



California Fair Political Practices Commission

April 9, 1987

Rodney O. Lilyquist
Deputy Attorney General
110 West A Street, Suite 700
San Diego, CA 92101

Re: Your Request for Informal
Assistance
Our File No. I-87-095

Dear Mr. Lilyquist:

We have received your letter requesting comments on the questions presented in an opinion request submitted to your office by Ralph Prince, City Attorney of San Bernardino (your Opinion No. 87-302). The opinion request concerns the authority of an elected city attorney of a charter city to prosecute violations of the Political Reform Act. Enclosed is a copy of our advice letter to Mr. Prince in response to similar questions (Our File No. I-87-027).

Please contact me at (916) 322-5901 if you require any additional information regarding this matter.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosure

JOHN K. VAN DE KAMP
Attorney General

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State of California
DEPARTMENT OF JUSTICE



110 WEST A STREET, SUITE 700
SAN DIEGO 92101
(619) 237-7351

Telephone: (619) 237-7182

March 23, 1987

Gregory M. Baugher, Executive Director
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Dear Mr. Baugher:

Opinion No. 87-302

We have received an opinion request, copy enclosed, concerning whether an elected city attorney of a charter city is authorized to prosecute violations of the Political Reform Act within the city where the city charter has been amended to remove the authority of the city attorney to prosecute misdemeanor violations of state law. We are also asked whether the city attorney may receive confidential disclosures from city officers which would preclude him from enforcing the Political Reform Act.

It is the policy of our office to solicit the views of all interested parties prior to issuing an opinion. Your comments regarding the questions presented would be appreciated. If possible, a response by April 16, 1987, would be most helpful; materials received after such date will nonetheless be considered.

Very truly yours,

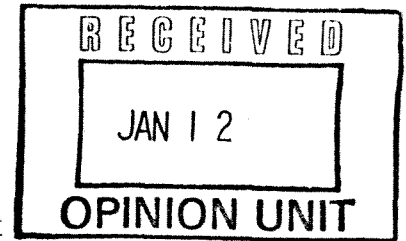
JOHN K. VAN DE KAMP
Attorney General

A handwritten signature in cursive script, appearing to read "Rodney O. Lilyquist".

RODNEY O. LILYQUIST
Deputy Attorney General

ROL:va

Enclosure



300 NORTH "D" STREET, SAN BERNARDINO, CALIFORNIA 92418

RALPH H. PRINCE
CITY ATTORNEY

January 8, 1987
700.61

Mr. Jack Winkler
Assistant Attorney General
Opinion Unit
Department of Justice
P. O. Box 944255
Sacramento, CA 94244-2550

Dear Mr. Winkler:

I request an opinion concerning the authority of an elected city attorney of a charter city to act as a criminal prosecutor with respect to violations of the Political Reform Act of 1974.

Government Code Section 91001.5 provides as follows:

"In any case in which a district attorney could act as the civil or criminal prosecutor under the provisions of this title, the elected city attorney of any charter city may act as the civil or criminal prosecutor with respect to any violations of this title occurring within the city."

The San Bernardino City Charter Section 55(d) was amended by the electorate in 1971 to remove the authority of the City Attorney to prosecute misdemeanor violations of state law.

Government Code Section 91001.5, effective in 1976, appears to empower the elected city attorney of any charter city to act as the criminal prosecutor with respect to violations of Title 9 of the Government Code occurring within the city. Since this section conflicts with the removal by local charter amendment of state law misdemeanor prosecutorial authority from the City Attorney of San Bernardino, the issue raised is whether Government Code Section 91001.5 preempts the field.

Title 9 of the Government Code, the Political Reform Act of 1974, approved by the electorate effective January 7, 1975,



January 8, 1987
Page 2

is comprehensive legislation which occupies the field of political reform matters. Section 81013 does permit the Legislature to impose "additional requirements on any person" Section 91001.5 may impose such an additional requirement on elected city attorneys of charter cities who do not prosecute state misdemeanor violations.

