

SC council may extend basis for disqualification

SANTA CRUZ — In the past, city councilmembers have only been able to disqualify themselves from voting on an issue by being absent, or in a position where they vote would make them some money.

A city attorney's opinion issued Nov. 12 may broaden the base for "disqualification" which the council has lived with over the years.

The issue came up when Councilman John Mahaney objected to having to vote on Proposition 11, the bottle and can deposit initiative. At that time, he said expressing his opinion took away his privilege of a secret ballot.

On Sept. 14 when the vote was taken, Mahaney asked City Attorney Rod Atchison if the vote was mandatory.

Atchison explained that under the city charter councilmembers must vote on all issues unless they are "disqualified."

In the past that has meant a disqualification because of some possible financial gain that a vote could bring.

However, Atchison said it was possible the vote on a state proposition would allow an abstention on the basis the deposit initiative was beyond the council's powers to control.

Both Mahaney and Joseph Ghio told him, "That's the first time you've said that in nine years."

In an opinion from Assistant City Attorney Neal Anderson that will go to the council Tuesday afternoon, the council is told that a member can be disqualified if the issue is "ultra vires."

That means the issue is beyond the council's power to act.

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However, since council positions on state and federal actions are understood to be advisory, they may not be considered to be "ultra vires" since there is no law to stop the council from expressing its collective opinion by voting.

Anderson also said there's two other conditions that can allow a councilmember to abstain.

Those are when a hearing is needed prior to the vote and when the councilmember can show, or be shown to have, personal bias.

One instance would be where the councilmember has a family member on a lower commission. It means that a councilwoman should not vote on issues that her planning commissioner husband has voted on.

Also, if a councilmember makes an accusation against someone, then the councilmember should not vote on issues relating to that accusation.

It can mean that a councilmember bringing an appeal to the board cannot vote on the appeal.

Ghio asked that he not have to vote when he challenged the construction of an amphitheater at Bay View school, a campus that abuts his property.

Anderson says the key element in personal bias is the public's perception.

He said a councilmember should be allowed to abstain if the "personal bias is extreme enough to undermine public confidence."

That statement may give councilmembers a great deal of latitude in future voting.