



DENNIS J. HERRERA
City Attorney

ATTACHMENTS

2010-11 Good Government Guide, An Overview of the Laws Governing the Conduct of Public Officials Published by the City Attorney's Office, Pages 15 – 19, Beginning with section "VI. The roles of commissions, their members, and their staff".

City Attorney Opinion No. 2003-01: The Roles of the Commission, Individual Commissioners and the Department Head

City Attorney Opinion No. 90-01 Administrative Powers of the Parking and Traffic Commission

Good Government Guide

time the appointing authority receives it, unless the written resignation provides for a later effective date. Admin. Code § 16.89-16. For example, a notice of resignation could state that the resignation will become effective on a specific date or once the appointing officer designates a new appointee. An offer of resignation, while indicating the office holder's willingness to vacate the office, does not, by itself, constitute a resignation, even if in writing.

Once a resignation is effective, neither the member nor the appointing officer may rescind it. As a general rule, the appointing officer could appoint the former commissioner to the vacancy the resignation created. But the reappointment would be subject to the normal rules governing appointments to that board or commission.

For more information on the resignation process, see City Attorney Opinion No. 2007-01, "Laws Governing Resignations of Appointed City Officers," available on the City Attorney's website.

D. Resignation by operation of law

As previously discussed, if a commissioner no longer meets the eligibility requirements to serve on a board or commission, the commissioner may no longer serve. The law treats this circumstance as a constructive resignation regardless of whether the commissioner has formally submitted a resignation.

E. Post-separation processes

Within 15 days after a member leaves office for any reason, the appointing officer must provide written notice to the Ethics Commission of the name of the person leaving office. C&GC Code § 3.1-105.

VI. The roles of commissions, their members, and their staff

A. Powers, duties, and restrictions relating to commissions

1. Powers and duties

Charter section 4.102 sets forth the powers and duties of boards and commissions in the executive branch. Section 4.102 provides that each board or commission shall:

- 1) Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City, as established by the Mayor and the Board of Supervisors through the adoption of legislation;

- 2) Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;
- 3) After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare, and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under Charter Section 9.103 (each department is responsible for providing the Mayor and Board of Supervisors with a mission-driven budget that describes each proposed activity of the department and the cost of the activity, under Charter § 9.114);
- 4) Recommend to the Mayor for submission to the Board of Supervisors rates, fees and similar charges regarding appropriate items coming within the body's jurisdiction;
- 5) Unless the Charter provides a different procedure for appointing department heads, submit to the Mayor at least three nominees, and if rejected, make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor. (The three-nominee process is intended to give the Mayor a range of choices. If the Mayor does not object, the board or commission may submit fewer than three names. The Mayor may indicate a preferred nominee before the body submits its nominee(s), but the body does not have to honor the Mayor's preference. The Mayor may also decline to accept any of the body's nominees and ask for further nominations. See City Attorney Opinion No. 2010-01);
- 6) Remove a department head; if the Mayor recommends removal of a department head to the board or commission, the body must act on the recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation is official misconduct (the Mayor, acting independently of the Police Commission, may remove the Chief of Police, Charter § 4.109);
- 7) Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;
- 8) Exercise such other powers and duties as prescribed by the Board of Supervisors; and
- 9) Appoint an executive secretary to manage the affairs and operations of the board or commission.

To carry out its duties, a commission may hold public hearings and take testimony. Charter § 4.102(10). In addition, relative solely to the affairs under its control, a commission may examine the department's documents, hold public hearings, subpoena witnesses, and compel production of documents. Charter § 16.114.

2. Restrictions on commissions

Along with giving powers to commissions, the Charter also restricts how a commission may deal with the administrative affairs of its department:

Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's power of hearing or inquiry as provided in this Charter. Charter § 4.102.

This restriction, which originated in the 1932 Charter, establishes a chain of command that governs the operation of departments under commissions. The commission sets policy and communicates that policy to the department head, who in turn is responsible for its execution. See City Attorney Opinion 90-01, p. 2. As we stated in that opinion:

[T]here is no prohibition...against a commission dictating administrative policy for its department, so long as the board or commission proceeds in the manner provided by the charter...[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 a broad authority to address administrative matters within its own department. *Id.* at p. 3.

The requirement that a commission address administrative matters solely through the department head does not apply to actions taken through the commission's power of hearing or inquiry. Charter § 4.102. "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." City Attorney Opinion 90-01, p. 4.

