

LATE DISTRIBUTION

19

DATE 3-14-11

C.A.O.
EL DORADO COUNTY
2011 MAR 11 PM 2:17

per Council okay to post online 4/20/11

~~Confidential~~
Attorney-Client
Privileged Communication



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

2011 MAR 14 AM 10:00

BOARD OF SUPERVISORS
EL DORADO COUNTY

TO: Terri Daly, Chief Administrative Officer
FROM: Edward L. Knapp, Chief Ass't. County Counsel *(EK)*
DATE: March 11, 2011
RE: Outline of County Redistricting Procedures

You have asked for a brief outline of the procedures concerning the redistricting of county supervisorial districts. County Charter section 200 says that the governing body of the county is a board of supervisors consisting of five members elected by district. Every ten years, the boundaries of the five supervisorial districts have to be adjusted in response to the new census figures in order for them to remain approximately equal in population.

The U.S. Constitution requires that the federal government perform a census of the American people every 10 years. The result of the federal 2010 census is now being made available to the public. Census data is used to reapportion federal congressional electoral districts, that is, to determine how many people must be in each of the 435 congressional districts and how many congressional districts must be in each state. Then the geographic boundaries of each representative district in a state must be rearranged so each district has the same number of people in it, in a process called redistricting. Each state has laws which govern how this redistricting process takes place in that state. It is most commonly done by the state legislature.

In California, this year will be the first time that redistricting of congressional and statewide electoral districts will be done by an independent 14 member "Citizen's Redistricting Commission" for state offices (Proposition 11, the Voters First Act, adopted in November 2008) and for federal congressional offices (Proposition 20, the Voters First Act for Congress, adopted in November 2010). California is currently the only state to have a fully independent citizen's commission responsible for state and federal redistricting.

While these federal and state processes are going on, the same census data is used by local public entities in California to rearrange the physical boundaries of legislative districts within the local entity. California Elections Code §21500 requires that following each decennial census, and using that census as a basis, the board of supervisors shall adjust the boundaries of any of all of the supervisorial districts of the county so that the districts "shall be as nearly equal in population as may be," and comply with Title 42, United States Code §1973 (Title II of the federal Voting Rights Act prohibiting discrimination in election procedures). In establishing the boundaries of the districts, "the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts."

Census data by federal law must be made available to states no later than April 1, 2011. Preliminary reports are that the population of El Dorado County went up by almost 16% in the last decade, and the population change was not evenly distributed; El Dorado Hills increased its population by 77% while the City of South Lake Tahoe went down by 9%. It is this type of demographic shift that redistricting was designed to accommodate.

Under the Elections Code, the Board of Supervisors must hold at least one public hearing on any proposal to adjust the boundaries of a supervisorial district prior to a public hearing at which the board votes to approve or defeat the proposal. Elections Code §21500.1. Boundaries must be adjusted before November 1st of 2011.¹ Elections Code §21501. If the board fails to meet this deadline, a supervisorial redistricting commission (consisting of the district attorney, county assessor and the county elections official if he or she is elected or, if not, the county superintendent of schools) shall do so before December 31, 2011. Elections Code §21501. The board may, if it wishes, appoint a redistricting advisory committee composed of citizens of the county to study the matter and report to the Board no later than August 1, 2011. Elections Code §21505. The term of a supervisor who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which he or she was elected. At the first election for county supervisor following redistricting, a supervisor shall be elected for each newly adjusted district that has the same district number as a district whose incumbent's term is due to expire. Elections Code §21506. A change in the boundaries of a supervisorial district shall not be made within 45 days before the first day for circulating nomination papers for an election of supervisors in the county or between the direct primary election and the general election. *Id.* A redistricting ordinance adopted by the board of supervisors is subject to referendum, *Ortiz v. Board of Supervisors* (1980) 107 Cal. App. 3d 866, and a redistricting ordinance may be adopted by voter initiative. *Harnett v. Sacramento County* (1925) 195 Cal. 676.

¹ The presidential primary is currently scheduled for February 2012. This date, along with the other statutes governing the timing of elections, may require that redistricting be completed well before November 1, 2010. This office is currently researching the various timing issues.

Terri Daly
March 11, 2011
Page 3

The statutory directive is to make supervisorial districts that are "as nearly equal in population as may be." Elections Code §21500. For congressional districts, federal courts generally require the variance in population between districts to be under 1%. The California Supreme Court has noted that local reapportionment has greater flexibility than congressional apportionment, and in the past has indicated a tolerance for a variation from strict equality in local redistricting of about +/- 3%. This means that in a county with 5 districts, each district can have between 17% and 23% of the overall population and would be considered presumptively valid. Population variations tend to be acceptable to the degree they are justified by the other legitimate concerns (topography, geography, cohesiveness, contiguity, integrity, and compactness of territory, and community of interests), and are less acceptable if they are motivated by illegitimate factors such as racial disenfranchisement.

This is a brief summary of some of the salient points concerning county redistricting, and this office will be happy to provide legal advice on the other legal issues that may arise during the redistricting process.

ELK:km

The contract shall be subject to the following terms and conditions: ...
1. The contract shall be subject to the following terms and conditions: ...
2. The contract shall be subject to the following terms and conditions: ...
3. The contract shall be subject to the following terms and conditions: ...
4. The contract shall be subject to the following terms and conditions: ...
5. The contract shall be subject to the following terms and conditions: ...
6. The contract shall be subject to the following terms and conditions: ...
7. The contract shall be subject to the following terms and conditions: ...
8. The contract shall be subject to the following terms and conditions: ...
9. The contract shall be subject to the following terms and conditions: ...
10. The contract shall be subject to the following terms and conditions: ...

This contract shall be subject to the following terms and conditions: ...
11. The contract shall be subject to the following terms and conditions: ...
12. The contract shall be subject to the following terms and conditions: ...
13. The contract shall be subject to the following terms and conditions: ...
14. The contract shall be subject to the following terms and conditions: ...
15. The contract shall be subject to the following terms and conditions: ...