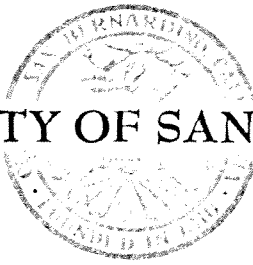
Please advise whether the State Legislature intended by the enactment of Government Code Section 91001.5 to empower elected City Attorneys of charter cities to act as the criminal prosecutor with respect to violations of Title 9, in instances when the charter of such city has been amended to remove the authority of the city attorney to prosecute state misdemeanor violations.

Very truly yours,



RALPH H. PRINCE
City Attorney

RHP:pmm



CITY OF SAN BERNARDINO

300 NORTH "D" STREET, SAN BERNARDINO, CALIFORNIA 92418

March 2, 1987

RALPH H. PRINCE
CITY ATTORNEY

Opn No. 87-21
10.37, 700.61

LOCAL LEGAL OFFICIAL'S VIEWS ON
QUESTIONS SUBMITTED TO ATTORNEY GENERAL

CONCLUSION

An elected City Attorney, whose power to prosecute state misdemeanors was removed by City Charter Amendment in 1971, may nonetheless serve as civil and criminal prosecutor under Section 91001.5 of the Government Code. The elected City Attorney may not accept information in confidence from public officials, and utilize that information in a subsequent prosecution. When the local elected City Attorney has the responsibility to serve as chief legal officer of the City and to represent and advise all city officers in all matters of law pertaining to their offices, the City Attorney should not accept confidential disclosures from city officers which would preclude him from serving as chief legal officer of the City, since to do so would constitute acceptance of employment adverse to a client.

FACTS

The City Attorney of the City of San Bernardino is an elected City Attorney, and is required by the Charter to serve as chief legal officer of the City, and to represent and advise the Mayor and Common Council and all city officers in all matters of law pertaining to their offices. His power to handle prosecutions of state misdemeanors was removed by the voters of the City of San Bernardino by amending the City Charter at an election held April 13, 1971.

Prior to the election of April 13, 1971, Section 55(d) of the City Charter of the City of San Bernardino read as follows:

"(d) The City Attorney shall be the chief legal officer of the City; he shall represent and advise the Mayor and Common Council and all City officers in all matters of law pertaining to their offices; he shall represent and appear for the City in all legal actions brought by or against the City, and prosecute violations of City ordinances and such other

misdemeanor offenses as authorized by law; he shall also act and appear as attorney for any City officer or employee who is a party to any legal action in his official capacity; he shall attend meetings of the City Council, draft proposed ordinances and resolutions, give his advice or opinion in writing when requested to do so in writing by the Mayor or Common Council or other City official upon any matter pertaining to municipal affairs; and otherwise to do and perform all services incident to his position and required by statute, this charter or general law." (Emphasis added.)

The election of 1971 omitted the underlined portion of Charter Section 55(d), and removed the authority of the City Attorney to prosecute misdemeanor offenses under state statutes. He now is authorized to prosecute ordinance violations.

Section 91001.5 of the California Government Code provides as follows:

"In any case in which a district attorney could act as the civil or criminal prosecutor under the provisions of this title, the elected City Attorney of any charter city may act as the civil or criminal prosecutor with respect to any violations of this title occurring within the city."

Several city officials of the City of San Bernardino have at various times requested opinions from the elected City Attorney concerning their conduct as city officers, and possible conflicts of interest which have arisen in the past or may arise in the future; some of such city officers, particularly Council Members, have asked that the opinions be confidential, and that the information relayed by them to the City Attorney be regarded as confidential.

Rules of Professional Conduct of the State Bar of California have been adopted by the State Bar and approved by the Supreme Court of the State of California. Rule 1-100 of the Rules of Professional Conduct states, in pertinent part, as follows:

"When so approved, these rules shall be binding upon all members of the State Bar, and a willful breach of any of these rules shall be punishable as provided by law."

