



OFFICE OF THE CITY ATTORNEY

ROCKARD J. DELGADILLO

CITY ATTORNEY

July 30, 2003

Mr. Greg Nelson, General Manager
Department of Neighborhood Empowerment
305 East First Street
Los Angeles, California 90012

Re: Incompatible Offices

Dear Mr. Nelson:

This office is in receipt of your e-mail inquiry in which you have posed the following questions: 1) Can someone serve on a Neighborhood Council board and a City Commission, other than Ethics, at the same time? and 2) Can a Neighborhood Council member hold an NC [Neighborhood Council] board position concurrently with being an Ethics Commissioner?

Our conclusions are as follows:

Summary of Advice

Neighborhood Council board seats are not "offices" within the meaning of the incompatibility of office doctrine. Therefore, the application of this doctrine does not prevent a person from concurrently holding seats as a Neighborhood Council board member or City Commissioner. In addition, since there is no provision in the City Charter that expressly prohibits this dual role, we conclude that a person may concurrently hold a Neighborhood Council board position and any City Commission position, including an Ethics Commission position. However, conflicts of interests may occur in serving in both capacities and there may be instances where a person may need to recuse him or herself from participating at either the Neighborhood Council board level or the Commission level, depending upon the particulars of the matter coming before the body.

Conclusions and Discussion

QUESTION 1:

Can someone serve on a Neighborhood Council board and a City Commission,



Mr. Greg Nelson, General Manager
Department of Neighborhood Empowerment
July 30, 2003
Page 2

other than Ethics, at the same time?

ANSWER:

Yes.

DISCUSSION:

Your question raises the issue of whether the incompatibility of office doctrine applies. The legal incompatibility doctrine prevents a holder of a public office from holding another office that is incompatible with the first. The doctrine is premised on the notion that "public policy requires that when the duties of two offices are repugnant or overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest, their discharge by one person is incompatible with that interest." *People ex rel Bagshaw v. Thompson* (1942) 55 Cal.App. 2d 147,150.

We previously addressed this question in a letter to you in a slightly different context: whether the legal incompatibility doctrine can be applied to prevent the concurrent holding of positions as an elected City Official and Neighborhood Council board member. See, City Attorney letter dated March 11, 2002. There, this office concluded that neighborhood council positions are not "offices" within the meaning of this doctrine nor are neighborhood council members "officers" of the City under the City Charter. Accordingly, we concluded that this doctrine was not applicable to prevent the concurrent holding of a position as an elected City Official and a Neighborhood Council board member.*

The same conclusion must be reached here. Since Neighborhood Council board positions are not "offices," the legal incompatibility doctrine does not apply and an individual may be permitted to hold both positions concurrently.

QUESTION 2:

Can a Neighborhood Council member hold an NC board position concurrently with being an Ethics Commissioner?

* However, this office concluded, because of the particular role of elected City Officials, that a "practical" incompatibility would result if elected City Officials also held Neighborhood Council board positions. This analysis was not extended to City staff or City commissioners.

Mr. Greg Nelson, General Manager
Department of Neighborhood Empowerment
July 30, 2003
Page 3

ANSWER:

Yes.

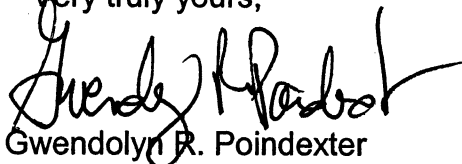
DISCUSSION:

Charter § 700 defines the role of the Ethics Commission and identifies the qualifications to serve as an Ethics Commissioner. § 700 (d). Of particular note, §700 (d) provides, in pertinent part, that: "During his or her tenure, neither a member of the commission nor its Executive Director shall hold any other public office" We interpret the words "public office" to include those offices and officers described in the City Charter in Article II, §§ 200 and 201. Thus, we believe that an Ethics Commissioner is not prohibited by § 700 (d) from serving on a Neighborhood Council board. For the same reasons as our response to Question Number 1, the legal incompatibility doctrine does not prevent concurrent holding of an Ethics Commission position and Neighborhood Council board position.

However, any person serving in concurrent capacities as a City commissioner and Neighborhood Council board member should be cognizant of the potential for conflicts of interest that might require a person to recuse him or herself from participating in a matter at either the Neighborhood Council board level or the Commission level, depending upon the particulars of the matter coming before the body. In those situations, those persons should consult with the City Attorney who can advise on the appropriate action to take.

Thank you for bringing this matter to our attention. Please let me know if we can be of further assistance to you in connection with this matter.

Very truly yours,



Gwendolyn R. Poindexter
Managing Assistant

Neighborhood Council Advice Division

(92130)

cc: Members, Board of Neighborhood Commissioners