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FINAL REPORT AND RECOMMENDATION  
OF THE  
CHARTER REVIEW COMMITTEE  
OF THE CITY OF MODESTO

May 4, 1970

Honorable Mayor and Members of the City Council  
City of Modesto  
Modesto, California

The Charter Review Committee was appointed by the Council of the City of Modesto on January 5, 1970, by Resolution No. 70-34 for the purpose of reviewing the City Charter. The Committee was to determine whether or not revisions should be made, or were required, since it had been approximately 8 years since the Charter was last reviewed. The purpose of the review was not to completely revise the Charter, but to study it to ascertain if any revisions should be made to clarify it, or bring it up-to-date.

The Charter Review Committee has held a total of 11 meetings, the last of which was a Public Hearing held on the evening of April 29, 1970. At the first meeting a procedure was outlined to be followed by the Committee, and copies of the Charter were furnished to each member in order that they could become familiar with its contents. Rules and Regulations under which the Committee would operate were discussed, and adopted.

In addition to each member studying the Charter, at its second meeting, the City Attorney reviewed each article and answered questions of the Committee. After its complete review of the Charter and communications it had received from the Mayor and Members of the City Council, the Committee, by majority vote, established the following subjects for consideration for either addition or revision to the Charter:

1. Alternatives for election of Councilmen by districts. — *affirmed*
2. Method of filling Council vacancies. — *3-3 vote*
3. Tenure of Councilmen. — *affirmed*
4. Compensation for Councilmen. (Section 703) — *affirmed*
5. Periodic review of Charter every 10 years. (Addition of Section 1604) — *affirmed*
6. Technical clarifications in Sections 701, 801 (k), and 1500. *affirmed as to all 3-3 / affirmed / consecutive*

The Committee studied each item herein mentioned and had lengthy discussion thereon. Copies of the minutes of each meeting, containing the substance of the discussions and reasons for the Committee's decisions have been furnished to the Council. The advantages and disadvantages of each item were debated, and as a result, the first, second and third items mentioned herein to be studied are not recommended for any change from the present Charter. It is the feeling of the majority of the members that these matters do not and have not presented any specific problems in Modesto, and therefore, until such time as problems do arise it would be advisable to not change the present Charter as it relates to them.

Section 703 of the Charter was the most controversial of the sections considered. The Committee urged the Mayor and Councilmen to attend the meetings at which this section was discussed. Some of the Councilmen presented their views to the Committee in person, as well as in previous letters, after which the Committee debated the matter of compensation at great length. The Committee's discussion was that the Mayor and Councilman have always felt that their time on the Council was an opportunity for a public service, but with the additional problems of a growing city, they should receive some compensation for their time. The Committee feels that at this time the Charter should be amended to provide that the Mayor and Councilmen should receive compensation in the amount of \$25.00 per meeting for each Council meeting attended not to exceed \$100.00 per month, and that, as in the past, they should also receive reimbursement for expenses incurred while performing official duties of their office. A draft of this recommendation is attached to this report.

A new section is being recommended for addition to the Charter which will provide that the Charter be reviewed at least every ten years. In the past the Charter has been reviewed at such times as the Council deemed it necessary, and it is the feeling of the Committee that it would continue to do this. The new section being recommended simply provides that it must be done every 10 years, but does not preclude the Council from having a review oftener if deemed necessary. A draft of this recommendation is attached to this report.

Section 701 is recommended for revision only to clarify it to eliminate any doubt as to interpretation. A draft is attached and two words have been added to the present section in order that it is absolutely clear that a person shall be eligible to be nominated for or to hold office as a Councilman or as Mayor, if he shall have been a resident and registered elector of the City of Modesto or of territory annexed thereto for at least th consecutive years immediately preceding his election or appointment.

Section 801 (k) is recommended for amendment in order to permit the City Manager to make and execute contracts on behalf of the City, involving budgeted or appropriated expenditures of \$3,500.00 or less. The last Charter review resulted in an increase in this amount to \$2,500.00 in order to provide for cost increases which had occurred over the years, and it is for the same reason that this Committee is recommending increasing the amount to \$3,500.00. A draft of this recommendation is attached to this report.