B. The role of and restrictions on individual commissioners

The Charter places the power and duties of a board or commission in the body as a whole, not in individual members. Charter § 4.102. The Charter, as well as State law and the City's Sunshine Ordinance, requires boards and commissions to act at public meetings. Charter § 4.104(a)(2); Govt. Code § 54953(a); Admin. Code § 67.5. A quorum of the board or commission must be present for the body to act. Charter § 4.104(b); see also Govt. Code § 54952.6 (defining "action taken" as a collective decision or commitment made by a majority of members of the body). Thus, commissioners lack the authority, as individuals, to exercise powers of the board or commission, although the body may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting on the program to the body.

In addition, as noted above, Charter section 4.102 provides that “any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct” Thus, in addition to requiring that a board or commission deal with administrative matters solely through the department head or the department head’s designees, section 4.102 prohibits individual members of boards and commissions from dictation, suggestion, or interference in administrative matters. City Attorney Opinion 90-01. This prohibition does not prevent individual commissioners from requesting information from the department head about the department’s operations. With the department head’s consent, commissioners may also seek information directly from department staff.

C. The role of commission officers

Unless the board or commission’s rules or enacting legislation provide otherwise, neither the president nor vice-president of a body has any greater authority than any other member. As noted below, the Charter permits a board or commission to adopt rules and regulations consistent with the Charter and City ordinances. Charter § 4.104(a)(1). Under this authority, most Charter boards and commissions adopt rules providing for the election of a president and possibly other officers. The president presides over meetings and may call special meetings of the body.

If the board or commission so chooses, it may give additional powers to the president in its rules or bylaws. Frequently, such rules authorize the president and the department head to set agendas for meetings. In addition, some rules authorize the body’s president to create committees and/or assign members to those committees, or to act as a spokesperson for the body.

D. The role of a department head

The Charter and Administrative Code set forth the responsibilities of department heads. The department head is responsible for the administration and management of the department. Charter § 4.126; Admin. Code § 2A.30. Among other things, department heads may:

- Appoint qualified individuals to fill positions within the department that are exempt from the civil service provisions of the Charter, and discipline or remove such employees. Charter § 4.126; Admin. Code § 2A.30.
- Act as the appointing officer under the civil service provisions of the Charter for the appointing, disciplining, and removal of employees. Admin. Code § 2A.30; Charter § A8.329.
- Issue or authorize requisitions for the purchase of materials, supplies, and equipment required by the department. Admin. Code § 2A.30.
- Adopt rules and regulations governing matters within the jurisdiction of the department, subject, if applicable, to Charter section 4.102. Charter § 4.126.

- With the approval of the City Administrator, reorganize the department. Charter § 4.126.

Thus, the department head acts as the day-to-day manager of the department, subject to the direction of the board or commission and the Mayor. Unless the Charter or Municipal Code expressly provide otherwise, the law does not require the department head to seek the body's approval before signing contracts and making other decisions on behalf of the department. Rather, the board or commission and the department head determine which matters require the body's approval.

Department heads whose department is under the jurisdiction of a board or commission generally serve at the pleasure of the body. Unless the Charter expressly provides otherwise, only the board or commission may remove the department head. One exception to this principle is that the Mayor, in addition to the Police Commission, may remove the Chief of Police. Charter § 4.109. And one exception to the principle that department heads serve "at will" is that, following a probationary period for the Director of Elections, the Elections Commission may remove the Director only "for cause." Charter § 13.104. Further, as previously noted, the Mayor may request that a board or commission remove its department head, and the body must act, one way or the other, on that request within 30 days. But the board or commission, not the Mayor, must make the final decision whether to remove the department head. Charter § 4.102(6).

E. The role of commission secretary

Subject to the budgetary and fiscal provisions of the Charter, each Charter board or commission may appoint a secretary to manage the affairs and operations of the body. Charter § 4.102(9). Generally, the secretary is responsible for: arranging board or commission meetings; preparing and distributing notices, agendas, minutes, and resolutions of the body; providing information to the public regarding the body's affairs; maintaining its files and records; and carrying out additional duties as directed by the body. The secretary is also responsible for making sure that commissioners receive notice of mail, including email, addressed to them, and that they have an opportunity to read such mail if they so choose.

Usually, a board or commission secretary is appointed by and serves at the pleasure of the body. The secretary's duty is to the body as a whole, not to individual members. Accordingly, a commissioner does not have the right to demand from the secretary reports, favors, or special considerations beyond what the commissioner is entitled to as a member of the public. If a commissioner wants information that will require a significant amount of staff or secretarial time, the commissioner should bring the request to the commission to determine whether the secretary (or other staff) should pursue the task.

