



Fw: Email fro ELK to Supervisor Briggs re Charter
Edward L Knapp to: Terry L Gherardi

11/16/2009 11:49 AM

History: This message has been forwarded.

Terri: Below is an email I sent to Supervisor Briggs in June responding to a question from him about the general differences between the El Dorado County Charter and general state law. I don't mind if it is given out to the public.

Ed Knapp
 Chief Assistant County Counsel
 El Dorado County

— Forwarded by Edward L Knapp/PV/EDC on 11/16/2009 11:46 AM —

From: Edward L Knapp/PV/EDC
 To: Ron V Briggs/PV/EDC@TCP
 Date: 06/26/2009 06:09 PM
 Subject: Re:

Ron:

There are not many differences between the El Dorado County Charter and general law. There are two reasons for this: one is state law does not allow much of a variance, and the other is that the El Dorado County charter does not contain many provisions that actually vary much from state law. City charters have a great deal of flexibility because the California constitution allows a city charter to contain rules about anything deemed to be a "municipal affair." However, the constitution severely limits the things that can be included in a county charter. There is no plenary grant of power over "county affairs."

The one difference between the El Dorado County charter and general law that everyone thinks is significant is in how vacancies in the office of supervisor are filled. Under general law, a vacancy in supervisor is filled only by gubernatorial appointment, whereas under the El Dorado County charter it is filled by special election within 120 days. Each method of filling vacancies has its own pros and cons. The Charter Commission members, the grand jury, and others have expressed conflicting opinions on whether the perceived disadvantages of appointment outweigh the cost and other problems we have experienced with special elections.

There are a few other differences, but it is hard to tell whether they are truly significant or not. An example is section 602, which says that supervisors cannot hold other salaried county jobs during their term, or for one year afterward. General law prohibits holding a salaried county job during a term as supervisor, but does not prohibit a job after the term is over. This one year post-term prohibition is a difference between the charter and general law, but since to my knowledge no supervisor has ever tried to get a county job after his or her term is over, it is hard to tell whether this provision is useful or not. It seems that many charter provisions are attempts to solve phantom problems because it sounds like a good idea, but the danger in solving phantom problems is that the solution may turn out to create its own unintended problems later.

In other instances, the charter mandates something that is allowed, but not mandated, by state law. For example, charter section 210(a)(2) requires that the Board review the CAO's performance at least once per year. Under the general law, the Board can review the performance of the CAO anytime it wants. To some, this charter provision is a waste of time because under general law the board already has the power to choose when to review the CAO's performance, more or less frequently as it sees fit. Others perceive provisions like this one as valuable because they force the Board to do things that the board could, but might not, otherwise do. Another example is the contract administration provision, charter section 602, which says that the county cannot pay for a "service or function" without a written contract. Under general law you can have oral as well as written contracts. You could say that section 602 is therefore a change from general law, but on the other hand, the board could pass its own resolution requiring only written contracts and therefore achieve the same result as section 602 without the baggage of a charter.

As far as I know, there is no general list of the things that you can have in a charter that you cannot have under general law. The charter review committee is working its way through the charter

Attached 2/8/10

section-by-section, trying to discover the ways that the charter differs from general law, whether the county could achieve the same result through a board resolution, and assessing what advantages a charter provision might have over a local resolution. I would be happy to let you know the differences that might be identified through this process, or your appointee to the committee could do the same. I would also be happy to discuss any of the charter issues with you personally.

Ed Knapp

Chief Assistant County Counsel

El Dorado County