

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

JOHN K. VAN DE KAMP  
Attorney General

---

OPINION	:	No. 83-1204
	:	
of	:	<u>SEPTEMBER 13, 1984</u>
	:	
JOHN K. VAN DE KAMP	:	
Attorney General	:	
	:	
RONALD M. WEISKOPF	:	
Deputy Attorney General	:	
	:	

---

THE HONORABLE BARRY KEENE, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

What is the term of the mayor and the mayor pro tem of a general law city chosen pursuant to Government Code section 36801?

CONCLUSION

The mayor and the mayor pro tem of a general law city chosen pursuant to Government Code section 36801 have no fixed term but serve at the pleasure of the city council which selects them.

## ANALYSIS

The governmental structure of "general law cities" (cf. Gov. Code, § 34102) is a "matter strictly regulated by statute" and so the Legislature thus "has [plenary] control over . . . the terms of municipal officers." (56 Ops.Cal.Atty.Gen. 327, 328 (1973).) It has provided two methods for the selection of a mayor of a general law city: 1) he or she can be chosen by the city council (Gov. Code, § 36801) or 2) following the question of whether the mayor should be elected being put to and approved by the electorate, along with the question of whether his or her term of office should be two or four years, he or she can be elected by them. (§§ 34900-34902; cf. 56 Ops.Cal.Atty.Gen. 328, *supra*.)<sup>1</sup> We are asked what the lengths of the terms of a mayor and a mayor pro tem chosen under the first alternative are. We conclude that there is no fixed term for a mayor and mayor pro tem so chosen and that they serve at the pleasure of the city council selecting them.

"The word 'term', when used in reference to the tenure of office, means ordinarily a fixed and definite time. Statutes creating public offices usually but not always prescribe the limits of the terms provided for, fixing the dates at which they shall begin and end." (*Boyd v. Huntington* (1932) 215 Cal. 473, 479.) In resolving the question presented we must therefore decide whether the law establishes *a term* of office for the mayor and mayor pro tem of a general law city. If it does not, Government Code section 1301 would apply and make their "terms" "held at the pleasure of the appointing power," i.e., the city council. (§ 1301; *Brown v. Superior Court* (1975) 15 Cal.3d 52, 55-56; cf. § 36506.) In other words they would have no "fixed term" because, within certain limitations, they could be removed at any time by the council which "appointed" them. (*Chambers v. City of Sunnydale* (1942) 56 Cal.App.2d 438, 441; *Ball v. City Council of Coachella* (1967) 252 Cal.App.2d 136, 141; *Healdsburg Police Assn. v. City of Healdsburg* (1976) 57 Cal.App.3d 444, 450; *Brown v. Superior Court*, *supra*.)

A determination of whether a public officer has a fixed term of office can only be made by reference to the law creating the office. (*Brown v. Superior Court*, *supra*, 15 Cal.3d at 56; *Boyd v. Huntington*, *supra*, 215 Cal. at 476, 479.) In that regard however, although it may not do so in express terms, a statute may nonetheless fix a term of office "where such result is properly inferred from the construction of the statute as a whole." (*Id.*, at 479.) We therefore must turn to the salient sections of the Government Code and

---

<sup>1</sup> The Constitution grants to *chartered cities*, in addition to their general power with respect to municipal affairs, plenary authority to provide in their charters, or by amendment thereto, the times at which and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed. Accordingly, the tenure of officers and employees of cities governed by charters is controlled exclusively by their charter provisions. (45 Cal.Jur.3d, Municipal Corporations, § 225 (p. 350-351).)

examine the operation of their statutory scheme with respect to the "fixing" of the term of the mayor of a general law city.

Section 36501 of the Government Code vests the government of a general law city in (a) a city council of five members, (b) a city clerk, (c) a city treasurer, (d) a chief of police, (e) a fire chief, and (f) such subordinate officers or employees as are provided by law. (§ 36501.) Section 36505 requires the city council to *appoint* a chief of police, and permits it to appoint a city attorney, a superintendent of streets, a civil engineer, and "such other subordinate officers or employees as it deems necessary." (§ 36505; see also §§ 36508, 36501.) *These appointive officers and employees "hold office during the pleasure of the city council."* (§ 36506; *Chambers v. City of Sunnydale, supra*; but see *Ball v. City Council of Coachella, supra*, and *Healdsburg Police Ass'n. v. City of Healdsburg, supra*.)

Generally speaking, municipal elections must be held on the second Tuesday in April in each even-numbered year, at which time all *elective* city offices are filled. (§ 36503.)<sup>2</sup> Pursuant to Government Code sections 36503, 35442 (formerly § 34329) and 35443 (formerly § 34329.1), the terms of the members of the city council are staggered (from the time the city was formed) so that three members run for office at one general municipal election and two members run for office at the next election two years later. The period prescribed by statute for their terms is four years, running from the Tuesday succeeding their election (§§ 35442, 35443),<sup>3</sup> and that period in general may not be reduced by the city electorate. (56 Ops.Cal.Atty.Gen. 327, *supra*; but see § 34906, discussed *post*.)

As noted prefatorily, section 36801 provides one method for selection of the mayor of a general law city, to wit, selection by the city council. It provides:

---

<sup>2</sup> That date is not absolute. A city council may enact an ordinance requiring that its general municipal elections be held on the same day as the statewide primary, the day of the statewide general election or on the day of school district elections. (§ 35503.5, subd. (a).) Should it choose to do so and hold them on either of the last two days, "those city officers whose terms of office would have, prior to the adoption of the ordinance, expired on the Tuesday succeeding the second Tuesday in April of an even-numbered year, shall, instead, continue in their offices until no later than the fourth Tuesday after the day of the general municipal election and until their successors are elected and qualified." (*Id.*, subd. (d).) Also, if such an ordinance is adopted, the voters must be informed that, as a result of the change in the election date, *elected city officeholders'* terms in office will be changed. (*Ibid.*) (See also §§ 36504 & 35443.)

