

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF SEPTEMBER 26, 2007

REGULAR MEETING

TO: Ted Long, Chairman, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #8: **CONSIDERATION AND ADOPTION OF A COMMISSION
POLICY ON ALTERNATE COMMISSIONERS**

RECOMMENDATION

Staff recommends that the Commission retain the current policies on Alternate Commissioners with a slight modification to Policies and Guidelines Section 1.3.2.

REASON FOR RECOMMENDED ACTION

The current Policies and Guidelines provide sufficient coverage and direction on the roles and responsibilities of Alternate Commissioners. The recommended modification is minor in general and better reflects the Commission's intent under the current legal environment.

BACKGROUND

At the August 22, 2007 meeting, Commissioner Sweeney requested that this item be placed on the agenda for discussion and consideration. He was concerned that the Commission had little or no policies in place regarding the roles and responsibilities of Alternate Commissioners. Specifically, he requested that staff advise the Commission on the legal implications for the following areas:

- Should Alternates receive stipends?
- Can Alternates sit on the dais along with the Regular members of the Commission?
- Can Alternates attend closed sessions?

The Commission directed staff to research the item and return with recommendations on strengthening the Policies and Guidelines (P&G), if necessary. This report will address the current P&G and the requirements under Cortese-Knox-Hertzberg or any other applicable State Law.

Background: Alternate Commissioners

The membership of this Commission is two city representatives, two county representatives, a representative of the public at large and two special district representatives. An Alternate for each category is also required per State Law [Government Code §§56325(b), (a), (d) and (c), respectively].

Should Alternates Receive Stipends?

The last paragraph in Government Code §56334 addresses compensation for Commission members. It reads, in part:

Commission members and Alternates shall be reimbursed for the actual amount of their reasonable and necessary expenses incurred in attending meetings and in performing the duties of their office. The commission may authorize payment of a per diem to commission members and Alternates for each day while they are in attendance at meetings of the commission.

Cortese-Knox-Hertzberg allows each LAFCO to adopt local policies that further define its responsibilities so long as those guidelines or procedures are not in conflict with State or case laws. To that end, the Commission adopted the following policy regarding Commission reimbursement:

- 1.4.1 With the exception of County Board of Supervisors representatives, Commission members and Alternates receive a meeting stipend as set by the Commission and are reimbursed for reasonable and necessary expenses incurred in performing the duties of their office

The current methods of reimbursement, a stipend of \$50 per meeting and mileage, are not specified in the P&G. Past practice has been to update the mileage rates annually at IRS rates; on the other hand, the stipend was last increased in 1999 (please refer to Attachments A and B). While the Commission has the discretion to increase or decrease this reimbursement or allow for County representatives to be eligible for reimbursement, under the Law it does not appear that the Commission has the authority to eliminate it completely. Consequently, the practice of Alternates receiving stipends appears to be grounded. That does not prevent a Commissioner from choosing not to receive the stipend or mileage if he or she wishes to do so, however.

Can Alternates sit on the dais along with the Regular members of the Commission?

Other than the provision that Alternates may serve and vote on behalf of the respective Regular members who are absent or disqualified, State Law is silent on what role an Alternate may play when the Regular member is present. Some Commissions discourage or do not allow the Alternate's participation unless it is an item of interest to the Alternate or unless he or she is needed to fill in for the Regular member.

Other LAFCOs are similar to this one in that they encourage the Alternates' participation under the possibility that Alternates may need to "step into the role" of a voting member. When that happens, the reasoning is that the Alternate should have as much information as the Regular in order to make an informed decision. This Commission has adopted the following policies governing Alternates:

1.3.2 Alternate Commissioners: Alternate Commissioners are encouraged to take an active role in El Dorado LAFCO business including discussions and deliberations on project proposals, CALAFCO legislative activities and training workshops, interagency coordination and communication, and participation in policy development and other working groups.

Alternate members may vote in place of the regular member who is absent or who disqualifies himself or herself from participating in an action (§56325). However, Alternate Commissioners do not routinely participate in closed sessions (Attorney General Opinion 98-1011; approved March 4, 1999). The Commission, by a motion, may invite the participation of alternates as guests in closed sessions.

As can be seen, the “active role” part on the first paragraph has traditionally included Alternates being part of ad hoc committees, participating in discussions during meetings and seating the Alternates in the dais. The seating arrangement dates back to the mid 1990s, around the time the LAFCO meetings switched from the daytime to the evening. According to former Commissioner Al Manard, there was no impetus for inviting the Alternates to sit on the dais, but the logic behind the decision was that of the “active role.” In the past, there have been concerns that Alternates sitting and participating among Regular members would confuse the public on who are the voting members.

The issue was last visited in March 2003, when the Commission asked staff at the time to research other arrangements (please refer to Attachments C and D). Of the items the Commission directed staff to pursue, only the use of the yellow “Voting” placards appears to have been implemented. No seating arrangement was created and adhered to and the hearings continue to be held in Building C. It is unknown whether staff contacted the Clerk to the Board of Supervisors in 2003-2004 regarding the use of the Supervisors’ Chambers subsequent to the agency’s move out of the County Complex. In late August staff verified with the Board Clerk that the Chambers is available for the dates and times of the regular Commission meetings.

The Commission can direct staff to create a seating arrangement or schedule the meetings in the Supervisors’ Chambers; however, staff does not recommend altering the P&G.

Can Alternates attend closed sessions?

Cortese-Knox-Hertzberg is silent on this question. In 1999, the Attorney General (AG) issued an opinion on the question of Alternates attending closed sessions (please refer to Attachment E). In said opinion, the AG wrote that LAFCO Alternates may not attend closed session. While this opinion is not the same as statute and does not carry the same legal weight, it is the closest indicator LAFCO has on the matter. In addition, LAFCO would have the burden of proving its case for circumventing the opinion if it were to be challenged in court.

Prior to the opinion, it appears that Alternates were welcomed to attend closed sessions. Since this Commission encouraged the Alternates’ participation in other matters, under the same “active role” reasoning the Alternates were asked to participate in closed sessions. As noted in the second paragraph of Policy 1.3.2 above, the Commission appears to have struck a balance with the prior practice and the AG

opinion. Currently, the policy above indicates that the Alternates may attend closed sessions as guests if the Regular members believe there is a compelling reason for them to do so. This allows the Commission to exercise maximum discretion, accepting that under certain circumstances the matter may be too sensitive for Alternates to attend the closed sessions. In most cases staff and Counsel may be in the position to advise the Commission when participation of the Alternates would be needed. Staff recommends the following language to reflect the Commission's intent better:

Alternate members may vote in place of the regular member who is absent or who disqualifies himself or herself from participating in an action (§56325). However, Alternate Commissioners, **when not acting in the absence of a regular member**, do not routinely **generally** participate in closed sessions (~~Attorney General Opinion 98-1011; approved March 4, 1999~~). The Commission, **under the advice of the Executive Officer and Counsel**, **may** ~~by a motion,~~ may invite the participation of **Alternates** ~~alternates as guests~~ in closed sessions **on a case-by-case basis**.