.

[16] *LAWYERS ARE ASKED TO AID FREEHOLDERS 7 to 7 Deadlock On City Attorney Will Be Put to Attorneys*, news article. (See fn. 13.)

By this time a number of the attorneys of the city had arrived, and were invited to talk before the Board. The Chairman explained that the matter in mind was in regard to the an (sic) election of the City Attorney by the people or to provide for the appointment by the Common Council, bearing in mind that the Board had already decided upon a Council-Manager form of government, leaving all administrative duties in the hands of the Manager, the Council being purely a legislative body.

The following attorneys spoke: Messrs. Charles Quitman, Herman Freeze, Edward Goodman, and Wm. P. Mayer, answering various questions and by The Board.

MOVED BY MR. BARNSON, seconded by Mr. Klicka, that the City Attorney be elected by the people.

Further discussion followed. A roll call vote was taken.
Voting AYE: Messrs. Anderson, Barnson, Bennett, Graham, Klicka, Mathewson, and Mrs. Dunham, and Mrs. Ranney.
Voting NO; Messrs. Hartley, Jones ,Martin, Merkley and Richards.
Absent: MESSRS. Ferguson and Snyder.
Motion carried. Eight in favor, five opposed, two absent.[17] [Emphasis added.]

The headline in a news article the next day read: *CITY ATTORNEY TO BE ELECTIVE, BOARD DECIDES*. The article continued:

The board of freeholders last night passed a motion that the city attorney shall be elected by the people under the provisions of the proposed new city charter.
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The action of the board relative to the election by the people of the city attorney followed considerable discussion between the freeholders and local attorneys."[18] [Emphasis added.]

Those who opposed the election of the city attorney did not give up and on 3 December 1930 they came before the Board in force:

MR. JOSEPH H. EGERMAYER, Attorney-at-law was present and upon invitation of the Chair spoke before The Board stating his reasons for

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[17] Board of Freeholders meeting minutes, 12 November 1930 at 2. (See fn. 15.)

[18] *CITY ATTORNEY TO BE ELECTIVE, BOARD DECIDES, Freeholders Also Put Police and Fire Chief Appointment Up To Manager*, news article [13 November 1930].

being opposed to the election of the City Attorney by the people, and advocating that he be appointed.
JUDGE SHELLEY J. HIGGINS, stated that he had not anticipated that subject coming up, but since it was being discussed, he would like to speak for a few moments. This was granted, and he also expressed the belief that the City Attorney should be appointed and not elected.
A short discussion followed.
MOVED BY MR. SNYDER, seconded by Mr. Merkely that we consider this matter at our next meeting, Friday night.
Motion carried.[19] [Emphasis added.]

The next day's paper carried the story of Mr. Egermayer and Judge Higgins' opposition to an elected city attorney and support for one appointed by the council:

> Opposition to having the city attorney elected by the people in provisions of the proposed new charter was voiced last night by Joseph H. Egermayer, attorney, at the meeting of the freeholders. It was voted to reconsider the matter at a meeting tomorrow.
>
> Egermayer likened the board of freeholders to the city council and reminded them of the fact that they had called in an attorney of their choice to help them in the legal work of framing the new charter. He contended that a better city attorney could be obtained by appointment of the council than by election of the people, who might vote for a lawyer who was a better vote-getter than an attorney. He held up the analogy of a board of directors. which would pick an attorney of its own choice rather than submit the question to the vote of the stockholders of the corporation they represented.
>
> Following Egermayer's remarks, Shelley J. Higgins, who has done considerable legal work for the freeholders, spoke in favor of appointment of the city attorney by the council. He based his opinion upon the necessity for San Diego to have an attorney who is qualified to understand the city's water situation and who is sufficiently competent with special water laws. The council, he said, would be able to choose that kind of an attorney, whereas the voting public might elect a man who might be incompetent.[20] [Emphasis added.]

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[19] Board of Freeholders meeting minutes, 3 December 1930, at 1-2.

[20] *LAWYER OPPOSES ELECTIVE FEATURE OF CITY ATTORNEY Cites Freeholder Board Calling In Outside Attorney as Example of Choosing*, news article, 4 December 1930.

