



CITY OF BEVERLY HILLS

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MEMORANDUM

TO: The Honorable Mayor and Members of the City Council
FROM: Laurence S. Wiener, City Attorney
DATE: February 12, 2021
SUBJECT: Application of Proposed Term Limit Ballot Measure

I. Introduction

The City Council of the City of Beverly Hills (“the City”) is considering whether to submit to the voters of the City an ordinance regarding term limits for elective offices in the City. State law requires that any change in term limits for local elected officials can only be applied “prospectively.”¹

There is some question about how this restriction applies to incumbent elected officials. The plain meaning of the word “prospectively” suggests that a new term limit law can only be applied to an officeholder’s future terms. However, it is unclear whether an incumbent official’s previous terms can be counted against a new term limit.

This memorandum examines the available legal guidance on this issue.

II. Analysis

State law allows a city to adopt or repeal a limit on how many terms of office an elected officer may serve. The law reads as follows:

Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council . . . Any proposal to limit the number of terms a member of the city council may serve on the city council . . . **shall apply prospectively only** and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled

¹ California Government Code Section 36502(b).

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election and a majority of the votes cast on the question favor the adoption of the proposal.² [*emphasis added*]

Notably, any new term limit which is approved by the voters “shall apply prospectively only.”

The statute does not provide any further clarification of the prospective application restriction. The restriction is therefore subject to interpretation. The dictionary definition of the word “prospectively” is “relating to or effective in the future.”³ A prospective law “[b]y definition . . . has no effect on rights, obligations, acts, transactions, and conditions performed or existing before the statute was adopted.”⁴

Attorney General’s Opinion

In 2012, the State Attorney General’s office issued an advisory opinion as to whether a city would violate the state term limit law if it applied a new term limit to disqualify an incumbent official who had been reelected.⁵ In that opinion, voters in City of Loomis had just approved a new limit of two consecutive four-year terms of office for its city council members. A state lawmaker sought guidance as to how the term limit should be applied against incumbent officials. The Attorney General opined that the new term limit could not be applied to any terms that the incumbent had served *before* the voters approved a new term limit.

An opinion of the Attorney General does not set binding legal precedent, so this opinion does not necessarily preclude other interpretations of the law. However, as of the date of this memorandum, no appellate court has confirmed or rejected the Attorney General’s opinion on this issue.

Unfortunately, the Attorney General’s opinion does not contain a great deal of background or analysis to support its conclusion. The Attorney General merely states that: “[W]e find no ambiguity in the requirement of Government Code section 36502 (b) that locally enacted term-limit provisions must apply prospectively. ‘By definition, a prospective law . . . means a law which has no effect on the rights, obligations, acts, transactions and conditions performed or existing before the statute was adopted.’”⁶

² Id.

³ *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/prospective>. Accessed 2/5/2021.

⁴ *Estate of Messner* (1987) 190 Cal. App. 3d 818, 822.

⁵ 95 Ops. of the California Attorney General 37 (2012)

⁶ Id., at 39

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However, an ordinance which applies only to future terms of office meets the definition of “prospectively” used by the Attorney General. The term “prospectively” does not preclude a law that applies to future acts, but which is guided by the acts or conditions which have occurred prior to the law’s enactment. Therefore, when applying a new law to a future action or condition, such as a limit on holding an elected office in the future, the law may be guided by the previous terms served by that official.

Thus, while an Attorney General’s opinion may be persuasive to a court that reviews the question of whether prior terms will count toward a term limit, an opinion such as this, with a dearth of reasoning, will not carry as much weight as other opinions of the Attorney General.

Legislative History

Additionally, the legislative history of the bill that added the word “prospectively” to Elections Code section 36502, contains a report from the Secretary of State which states:

This bill requires that limits apply prospectively; time in office already served by an officeholder would not count against any limit on time in office imposed as a result of this bill.⁷

Thus, this report from the Secretary of State agrees with the Attorney General’s interpretation of the term “prospectively” (but was not cited by the Attorney General). Furthermore, this report shows that the legislators were aware of this interpretation of the proposed statute.

Of course, the Secretary of State’s report is not a traditional source of legislative intent. The Secretary of State is not a member of the legislature and his report is not direct evidence what the legislature intended. Nevertheless, at a minimum, the above statement shows what the Secretary of State perceived as the meaning of the word “prospectively.”

III. Conclusion

State law authorizes the City to propose a term limit for elective offices in the City which will be voted upon at a regularly scheduled election. This state law also provides that the new term limit “shall apply prospectively only.”

Although a court has not addressed the issue of how the “prospective” application should be applied to incumbent or past councilmembers, both the Attorney General and a report by the

⁷ Secretary of State, Bill Analysis SB 2 (June 27, 1995).

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Secretary of State concluded that the restriction should be interpreted to mean that a councilmember's prior terms cannot be counted against a new term limit.

While there are arguments that these interpretations are not correct, if the City adopts a term limits ordinance that counts a Councilmember's previous terms against the total terms allowed, then these interpretations will serve as impediments to successfully defending such an ordinance.