F. The role of the City Attorney

The City Attorney is the legal counsel for the City. In that capacity, the City Attorney's Office represents the City and its officers and employees in lawsuits; drafts and approves



DENNIS J. HERRERA
City Attorney

January 30, 2003

OPINION NO. 2003-01

SUBJECT: The Roles of the Commission, Individual Commissioners and the Department Head.

REQUESTED BY: Honorable Members
Commission on the Status of Women

PREPARED BY: Amy S. Ackerman
Deputy City Attorney

Question Presented

You have asked for general advice about the roles and duties of the Commission on the Status of Women ("Commission"), individual Commissioners and the department head in administering the Department on the Status of Women ("department"). More specifically, you have asked what the roles and duties of the Commission and department head are in preparing the budget and in hiring department employees.

Short Answer

The roles of the Commission, individual commissioners and the department head are set forth in San Francisco's Charter and Administrative Code. As described more fully below, the Commission is authorized to establish plans, policies and goals for the department, while the department head is responsible for the day-to-day management and administration of the department. As a body, the Commission may set administrative policy for the department, provided that it gives its direction solely through the department head. If the department head does not follow the Commission's instructions on a particular administrative matter, the Commission may either accept the department head's decision or remove her. Except for purposes of inquiry, individual commissioners may not initiate or take actions in their official capacity without Commission authorization. Further, commissioners may not interfere with the administration of the department.

The department head or her designee is responsible for preparing the department's budget. The Commission must approve the budget or any budget modification or fund transfer requiring the approval of the Board of Supervisors. After the Commission approves the budget or modification, the Commission forwards it to the Mayor to initiate, prepare and submit the annual proposed budget to the Board of Supervisor on behalf of the executive branch.

Honorable Members

2

January 30, 2003

OPINION NO. 2003-01

The department head is the appointing officer for the department under the civil service system. When filling a civil service position, the department head selects the employee from those qualified applicants identified by the Department of Human Resources, consistent with civil service rules and procedures. The Commission may set policies regarding the process for hiring for civil service positions, provided that such policies do not conflict with federal, state, or local law, civil service rules or Department of Human Resources policies.

The department head has sole discretion for filling a civil service-exempt position. The Commission may set policies governing the process for hiring exempt employees, provided that those policies do not conflict with any federal, state and local laws or rules governing the hiring of City employees. Again, if the department head chooses not to follow the Commission's policies, the Commission may either accept the department head's decision or remove her.

Analysis**The Role of the Commission**

San Francisco Charter section 4.102 sets forth the powers and duties of City commissions within the executive branch.¹ Each commission shall:

1. Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation;
2. Develop and keep current an Annual Statement of Purpose outlining its areas of jurisdiction, authorities, purpose and goals, subject to review and approval by the Mayor and the Board of Supervisors;
3. After public hearing, approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the Board of Supervisors, subject to the Mayor's final authority to initiate, prepare and submit the annual proposed budget on behalf of the executive branch and the Board of Supervisors' authority under [Charter] Section 9.103;²
4. Recommend to the Mayor for submission to the Board of Supervisors rates, fees and similar charges with respect to appropriate items coming within their respective jurisdictions;

¹ Unless otherwise specified, all further statutory references are to the San Francisco Charter.

² Each department is responsible for providing the Mayor and Board of Supervisors with a mission-driven budget that describes each proposed activity of the department and the cost of the activity. (§9.114.)

Honorable Members

3

January 30, 2003

OPINION NO. 2003-01

5. Unless the Charter provides a different procedure for appointing department heads, submit to the Mayor at least three qualified applicants, and if rejected, to make additional nominations in the same manner, for the position of department head, subject to appointment by the Mayor;
6. Remove a department head; the Mayor may recommend removal of a department head to the commission, and it shall be the commission's duty to act on the Mayor's recommendation by removing or retaining the department head within 30 days; failure to act on the Mayor's recommendation shall constitute official misconduct;
7. Conduct investigations into any aspect of governmental operations within its jurisdiction through the power of inquiry, and make recommendations to the Mayor or the Board of Supervisors;
8. Exercise such other powers and duties as shall be prescribed by the Board of Supervisors; and
9. Appoint an executive secretary to manage the affairs and operations of the board or commission.