Rule 4-101 specifies as follows:

"A member of the State Bar shall not accept employment adverse to a client or former client, without the informed and written consent of the client or former client, relating to a matter in reference to which he has obtained confidential

information by reason of or in the course of his employment by such client or former client."

Rule 5-101 of the Rules of Professional Conduct states as follows:

"A member of the State Bar shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the member of the State Bar acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms which should have reasonably been understood by the client, (2) the client is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transactions, and (3) the client consent in writing thereto."

Rule 5-102 specifies as follows:

"(A) A member of the State Bar shall not accept professional employment without first disclosing his relation, if any, with the adverse party, and his interest, if any, in the subject matter of the employment. A member of the State Bar who accepts employment under this rule shall first obtain the client's written consent to such employment.

(B) A member of the State Bar shall not represent conflicting interest, except with the written consent of all parties concerned."

ANALYSIS

Government Code Section 91001.5 has been enacted as part of a comprehensive scheme to regulate the field of political reform. Although it was not an original part of the Political Reform Act of 1974, Government Code Section 81000 et seq., it was added by Chapter 594 of the Statutes of 1976 as an urgency measure, and given immediate effect August 27, 1976. It clearly is intended to provide an additional enforcement mechanism to the Political Reform Act, and is consistent with the purposes of that Act.

That section specifically grants to elected City Attorneys of any charter city power to act as the civil or criminal prosecutor with respect to any violations of the Political Reform Act occurring within the City. This clearly evidences an attempt by the legislature to expand the powers of the elected City Attorney of all charter cities. Obviously, if the elected City Attorney already had power under the charter to handle such violations, this Act would not have been

required, and would be rendered meaningless. The fact that it was enacted indicates the intent to expand upon the powers of the elected City Attorney of any charter city.

Since the Charter of the City of San Bernardino does not specifically prohibit the City Attorney from prosecuting state law violations, this provision of the Government Code is not in conflict with the City Charter. Accordingly, we need not consider the provisions of Article VI Section 5 of the Constitution of California specifying that city charters adopted pursuant to the constitution shall supersede any existing charter and with respect to municipal affairs shall supersede all laws inconsistent therewith. Since the provision of Government Code Section 91001.5 relating to City Attorneys is not inconsistent with the provisions of the City Charter, the state law may be held to prevail.

Note is taken that this provision is discretionary, and not mandatory.

Accordingly, the elected City Attorney of the City of San Bernardino, a charter city, may act as civil and criminal prosecutor under the provisions of Government Code Section 91001.5, of all violations of the Political Reform Act of 1974, but is not required to do so.

The State Bar of California has reviewed the applicability of the Code of Professional Conduct to activities of an elected City Attorney in considering certain actions by then City Attorney Ira Reiner of the City of Los Angeles in accepting confidential disclosures from a city official, and then later prosecuting that same city official. In re Reiner August 22, 1986, No. LA-83-1382 and LA-84-1414. In that case, the State Bar of California determined that the Code of Professional Conduct did preclude an elected City Attorney from accepting confidential disclosures, and then utilizing those disclosures in a prosecution of the city official. The State Bar found that Mr. Reiner had violated both Code of Professional Conduct Rule 4-101 and 5-102.

The City Attorney of the City of San Bernardino runs the same risk in the event that he or his staff accepts confidences from any city official seeking confidential legal advice, and then attempts to use that information in a civil or criminal prosecution, by undertaking to give confidential legal advice to a city council member or other city official. When such advice requires confidences, the City Attorney may be taking employment adverse to his primary client, the City of San Bernardino.

Unless the legislative body of the City of San Bernardino specifically authorize in writing the City Attorney to accept a request for opinion by a city officer under assurances of confidentiality, the City Attorney May not accept such

professional employment. Nothing in state law overrules the provisions of Code of Professional Conduct Rule 5-102 of the State Bar of California, or provides other protection to the City Attorney who chooses to render such advice on a confidential basis to a city officer, without such written consent of his primary client, the City of San Bernardino.

A handwritten signature in cursive script, reading "Ralph H. Prince".

RALPH H. PRINCE
City Attorney

RHP:nb