

ELECTING CITY TREASURERS AND CLERKS: WISE OR OTHERWISE?

SUMMARY

The Grand Jury investigated the value and appropriateness of electing (vs. appointing) city clerks and treasurers in general law cities in San Luis Obispo County.

We determined that Atascadero has been lax in adhering to state government code requirements and that their elected treasurer shows little interest in the financial oversight responsibilities that are part of his job. The elected treasurer in Paso Robles is fully qualified and attentive to the discharge of his duties. In Arroyo Grande, the elected treasurer is a clerk who simply deputizes her boss in the city manager's office to actually do the job. We find this arrangement presents potential problems.

In all three cities the elected city clerks are regular full-time city employees. They either perform their legally defined tasks themselves or deputize another city employee to do so on their behalf.

In the three cities the elected clerks and treasurers are paid stipends ranging from \$5 to \$600 per month. In addition they are entitled to health care benefits that can be substantial. If, however, the elected clerk or treasurer is also a full-time city employee, those health care benefits are already covered.

Convincing the electorate of the three cities to make these jobs appointive might, if appropriate safeguards were established at the same time, improve efficiency and in the case of city treasurers clarify oversight responsibilities.

PROCEDURE

- Elected city treasurers and clerks were interviewed, as were two appointed city treasurers. State laws governing the establishment and duties for those positions were reviewed.
- City ordinances prescribing the pay and duties of those positions were studied.
- Investment policies and financial holdings of the three cities as well as other cities were reviewed.
- Background and data related to those posts were collected from the League of California Cities and statewide associations for city clerks and treasurers.

NARRATIVE

Candidates for the offices of city treasurer and city clerk often run for office unopposed. All three cities with elected treasurers and clerks have benefited by having city staff members who live within the city boundaries run and win those offices. Where that occurs, the system tends to function well and the cities avoid paying health benefits for elected office holders.¹ This strategy

¹ The California Municipal Law Handbook states: “Benefits. A city may provide health and welfare benefits, such as medical, dental and life insurance, to members of its city council.” Cal. Gov’t Code §§ 53200 - 53210. Any amounts paid by a city for retirement, health and welfare, and federal social security benefits are not subject to the salary limits in the Government Code “provided the same benefits are available and paid by the city for its employees.” Cal. Gov’t Code § 36516(e); see 83 Cal. Op. Att’ Gen. 124 (2000); 89 Cal. Op. Att’y Gen. 107 (2006) (addressing cash in-lieu payments for waived benefits).

also allows the cities to comply with a state law that requires elected officials to live within the city. City employees who may be deputized to actually perform some or all of the treasurer or city clerk functions are not required to live in the city.

City treasurers and clerks are elected in more than a third of California cities. The League of California Cities, in its latest available tracking, counted 146 cities with elected city clerks and 174 with elected treasurers. There are 368 general law cities governed by state codes requiring them to have either elected or appointed city clerks and treasurers. A limited number of incorporated cities in the state, including San Luis Obispo, operate under a voter-approved charter that determines whether these positions are filled by election or appointment.

City clerks maintain city records and make them available to the public. They perform under public scrutiny. Many of the clerks' duties are prescribed by laws governing open meetings, public records and election procedures.

A city treasurer's functions are less obvious to the general public. Public disclosure of financial reports varies from city to city. Current monthly reports of receipts, disbursements and fund balances are often unavailable on city web sites though some of the cities in this report may be changing their practice in that. Treasurers are required by statute to prepare these reports and file them with the city council. The investment policies that govern a treasurer's action are not always kept up to date or posted on the web. And a city's annual financial report that is to be prepared for the state controller and published for the public's benefit within 120 days of the end of the fiscal year is often difficult to find. A full, audited statement of the city's financial position often takes six months or more to produce and may, or may not, be made available to the public on the city's web site.

In addition, California Government Code section 36517 provides that the city clerk and the city treasurer shall receive, at stated times, a "compensation fixed by ordinance or resolution." Therefore, it is up to the city council to set the compensation for the clerk and treasurer.