Judge Shelley Higgins' support for an appointed city attorney carried great weight, because he was selected by the Board of Freeholders to be the board's legal counsel to advise on and draft the proposed new charter:

> Higgins last night was retained by the freeholders to put the charter into proper legal phraselogy and the freeholders in turn voted to ask the city council for an appropriation of $500 to pay Higgins and his office for the work. Higgins said he would not expect to receive renumeration in proportion to the work involved, but that he was willing to aid the freeholders as much as possible, considering that they are giving their time and energy gratis.[21]

After Judge Higgins and Mr. Egermayer's presentation on 3 December 1930 against the elected city attorney, the Board of Freeholders voted to reconsider the matter of electing rather than appointing the city attorney at a special afternoon meeting on 5 December 1930:

> Freeholders will reconsider their action in providing for an elective city attorney in the proposed charter tomorrow at a special meeting at 2 p.m. in the Medico-Dental building.
>
> The board last night voted last night to reconsider after Attorneys Shelley Higgins, former city attorney, and Joseph H. Egermayer argued in favor of councilmanic appointment of the city's legal adviser.[22]

San Diego attorney Charles Quitman, who favored an elected city attorney, was quick to respond to the effort by Judge Higgins and attorney Egermayer to persuade the Freeholders Board to reverse the decision to elect rather than appoint the city attorney. On the afternoon of 5 December 1930, two days after Judge Higgins and attorney Egermayer argued before the board that the city attorney should be appointed, attorney Quitman appeared and defended the board's original decision to have an elected city attorney:

> Mr. Charles C. Quitman, Attorney-at-law was present and upon Motion of Col. Jones, Seconded by Mr. Snyder and Carried, he was given an opportunity to speak for ten minutes.

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[21] *LAWYER OPPOSES ELECTIVE FEATURE OF CITY ATTORNEY Cites Freeholder Board Calling In Outside Attorney as Example of Choosing*, news article, 4 December 1930. (See fn. 20.)

[22] *MAY APPOINT CITY ATTORNEY Freeholders To Reconsider Charter Clause Providing For Election*, news article, 4 December 1930; Board of Freeholders meeting minutes, 5 December 1930.

> This he did stressing his belief that the City Attorney should be elected by the people.
>
> There was some discussion regarding the subject but no action was taken.[23] [Emphasis added.]

Quitman also told the board that "he had talked with a number of local attorneys, all of whom favored election of the city attorney by the people."[24] [Emphasis added] Later that same day on 5 December 1930 the argument for and against an elected city attorney took another twist, with the appearance of attorney Joseph Madden. Mr. Madden argued before the board that the city attorney should be selected by the San Diego Bar Association and confirmed by the City Council:

> The Chairman stated that this was the evening that had been set aside to discuss further the matter of City Attorney.
>
> MOVED BY MR. BARNSON, seconded by Mr. Merkley and carried that we hear from the gentlemen present, if he had any matter to present before the Board.
>
> Mr. Joseph Madden then spoke, suggesting that the City Attorney be selected by the San Diego Bar Association, that selection to be confirmed by the City Council, it being his belief that that organization would be better qualified to select an efficient city attorney than any other method.
>
> Believing that there might be others present during the evening to speak on the subject of City Attorney, the further discussion was postponed.[25] [Emphasis added.]

The newspapers reported Madden's suggestion that the city attorney should be selected by the Bar Association and approved by the Council:

> The question of whether the city attorney should be appointed by the council or elected by the people in the provisions of the new city charter occupied the attention of the board of freeholders at meetings yesterday afternoon and evening when they listened to arguments for the election of that official by C.C. Quitman, attorney, and Joseph Madden.

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[23] Board of Freeholders meeting minutes, 5 December 1930 (afternoon), at 1.

[24] *ATTORNEY'S JOB HOLDS ATTENTION OF FREEHOLDERS Question of Whether City Legal Officer Be Elected or Appointed Discussed*, news article.

[25] Board of Freeholders meeting minutes, 5 December 1930 (evening) at 1.

> Madden spoke last night, emphatically recommending that the city attorney be neither elected by the people nor appointed by the council, but selected by the San Diego Bar association, subject to confirmation by the Council.[26]

The board took no action to rescind its decision in favor of an elected city attorney. However, between 22 December 1930 and 7 January 1931 the opponents of the plan to elect the city attorney tried three times to get the Board of Freeholders to change its mind and support their plan to appoint the city attorney. At the 22 December 1930 board meeting opponents of the city attorney by election plan tried twice to have the matter reconsidered:

> MOVED BY MR. MERKLEY, seconded by Col. Jones that the matter of electing the City Attorney be reconsidered.
>
> Vote taken by raise of hands, four voting yes, six voting no; motion lost.[27]

And then again later during the 22 December 1930 meeting, board member Snyder moved to reconsider the plan to elect the city attorney:

