



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Counsel

January 10, 2014

Director Michael T. Hogan
Director Keith Lewinger
Director Vincent Mudd
Director Fern Steiner
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123-1233

Re: Applicability of MWD's Administrative Code

Dear Directors:

This letter responds to your letter of December 9 inquiring about the application of Administrative Code provisions related to the procedures followed by the Board in setting the compensation for certain executive officers. This letter further explains my position in response to your inquiry.

First, I would point out that the action taken by the Board was not inconsistent with the procedures for dealing with department head compensation in the Administrative Code. The matter related to department head compensation was on the agenda for the September Executive Committee meeting (Committee Item 7.f). However, Board Chairman Foley was unable to attend that meeting and requested that the discussion be continued to the October Board meeting. Vice Chairman John Murray, Jr., who chaired the meeting, asked for the Committee's concurrence in the Chairman's request and it was agreed to without objection. At the October Board meeting, the Chairman advised the Board that he had discussed salary recommendations with senior members of the Executive Committee and those recommendations were presented in the Chairman's letter to the Board. With respect to this particular matter, the Chairman was acting in accordance with his authority to reassign the Executive Committee's duties to officers of the Board. Admin. Code §2417.

Second, the legal advice provided to the Board by Assistant General Counsel Syd Bennion is correct. The Board may exercise its statutory authority regardless of whether it follows internal procedural rules that it has adopted. Metropolitan's Board of Directors is vested by statute with the authority to exercise all powers and duties vested in or imposed on the District. MWD Act §50. This includes the setting of compensation for District officers and employees. MWD Act §81. There are few statutory procedural requirements on the Board; for example, the Board

can only act by a majority of the total number of votes of all Board members unless a law expressly requires a super-majority (MWD Act §57), and action may only be taken if the item of business has been briefly described on an agenda posted at least 72 hours before the meeting (Govt. Code §54954.2(a)(2)). These statutory requirements were met for the action taken by the Board in setting the compensation for the District's executive officers.

Unlike statutory requirements, the procedural rules adopted by a local legislative body are not mandatory. Setting rules to govern itself is an inherent power of a legislature, but it is also an internal matter that is wholly within the control of the legislature itself. "A house 'has power to adopt any procedure and to change it at any time and without notice. It cannot tie its own hands by establishing rules which, as a matter of power purely, it cannot at any time change and disregard. Its action in any given case is the only criterion by which to determine the rule of proceeding adopted for that case.'" *People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 327, quoting *French v. Senate* (1905) 146 Cal. 604, 608. See also, *Mission Hospital Regional Medical Center v. Shewry* (2008) 168 Cal.App.4th 460, 484 ("We acknowledge that the Assembly and the Senate have power to adopt their own rules of proceeding, including rules for hearing and notice, and that these rules of proceeding 'are the exclusive prerogative' of each house. Each house 'has power to adopt any procedure and to change it at any time and without notice.'")

Although not statutorily required to do so, the Board has established Committees for the purpose of "advising and recommending actions to the Board of Directors." Admin. Code §2302. The provisions of the Administrative Code governing the Committees are internal rules of procedure for the Board that it may, as noted above, change at any time or disregard if it chooses to do so. The Code establishes the Executive Committee and assigns to it, among other things, the duty to make recommendations to the Board regarding the performance ratings and compensation of department heads. Admin. Code §2416(e).

The provisions of the Administrative Code relating to the duties of Committees are procedural rules established by the Board, and they need not be followed by the Board for its action to be valid. *City of Pasadena v. Paine* (1954) 126 Cal.App.2d 93, 96 ("Such rules are therefore procedural and their strict observance is not mandatory. Consequently, a failure to observe one of them is not jurisdictional and does not invalidate action which is otherwise in conformity with charter requirements.") The setting of compensation for department heads is an action that the Board is statutorily authorized to take by majority vote, which it did. The lack of a recommendation from the full Executive Committee prior to that action does not make it invalid.

I disagree with your assertion that these provisions of the Administrative Code are "meaningless" if the Board may validly act without following every procedural rule in the Code. The Board and Committees routinely operate in accordance with the Administrative Code. But those procedural rules do not constrain the statutory authority vested in the Board to take such actions as it deems appropriate to exercise and perform all powers, privileges, and duties imposed on the District.

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Your letter also posits that the Brown Act requires that the public be notified whenever a Board action does not follow the Board's internal operating rules. There is no such requirement. The Brown Act only requires that local agencies post an agenda that contains "a brief general description of each item of business to be transacted or discussed at the meeting." Govt. Code §54954.2(a)(1). It is not necessary for the agenda to identify the internal procedural rules that pertain to the posted item of business. When a proposal to amend the Administrative Code is considered for Board action, that item is noticed on Metropolitan agendas (e.g., Consent Calendar Item 7-5 on the November 2013 agenda), but no action was taken by the Board to change the Code at the October 2013 meeting.

Very truly yours,



Marcia Scully
General Counsel

MS:jmm

cc: MWD Board of Directors
San Diego County Water Authority Board of Directors