The specific duties of a city treasurer as established in state law include -- in addition to complying with all laws governing the deposit and securing of public funds -- issuing only those checks signed by legally designated persons, making a monthly report to the city clerk that accounts for all receipts, disbursements and fund balances, and filing a copy of that report with the city council. The treasurer may also collect taxes prescribed by ordinance.

Significantly, state law allows an elected treasurer to deputize a city employee to perform the treasurer's duties. When a city employee runs for these offices, that candidate often runs unopposed. When a city employee wins the job, this arrangement can give a city manager discretionary powers over the elected official -- whether those powers are exercised or not. While electing a city staff member as clerk or treasurer may save the city money on health benefits, it also creates the questionable situation in which the elected official is at once an employee responsible to a city manager or other executive and an elected officer responsible to the electorate at the ballot box. Under these circumstances potential conflicts of interest are inherent.

There are reasons to be especially concerned about the practice of electing city treasurers. Any citizen who is a resident of the city can run for the office, without possessing any particular qualifications. If a candidate with an agenda markedly at odds with the city council and city manager --one with little commitment to professional investing, for example -- were to win, many millions of city dollars could be at risk or, alternatively, tied up in a dispute over power. State law gives the treasurer supervisory and monitoring powers over the city's finances.

In all three cities voters have been asked to make the clerks and treasurers appointed rather than elected officials and have turned that request down, presumably so the voters would have a more direct say in city management. But ironically, when these folks are elected but concurrently serve as city employees, it could be difficult for them to function as independent public watchdogs. In Arroyo Grande, the elected treasurer appoints her boss to do the job to which she (the employee) was elected.

Following is a description of the various ways elected treasurers and city clerks function in San Luis Obispo County:

Arroyo Grande

The Arroyo Grande treasurer performs none of the functions of the job. She had served as an accounting clerk for two years when the city manager requested she run for city treasurer in 2008 because the city's director of finance could not run. She did not live in the city. The accounting clerk agreed to stand for that office, which pays \$5 a month. No one filed against her. In Arroyo Grande that year, no general election was held for any of the city offices because only one person filed for each position up for election: mayor and city council member, city clerk, and city treasurer. Given that circumstance, state law specifies that the city council can appoint all candidates to office without holding an election.

The Arroyo Grande treasurer, who remains a payroll clerk earning in the range of \$40,000 - \$48,000 a year, immediately appointed the city's director of financial services as deputy city treasurer. She (the payroll clerk) received little or no briefing about her on-going responsibilities as city treasurer. The finance director performs all of the duties of the treasurer and oversees the staff that helps with those duties which generally require important technical skills and knowledge. This is in accordance with the city's detailed investment policy which is reviewed annually by the city council. Virtually all of the city's ongoing funds -- approximately \$18 million which may go up or down as the city's bills come due -- are invested in the state-operated Local Agency Investment Fund which currently pays about one percent (1%) in annual interest and allows the city to move money in or out of the fund on a daily basis. The city investment policy states that "to protect against fraud or embezzlement or losses caused by collapse of an individual securities dealer, all securities owned by the city shall be held in safekeeping by a third party bank trust department."

The current city clerk was hired by the city in 1999 to serve as deputy city clerk, ran unopposed for the post in 2004 and, as the only candidate, was appointed city clerk in 2008. As a city employee she is paid about \$85,000 a year and holds the title of director of legislative and

information services. Her staff helps her perform all of the state prescribed functions of city clerk.

By city ordinance, an elected treasurer who was not an employee of the city would be paid only \$5 a month, but would also receive city paid health benefits, which are valued at about \$12,000 a year. An elected city clerk, who was not a city employee, would be paid only \$25 a month and would receive the same health benefits. Today, the city saves the cost of those benefits because the positions are currently held by persons who already receive health benefits as employees.

Both office holders now intend to run for re-election in 2012.