<sup>3</sup> Strictly speaking, city councilpersons "hold office for four years from the Tuesday succeeding their election, *and until their successors are elected and qualified.*" (§§ 35442, 35443, 36503.) Conceivably that can be longer than four years.

"The city council shall meet on the Tuesday after the general municipal election and choose one of its number as mayor, and one of its number as mayor pro tempore."

(Added by Stats. 1949, ch. 79, p. 149, § 1 and amended by Stats. 1955, ch. 750, p. 1245, § 2.)<sup>4</sup> Unlike the case of an elected mayor whose term of office will have been fixed by the electorate at either two or four years (§§ 34900, 34901, 34902), however, no mention is made of the term of office of a mayor chosen pursuant to section 36801. We believe that contrasting silence reflects the Legislature's intention that a mayor so chosen *not* have a fixed term of office.

Section 36503 provides that municipal elections, must be held every two years and sets the Tuesday succeeding the biennial municipal election as the date on which a city councilperson's term is to commence. But section 36801 sets that date as well for the time the just-elected council is to meet to choose one of its members as mayor and one of them as mayor pro tem. Although the sections are plainly interrelated to form one harmonious statutory scheme, it does not necessarily follow that a fixed term of office for those last offices is thereby established that may run until the next municipal election or to any other time. While a definite beginning for the holding of those offices may be established by the statutory scheme, it is absolutely silent as to what the termination dates for them would be.

In *Boyd v. Huntington*, *supra*, 215 Cal. 473, the court acknowledged that "where there is no beginning or termination date provided for a definite term, the terms run with the incumbent" (215 Cal. at 478), but it also noted that "the converse" [*sic*, inverse] was also true, that is, if a particular date *is* established *for either the beginning* or the end of the term, then the term runs with the office and not the officer . . . ." (*Ibid.*) The problem with that being found the situation in the case of the mayor and mayor pro tem of a general law city is that it presupposes that a term for the office exists at all which can somehow be discerned (as by rotation in office) from the statutory scheme (cf. *Boyd v. Huntington*, *supra*, 215 Cal. at 479-480) and that element is utterly lacking here. Unlike the cases of the *elective* mayor of a general law city and its city councilmen, whom the Legislature has indicated "hold office until their successors are elected and qualify" (§§ 34902, 34904, 35442, 35443, 36503) and has even referred to their holdings of office as "terms" (§§ 36503, 34906), there is absolutely nothing in the statutory schema governing municipal elections from which one could say that the office of a mayor (or mayor pro tem) *selected*

---

<sup>4</sup> The mayor so selected presides at the meetings of the city council; if he is absent or unable to act the mayor pro tem serves with all the powers and duties of the mayor, until the mayor returns or is able to act. (§ 36802.) We do not decide herein whether *they* are "appointive subordinate officers" within the meaning of section 36505.

by a city council was meant to have "fixed and definite time" of duration. That lack of similar phraseology in the statutes dealing with those offices would indicate that they were *not* meant to carry a particular "term." (*Boyd v. Huntington, supra*, at 479 ("term"); cf. *Safer v. Superior Court* (1975) 15 Cal.3d 230, 238; *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 891) and it would be improper to supply one under the guise of statutory construction. (*Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 667.)<sup>5</sup> With no fixed term established by law, under section 1301 the mayor and mayor pro tem would serve at the pleasure of the city council which appointed them (§ 1301 ("Every office, the term of which is not fixed by law, is held at the pleasure of the appointing power); *Brown v. Superior Court, supra*, 15 Cal.3d at 55-56; cf. § 36506, but see fn. 4, *ante*). Within certain limitations (*Ball v. City Council of Coachella, supra*, 252 Cal.App.2d at 141; *Healdsburg Police Officers Assn. v. City of Healdsburg, supra*, 57 Cal.App.3d at 450) their doing so may be terminated by the council at will either by specific removal (see, e.g., *Cozzolino v. City of Fontana* (1955) 136 Cal.App.2d 608, 611) or by appointment and qualification of a successor (see, e.g., *Chambers v. City of Sunnyvale, supra*, 56 Cal.App.2d at 441; cf. § 35445 (surrender of elective offices)).

We therefore conclude that the mayor and mayor pro tem of a general law city chosen pursuant to section 36801 have no fixed term but rather serve at the pleasure of the city council.

\*\*\*\*\*

---

<sup>5</sup> We are also impressed by the fact that in 1969 the Legislature amended sections 34900 and 34901 to provide that *in addition to* submitting to the electors the question of whether their mayor should *be elective*, a city council should also put to them the question of whether the mayor should serve a two-year or four-year *term*. (Stats. 1969, ch. 504, pp. 1112, 1113, §§ 1, 2.) That would seem to further indicate that with respect to the mayors of general law cities the Legislature associated the notion of a *term* of office with those *elected* to that position. (Cf. the amendment to § 34902, subd. (b) by Stats. 1976, ch. 217, p. 401, § 1, providing for elimination of the office of *elective mayor* on the expiration date of the *incumbent's term* and reestablishment of the procedure of selection of the mayor by the city council.)