The last section the Committee feels should be recommended for revision is Section 1500 entitled "Board of Education". Inasmuch as this section refers to the Modesto Junior College District of Stanislaus County, which no longer exists, the Committee feels the section should be amended to eliminate such reference. At the same time, in order to clarify the meaning of the section as it relates to the eligibility of a person to be nominated for or to hold office as a member of the Board of Education, the Committee decided to reword that portion of the section to make it conform to the Committee's recommendation for revision of Section 701 relating to the eligibility of Mayor and Councilmen to hold office. A draft of this recommendation is attached to this report.

Other than the recommended changes outlined above, the Committee feels further changes to the present Charter are not needed. It is the feeling of the Committee that Modesto's Charter is a clear and concise document, and that its simplicity makes it one of the most workable Charters in the State of California. In fact, many consider Modesto's Charter to be a model Charter.

This report and recommendations have been approved by all members of the Charter Review Committee. In addition, some members of the Committee have

expressed a desire to communicate to the Council their individual comments about some of the items reviewed by the Committee. Individual comments have been included with this report.

The members of the Committee wish to thank the Council for the opportunity of serving on the Committee and reviewing the Charter. All of us have learned more about how our city government operates and with the changes we have recommended we feel that Modesto will have a vital and relevant Charter to meet the challenges of the future.

Respectfully submitted,

CHARTER REVIEW COMMITTEE

By

  
DON D. HAMMOND, Chairman

PROPOSED AMENDMENT TO SECTION 703 OF THE CHARTER

Section 703. Compensation. ~~The Mayor and councilmen shall receive no compensation for their service as such except to the extent heretofore or hereafter approved by the electorate, but the Mayor and members of the Council shall receive reimbursement on order of the Council for Council authorized traveling and other expenses when on official duty.~~

The Mayor and councilmen shall each receive Twenty-five and no/100ths (\$25.00) Dollars per meeting for each Council meeting attended not to exceed One Hundred and no/100ths (\$100.00) Dollars per month. The Mayor and councilmen shall also receive reimbursement for expenses incurred while performing official duties of their office.

April 29, 1970

PROPOSED NEW SECTION 1604 TO BE ADDED TO THE CHARTER

Section 1604. Review of Charter. The Council shall cause this Charter to be reviewed at least every ten (10) years commencing with the year 1980.

April 29, 1970

PROPOSED AMENDMENT TO SECTION 701 OF THE CHARTER

Section 701. Eligibility. No person shall be eligible to be nominated for or to hold office as a member of the Council or as Mayor unless he is and shall have been for at least three consecutive years immediately preceding his election or appointment a resident and registered elector of the City of Modesto or of territory annexed thereto.

April 29, 1970

PROPOSED AMENDMENT TO SUBSECTION (k) OF SECTION 801 OF THE  
CHARTER  
(City Manager)

Section 801. Powers and Duties.

(k) Make and execute contracts on behalf of the City, involving budgeted or appropriated expenditures of ~~\$2,500.00~~ \$3,500.00, or less.

April 29, 1970

PROPOSED AMENDMENT TO SECTION 1500 OF THE CHARTER

Section 1500. Board of Education. The control, management and administration of the public schools of the City of Modesto, and the territory that is now or may hereafter be annexed thereto for school purposes, in accordance with the Constitution and general laws of the State of California, are hereby vested in a Board of Education. In all matters not specifically provided for in this Article, the Board shall be governed by the provisions of the general law relating to such matters and shall be vested with all the powers and charged with all the duties provided by the laws of the State for city boards of education. The Board of Education shall be the governing body of the Modesto City School District of Stanislaus County and the Modesto High School District of Stanislaus County, ~~and the Modesto Junior College District of Stanislaus County.~~ The Board of Education shall consist of five (5) members who shall serve without compensation. The members of the Board of Education shall be elected at large from the territory within the boundaries of the school district or districts which are under the jurisdiction of the Board. The members of the Board of Education shall hold office for a period of four (4) years from and after the first Tuesday following their election and continuing until their successors are elected and have qualified. No person shall be eligible to be nominated for or to hold office as a member of the Board of Education unless he is and shall have been for at least three (3) consecutive years immediately preceding his election or appointment a resident and registered elector of the school district or districts which are under the jurisdiction of the Board of Education.