Atascadero

The elected city treasurer in Atascadero is an independent office holder. He runs his own tax and financial planning business and signs off on financial reports prepared by the city staff. The reports are supposed to be prepared monthly, but that doesn't always occur. The last of those reports that could be summoned from the city's web site is from March 2008. An unsigned copy of such a report for September 2009 was provided to the Grand Jury.

The Atascadero City Council's approved investment policy dates back to 2006. It calls for the oversight of investments to be conducted by the city manager, the director of administrative services and the treasurer. The city maintains a safekeeping trust account for paperwork and processing investments. All three of the officials with oversight duties can access the money in that account.

Atascadero's elected treasurer has not deputized any city staff members to perform the functions required of him by law. The elected treasurer invests city funds in certificates of deposit. He is paid \$200 a month plus health benefits which are valued at about \$8,000 a year. The treasurer was first elected to the post in 2002 and re-elected in 2006, running unopposed both times. He will be up for election again in 2010 and is not expected to run for re-election. He initially ran for the job to help assure that no candidate who might interfere with city operations was elected.

Atascadero's elected treasurer was managing investments of about \$9 million in certificates of deposit, \$924,000 in government securities and \$25.8 million in Local Agency Investment Funds in September 2009, according to a report prepared by the city finance department. The director of administrative services, although not deputized, oversees the rest of the city's funds, most of which are invested in the state's Local Agency Investment Fund. The remainder of the city's \$37.2 million was held in cash accounts, according to the monthly report provided to the Grand Jury.

Neither the city council nor the city manager meet every three months with the treasurer as the council's investment policy prescribes. Nor does the treasurer attend city council meetings. When first elected, the treasurer attended some training conducted by a statewide association on municipal finance, but has not recently participated in any such session. He is not currently conversant with state laws prescribing appropriate city investments though he is aware that most of the city's money is invested in the respected Local Agency Investment Fund.

The Atascadero City Clerk operated a private secretarial service when she was appointed to the city clerk position in November 1996. She then was elected without opposition in 1998, 2002 and 2006. She plans to run for re-election in 2010. She was paid \$200 a month for performing the clerk's ceremonial duties when first elected, and a staff member in the city manager's office handled most of the paperwork. But that arrangement soon changed, and she was hired to fill a full-time city staff position while continuing to perform the city clerk functions. Her staff title is administrative assistant to the city manager. She is now paid more than \$78,000 a year for her work, which includes handling the job of city clerk. She continues to receive a \$200 monthly stipend for being elected city clerk.

Paso Robles

The city of Paso Robles has a veteran investment officer serving as its elected city treasurer. He was first elected in 1988 and served in that capacity while on the city staff as director of administrative services. He retired from his city job in 2007 but continues to serve as the elected

treasurer. He was most recently re-elected in 2008. As a city staffer he received no pay or extra benefits as treasurer but, under a 1998 voter-approved ordinance, as an independent city treasurer he is paid the same \$600 a month received by city council members along with health benefits worth about \$9,600 a year.

The Paso Robles treasurer actively manages a portfolio that had a market value of just over \$67 million at the end of August 2009. At that time, some 38 percent, or about \$25.6 million, was invested in the Local Agency Investment Fund. Another 43.6 percent (about \$29.2 million) was in federal agency coupon securities, and 13.2 percent (about \$8.8 million) of the portfolio was in government housing bonds. Bank certificates of deposit were 2.7 percent (about \$1.8 million) of the portfolio, and smaller categories included medium term notes and miscellaneous coupon securities. The city-council-adopted investment policy specifies arrangements for “safekeeping institution” but allows some accounts to be held by the city alone.

The treasurer currently plans to seek re-election in 2012.

Paso Robles’ elected city clerk is paid \$120,000 a year for his staff position as the city’s maintenance services superintendent in charge of streets, city buildings and the city vehicle fleet. His pay as city clerk is zero and he receives no additional money for health benefits. A clerk who was not a city employee would make \$600 a month and the city would pay for health benefits.