(§4.102.) To carry out their duties, commissions may hold hearings and take testimony.
(§4.102(10).)

The Charter also restricts how commissions may deal with administrative affairs:

Each board or commission, relative to the affairs of its own department, shall deal with administrative matters solely through the department head or his or her designees, and any dictation, suggestion or interference herein prohibited on the part of any member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the board or commission's power of hearing or inquiry as provided in this Charter.

As we have previously advised, this restriction, which originated in the 1932 Charter, "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."³ (City Attorney Opinion 90-01, p. 2.) As we stated:

[T]here is no prohibition . . . against a commission dictating administrative policy for its department, so long as the board or commission proceeds in the manner provided by the charter. . . . [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

³ See 1932 San Francisco Charter section 3.500(i).

Honorable Members

4

January 30, 2003

OPINION NO. 2003-01

commission or its committees. So long as a commission complies with these Charter requirements, it enjoys a broad authority to address administrative matters within its own department.

(*Id.* at p. 3.)

Finally, the requirement that a commission deal with administrative matters solely through the department head does not apply to actions taken through the commission's power of hearing or inquiry. (§4.102.) "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." (City Attorney Opinion 90-01, p. 4.)

The Role of Individual Commissioners

The Charter reposes the power and duties of commissions in the commission, as a whole, and not individual members. (§4.102.) The Charter requires commissions to act at public meetings. (§4.104; see also Gov't. Code §54953 [requiring local commissions to act in public meetings].) In addition, a quorum of the commission must be present for it to act. (§4.104; see also Gov't. Code §54952.6 [defining "action taken" as a collective decision or commitment made by a majority of members of a commission].) Thus, a commission exercises its power as a body. Members lack the authority to exercise the powers of the commission as individuals, although commissions may designate individual commissioners to perform assigned duties, such as monitoring the progress of a departmental program and reporting information on the program to the commission.

In addition, as noted above, Charter section 4.102 imposes an additional restriction on individual commissioners. The section provides that "any dictation, suggestion or interference [in administrative affairs] herein prohibited on the part of any member of a board or commission shall constitute official misconduct . . ." Thus, in addition to requiring that a commission deal with administrative matters solely through the department head or his or her designees, section 4.102 prohibits *individual members* of boards and commissions from dictating, suggesting or interfering in administrative matters. (City Attorney Opinion 90-01, p.3.) The prohibition does not, however, prevent individual commissioners from seeking information from the department head about the department's operations. Further, with the department head's consent, commissioners may also seek information from department staff.

The president or vice-president of a commission does not enjoy any greater authority in this regard. The Charter permits a commission to adopt rules and regulations consistent with the Charter and City ordinances. (§4.104.) Under this authority, most commissions adopt rules providing for the election of a president to preside over meetings. Section 4.102 does not except commission officers from its prohibition against interference with administrative affairs. "[A]

Honorable Members

5

January 30, 2003

OPINION NO. 2003-01

rule granting the president such authority would conflict with the Charter and be void.” (City Attorney Opinion 90-01, p.5.) Thus, except for the purposes of inquiry, individual commissioners may not initiate or take actions in their official capacity without commission authorization. Further, commissioners may not interfere with the administration of the department.

The Role of the Department Head

The Charter also sets forth the responsibilities of the department head. Charter section 4.126 provides that the department head is responsible for the "administration and management of" her department. The department head may:

1. Appoint qualified individuals to fill all positions within their departments that are *exempt* from the Civil Service provisions of this Charter;
2. Adopt rules and regulations governing matters within the jurisdiction of their respective departments, subject, if applicable, to Section 4.102; and
3. With the approval of the City Administrator, reorganize their respective departments.

(*Ibid.*, emphasis added.)

San Francisco Administrative Code section 33.3 expressly provides that the Executive Director of the Commission is the department head and authorizes her to carry out the functions enumerated in Charter section 4.126. San Francisco Administrative Code section 2A.30 further specifies the roles and duties of the department head. Section 2A.30 provides, "[e]ach department head shall be immediately responsible for the administration of his or her department . . . [and] shall act as the 'appointing officer' under the civil service provisions of the Charter for the appointing, disciplining and removal of such officers, assistants and employees as may be authorized."

The department head must "issue or authorize all requisitions for the purchase of materials, supplies and equipment required by [the] department . . ." (*Ibid.*) The department head must also recommend to the Board of Supervisors such ordinances as may be required to carry out the department's powers and duties. (*Ibid.*) Finally, through the Mayor, each department head "may suggest the creation of positions subject to the provisions of the Charter, and may reduce the forces under his or her jurisdiction to conform to the needs of the work for which he or she is responsible." (*Ibid.*) The authority to reduce workforces may be limited by collective bargaining agreements with covered employees.