If a vacancy shall occur on the Board of Education, the Board shall forthwith appoint a person to fill such vacancy. Said

appointee shall hold office until his successor is duly elected at the next general municipal election and has qualified. The members of the Board of Education shall be subject to recall as provided in this Charter.

All territory included within the limits of any school district or districts which are under the jurisdiction of the Board of Education, but not within the City limits, shall be deemed a part of the City for the purpose of holding municipal elections and shall constitute one or more separate election precincts, and the qualified electors therein shall vote only for members of the Board of Education and on questions submitted to a vote of the people at special or general elections pertaining to school matters.

The members of the Board of Education in office at the time this Charter takes effect shall continue in office until the expiration of their terms. Their successors shall be elected for a term of four (4) years at the general municipal election to be held during the year each of said respective terms expires, it being the intention of this section that the terms of the five (5) members shall be staggered, three (3) members being elected at the General Municipal Election to be held in 1963, and two (2) members being elected at the General Municipal Election to be held in 1965, and staggered accordingly successively thereafter at each General Municipal Election.

April 29, 1970

May 6, 1970

Mayor Davies and Members of the Council:

One of the items considered and rejected by the Charter Review Committee was a proposal to change the present method of filling Council vacancies. Although the Committee voted 12-1 to retain the present system, I strongly urge you to submit an amendment to Section 702 of the Charter to the voters which, if approved, would allow them to fill vacancies by special elections rather than by Council appointment.

The present method, set forth in the original Charter in 1951, provides that, in case of a vacancy "... in the office of Mayor or Councilmen, the Council shall ... appoint a person to fill such vacancy." I believe this should be changed because a dangerous potential for manipulation exists. It is all too easy for a sub rosa arrangement to be made wherein a Councilman resigns a few months prior to the expiration of his term, then a Council majority appoints someone sympathetic to the prevailing philosophy of the Council. A preponderance of evidence demonstrates that an incumbent Councilman, even one with only a few months experience, has a heavy edge in an election merely because he holds the office.

The Committee majority argued for retaining the present system on the grounds that 1) experience has shown that there has been no collusion of the nature referred to above, 2) that special elections are too costly, and 3) that taking the power of appointment from the Council indicates a lack of confidence on the part of the people in the very men they elected in the first place.

Let us examine the first argument. Since the inception of the Charter in 1951, twenty-seven (27) Councilmen and Mayors have served. Nine (9) were appointed to the Council. In other words, in fully one-third of the cases, there was the potential, the opportunity for collusion in the vacancy procedure. Even if one concedes that collusion had not played a role in past situations (and there are those who do not concede this), there is too great an opportunity for manipulation built into the present system. We are a government of laws, not men. This is a basic underpinning of our philosophy of government which was recognized by the Founding Fathers when they built all those safeguards against the temptations of power into the Constitution. To say that the temptation inherent in the present vacancy procedure has never been abused is irrelevant and specious. The potential for corruption is there, and it should be removed.

The argument that special elections are expensive is, of course, true. It would seem, however, that the opportunity for the people to maintain a more direct voice in government should weigh more heavily than the consideration of cost. Further, if Councilmen knew that their resignation would cost the citizens \$10,000.00 for a special election, they might be more inclined to commit themselves to a full term of office when they are elected.

As to the third argument, potential embarrassment of present Councilmen by removing their vacancy appointment power should not even be a consideration. Obviously such a move would not be directed against any individuals and would not constitute lack of confidence any more than the checks and balances the President, the Congress, and the Supreme Court exercise on each other can be construed as a lack of confidence. It is merely prudence.

I should like to see a provision for a special election when a vacancy occurs more than

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four (or six) months prior to the expiration of the term.

In any case, gentlemen, I again urge your serious consideration of the submission to the voters of a Charter amendment embodying such a principle.

Respectfully submitted,

*John C. Whitaker*

John C. Whitaker  
Member of the Charter Revision Committee

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