> MR. SNYDER asked that we again reconsider the question regarding the election of the City Attorney. There was some discussion as to bringing up the subject again, AND IT WAS MOVED BY MR. GRAHAM, and seconded by Col. Jones that we suspend the rules as regards our former motion that it would require a two-thirds vote to reconsider
> A roll-vote was taken.
> VOTING AYE: Messrs. Anderson, Hartley, Jones, Martin, Merkley, Richards and Snyder, and Mrs. Ranney.
> VOTING NO: Messrs. Barnson, Graham, Klicka, and Mathewson.
> NOT VOTING: Mrs. Dunham.
> Absent: Messrs. Bennett and Ferguson.
> Motion carried.
>
> MOVED BY MR. SNYDER, seconded by Col. Jones, that we reconsider our action on the election of the City Attorney.
> A roll call vote was taken.
> VOTING AYE: Messrs. Hartley, Jones, Martin, Merkley, Richards and Snyder.
> VOTING NO: Messrs. Anderson, Barnson, Graham, Klicka, Mathewson, Mrs. Raney and Mrs. Dunham.

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[26] *ATTORNEY'S JOB HOLDS ATTENTION OF FREEHOLDERS Question of Whether City Legal Officer Be Elected or Appointed Discussed*, news article. (See fn. 24.)

[27] Board of Freeholders meeting minutes, 22 December 1930, at 1.

ABSENT: Messrs. Bennett and Mr. Ferguson.
Motion lost.[28] [Emphasis added.]

The final assault on the plan to elect the city attorney occurred at the 7 January 1931 meeting of the freeholder board. A motion was made to reconsider the action previously taken by the board "making the City Attorney an officer elected by the People." The motion lost with 7 voting in favor and 7 against.[29]

The proposed charter, with the provision that the City Attorney would be elected by the people, was adopted unanimously by the Board of Freeholders on 9 January 1931.[30] The Charter was to be voted on by the people at the general election 7 April 1931.[31]

The Board of Freeholders achieved a level of consensus rarely seen in politics. There was a strong feeling of mutual support and respect for the new proposed charter and for one another:

> The adjournment of the board, which will cease to exist with the filing of the charter, was tinged with warm felicitations among the members. They all signed each other's copies of the final draft of the charter as souvenirs of what they termed a piece of enjoyable work well done.[32] [Emphasis added.[

Once the board submitted the proposed charter to the city clerk a four-month campaign ensued, culminating in an overwhelming public vote in favor of the charter which included the election of the city attorney. The idea of an elected city attorney was supported widely. For example, the labor representative on the freeholder board, Mr. Ray Mathewson, emphasized that the city attorney was to be elected to ensure his independence from the city council:

> The city attorney is elected by the people. At the present time he is appointed by the council. It was felt that if the attorney were elected by the people, he would be in a much more independent position than if he

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[28] Board of Freeholders meeting minutes, 22 December 1930, at 2-3. (See fn. 27.)

[29] Board of Freeholders meeting minutes, 7 January 1931, at 2.

[30] Board of Freeholders meeting minutes, 9 January 1931, at 4.

[31] *BOARD UNANIMOUS IN APPROVAL OF CHARTER DRAFT Document to Be Filed With City Today; Heartiest Support Given by All*, news article.

[32] *BOARD UNANIMOUS IN APPROVAL OF CHARTER DRAFT Document to Be Filed With City Today; Heartiest Support Given by All*, news article. (See fn. 31.)

were appointed by the council. The council may employ special water counsel to aid the city attorney.[33] [Emphasis added.]

In registering its support for the proposed charter, the Hillcrest News identified the fact that the city attorney was to "fearlessly protect" the interests of the people of San Diego and not just carry out the wishes of the city council and manager:

> 10. The city attorney is to be elected by the people as a guarantee that the legal head of the city will be able to fearlessly protect our interests and not be an attorney appointed to carry out the wishes of council or manager.[34] [Emphasis added.]

A ballot brochure published by San Diego Straight Ahead also described the duties of the elected city attorney:

> INDEPENDENT CITY ATTORNEY
> The city attorney is to be elected by the people. This is a guarantee that the legal head of the government will be able to fearlessly protect interests of all San Diego and not merely be an attorney appointed to carry out wishes of council or manager.[35] [Emphasis added.]

Even the journalist muckraker, A.R. Sauer, who had so vigorously opposed the 1929 charter draft, gave his wholehearted support to the 1931 draft adopted by the voters on 7 April 1931. It was because the freeholder board was willing to listen to the concerns from citizens about provisions like placing the right to vote for city attorney in the hands of the people that Mr. Sauer's support for the 1931 charter was obtained:

> That the new charter is a good charter is due primarily to the fact that the freeholders who composed it are business men who are also men who take pride in their city. They gave heavily of their time, patience and energy to perfect the new charter; they went exhaustively into every problem with which they were confronted; they accepted suggestions graciously; and they made decisions firmly.[36] [Emphasis added.]