The Budget Process

Each department must prepare a "mission-driven budget" that describes each proposed activity of the department and the cost of the activity. In addition, the budget must include the

Honorable Members

6

January 30, 2003

OPINION NO. 2003-01

customers or clients served by the department, the service outcomes desired by the department's programs or activities, the strategic plans that guide each program and activity, the productivity goals that measure progress toward strategic plans, the extent to which the department achieved, exceeded or failed to meet its goals, objectives and any identified spending constraints. (§ 9.114.) The department must prepare its budget estimates in the form that the Controller, after consulting with the Mayor, directs in writing. (*Ibid.*)

As noted above, the Commission must approve the budget before its submission to the Mayor's Office and Board of Supervisors. (§4.102.) In addition, the Commission must approve any budget modifications or fund transfers requiring the approval of the Board of Supervisors. (*Ibid.*) After the Commission approves the budget or modification, the Commission forwards it to the Mayor to initiate, prepare and submit the annual proposed budget to the Board of Supervisors on behalf of the executive branch. (See Article IX.)

The Hiring Process

The San Francisco Charter establishes a civil service merit system governing the employment of City employees. The civil service system governs applications, examinations, eligibility, appointments, promotions, transfers, lay-offs, and designation of positions. (§10.101.) The Civil Service Commission is charged with adopting the rules, policies and procedures of the civil service system. (*Ibid.*) As the personnel department for the City, the Department of Human Resources carries out that system. (§10.102.) Accordingly, when a department is hiring for a civil service position, the Department of Human Resources is charged with selecting qualified candidates, on the basis of merit and fitness. (*Ibid.*) As appointing officer, the department head selects the employee from those qualified applicants, consistent with civil service rules and procedures. (S.F. Admin. Code §2A.30.) The Commission may set policies regarding the process for hiring for civil service positions, provided that such policies do not conflict with federal, state, or local law, civil service rules or Department of Human Resources policies.

The civil service system and its procedures do not govern the hiring for exempt positions. (§10.104.) As noted above, the department head is responsible for making exempt appointments. (§4.126.) Thus, the department head has sole discretion in filling those exempt positions. In the Ordinance establishing the duties of the Commission and its department, the Board of Supervisors has directed the Executive Director, as the department head, to ensure that the Commission's staff have "demonstrated commitment and expertise in working on behalf of women's issues and gender equity." (S.F. Admin. Code §33.3..)

Although the department head has sole discretion in filling exempt positions, as noted above, the Commission may set policies for the department and may direct the administration of the department through the department head. (§4.102.) Thus, the Commission may set policies governing the process for hiring exempt employees, provided that those policies do not conflict with any federal, state and local laws and rules governing the hiring of City employees. Again, if

Honorable Members

7

January 30, 2003

OPINION NO. 2003-01

the department head chooses not to follow the Commission's policies, the Commission may either accept the department head's decision or remove her. (City Attorney Opinion 90-01, p.3.)

We hope you have found this information to be helpful. If we can provide any further assistance, please do not hesitate to call on us.

Very truly yours,

DENNIS J. HERRERA
City Attorney

/S/

Amy S. Ackerman
Deputy City Attorney

APPROVED:

/S/

DENNIS J. HERRERA
City Attorney

CITY AND COUNTY OF SAN FRANCISCO

LOUISE H. FRENCH
CITY ATTORNEY
CITY HALL

January 22, 1990

OPINION NO. 90 - 01

SUBJECT: Administrative Powers of the
Parking and Traffic Commission

REQUESTED BY: Rina Cutler
Executive Director,
Department of Parking and Traffic

PREPARED BY: Burk E. Delventhal
Thomas J. Owen
Deputy City Attorneys

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

- 5 -

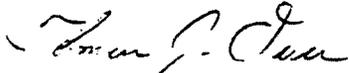
January 22, 1990

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.

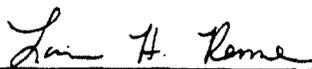
Respectfully submitted,

LOUISE H. RENNE
City Attorney


BURK E. DELVENTHAL
Deputy City Attorney


THOMAS J. OWEN
Deputy City Attorney

APPROVED:



LOUISE H. RENNE
City Attorney