In Paso Robles the elected city clerk retains the rights and duties of the office, but deputizes the assistant city manager and secretaries in the community development and police departments to perform the functions of the office. The deputy city clerk position is vacant and the elected clerk contributes by attending council meetings and paying more attention to the clerk’s tasks.

Other general law cities

In Grover Beach, Morro Bay and Pismo Beach the city treasurers are appointed. The city’s chief financial officer is named to that post and designated to perform the state- required duties.

CONCLUSIONS

By law, elected city treasurers play a limited but important role in the ongoing financial health of general law cities in San Luis Obispo County. In fact, their approaches to the job vary significantly. In Arroyo Grande, the treasurer has delegated her job without knowledge of its responsibilities. In Atascadero, the treasurer's oversight effort is negligible. In Paso Robles an experienced investment officer manages the money with close attention to detail. He may quit in 2012 and the city will be hard pressed to replace him. The three cities could benefit from appointed treasurers. At a minimum, the cities should do a better job of informing the public of city finances and the important oversight role that treasurers are assigned in maintaining the financial health of the municipality. That said, they need to be trained and attentive. There is continued risk of electing treasurers who can win office with a political agenda and no qualifications.

In each of the three cities, the city clerks who are paid employees with other duties, are doing the job or are knowledgeable of its importance. Over the long haul, city clerk positions could be streamlined by making them appointive although there could be concern that public access to documents may be more easily limited when the position is appointive.

FINDINGS

1. Elected city treasurers sometimes lack the technical skills and professional experience to adequately perform the duties of the office.
2. Health benefits alone may be sufficient to attract unqualified persons to run for the job, leaving the work to city staff and costing the cities health benefits for persons performing no useful function.
3. Efforts to convince voters to approve making the job appointive have failed in all three cities.

4. The cities have found different ways to deal with these challenges. One approach is to arrange for a city employee to be elected treasurer and have that employee designate the finance director to do the job. But that approach can have inherent conflicts of interest.
5. Communication is minimal between the Atascadero treasurer and the other city officials who have financial oversight responsibilities. .
6. Atascadero officials failed to complete and provide the council with the state-required monthly financial reports in a timely manner for the period of April 2008 through November 2009.
7. The elected Arroyo Grande treasurer has received very minimal training about the responsibilities of the position.
8. Elected city clerks in the three cities are all staff members and generally perform the jobs according to the requirements of state law.
9. Recognizing that the offices of treasurer and city clerk generally require technical skills and knowledge, Arroyo Grande's city management is recommending that provisions to allow these posts to become appointed positions again be placed before the voters.

RECOMMENDATIONS

1. Given state law, city councils should make sure that their investment policies are as air tight as possible and assure that those policies are carefully and continually followed to eliminate the potential for an elected treasurer to misuse his or her powers. (Findings 1, 2 and 5)
2. City councils and city managers should require that their functioning treasurers and city clerks, whether elected, appointed or deputized, provide all reports required of those offices at the time designated in state law. (Finding 6)
3. Financial reports, and backup documents recording changes in investments, should be carefully scrutinized by a council member on a monthly basis. (Findings 1, 2, 5 and 6)
4. City councils in Arroyo Grande, Atascadero and Paso Robles should consider trying again to convince the electorate to make at least the position of treasurer appointive, while educating the electorate about qualifications needed in a treasurer and committing

the city to require appointed treasurers to possess those qualifications. (Findings 1, 2,3,4 and 5)

5. All general law cities in the county should post the state-required monthly treasurer's report and annual financial statement on the city's web site in a location easy to find. (Finding 6)
6. Arroyo Grande should, at a minimum, send its elected treasurer to a training session where she can learn about the responsibilities she is delegating.

REQUIRED RESPONSES

The Arroyo Grande City Council is required to respond to Recommendations 1, 2, 3, 4, 5 and 6. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **July 29, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The Atascadero City Council is required to respond to Recommendations 1, 2, 3, 4 and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **July 29, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The Paso Robles City Council is required to respond to Recommendations 1, 2, 3, 4 and 5. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **July 29, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The mailing addresses for delivery are:

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