Moreover, placing independent powers in the hands of the city attorney helped the freeholder board to achieve one of its basic objectives which was to fight corruption in city government. As the labor representative on the freeholder board wrote about the

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[33] Ray Mathewson, *COUNCIL MUST ELECT MANAGER IN TWO MONTHS New Charter Provides For Action 60 Days After Passage*, news article.

[34] James E. Parsons Editor and Publisher, Endorsement Column, *GIVE SAN DIEGO A NEW DEAL*, The Hillcrest News.

[35] Ballot Brochure "Plan for Progress" published by San Diego Straight Ahead.

[36] A.R. Sauer, *The New City Charter Should Be Adopted*, news article.

charter: "It is not an absolute guarantee against dishonest or corrupt government, but it will make it extremely difficult for dishonesty and corruption to prevail."[37]

Included among the supporters for the new charter was the San Diego Union newspaper, which singled out for special mention the election of the city attorney:

> The freeholders have departed from the accepted rules even more widely-and, in our opinion, less wisely-in providing that the city attorney shall be an elective officer. Here again, however, and regardless of differences of opinion, the freeholders have endeavored to suit San Diego's particular needs. They have made this an elective office, permitting the people to choose an attorney partly upon a basis of policies advocated, and have provided for the employment of special counsel in cases of particular moment as, for example, in the matter of water litigation.
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> ***
>
> The new charter is a clear-cut, concise and understandable document, honestly constructed by intelligent citizens who have wisely sought and obtained the best of specialized advice upon every problem involved. It should be ratified by an overwhelming vote of the people next Tuesday.[38] [Emphasis added.]

On 7 April 1931 the voters of San Diego adopted the new charter, with the provision that the city attorney was to be elected by the people of San Diego, with a vote of 79.76% (22,727) for and 20.24% (5,767) against.[39] Voters also elected a new mayor, Walter W. Austin:

> The broom with which San Diego cleaned out the courthouse last November was applied to city hall yesterday and today Mayor Harry C. Clark and Councilman E.H. Dowell had been relegated to the political rag-bag by the voters.
>
> The spring house cleaning found San Diego with:

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[37] Ray Mathewson, *CHARTER SAID BETTER THAN PRESENT FORM Mathewson States San Diego's Operation Will Be Improved*, news article.

[38] Charter Endorsement, *To Suit San Diego*, San Diego Union Tribune, 4 April 1931.

[39] 7 April 1931 Semi-Official Returns.

A new mayor-Walter W. Austin, president of the Austin Safe & Desk Co., who campaigned on a business program and piled up the largest individual vote of any of the candidates.[40]

An editorial in the San Diego SUN newspaper captured the reform mood of the city following the historic adoption of the new charter and the election of a reform mayor:

> THE NEW DAY has dawned for San Diego! April 7th 1931, will go down in the city's history as the turning point when this city cast off the shackles of a rusty governmental form and put on the shining garment of modern business methods in public affairs.
>
> From a past clouded with confusion and uncertainty, we may now look forward in confidence to a future bright with promise of progress.
>
> Victory of the new charter was a victory for the people, whether they voted in favor of or against it.
>
> Every citizen will profit from its adoption. No act of electorate for many years has been so important and so encouraging as the splendid majority given the new instrument yesterday.
>
> Now must the citizenship rally behind it and organize for the new era it introduces into San Diego's history.
>
> We must make sure of the RIGHT START when the charter goes into next year.
>
> To do that we must begin thinking RIGHT NOW of the MEN and the METHODS we ware going to employ to make certainty doubly certain.
>
> The SUN would like to see the level-headed, serious-minded LEADERS of the best interests of San Diego put their heads together AT ONCE to plan for that day.
>
> It should be a COMMUNITY day, not merely a political incident. It should be a day of solemn thanksgiving. It should be a day of dedication, whereon the people should pledge themselves to UNITE for the good of San Diego. It should be the biggest event of the year. And it CAN be if careful plans are made now to do it.[41] [Emphasis added.]

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[40] *RUSSO, STAHEL TRIUMPH IN COUNCIL RACE Clark Next To Last Place In Number of Votes; Charter Passes*, news article, 8 April 1931.

[41] Editorial, *The New Day!*, The San Diego SUN.

III.

CONCLUSION

The people of San Diego decided they wanted to elect their city attorney as part of a larger reform of city government. The role of the City Attorney was designed by the freeholders board that created the city charter adopted by the voters on 7 April 1931. In carrying out the responsibilities of the City Attorney, the holder of this office must do so mindful of the intent of those who designed and created this position. The City Attorney must protect the interests of all San Diego and not merely carry out the wishes of the council and manager.

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MICHAEL J. AGUIRRE, City Attorney