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SPECIAL ELECTION CONFLICT HEATS UP NEW OPINION: VOTE CAN WAIT

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By Tony Bizjak Bee Staff Writer

--The debate over whether the city must hold a special election for a short-term mayor heightened Monday, the day before an expected City Council decision on the issue. Former U.S. Attorney **Charles Stevens**, now in private practice, issued an opinion -- at the request of Councilman Dave Jones -- that disagrees with the city attorney's position.

City Attorney Sam Jackson concluded last week that, based on his reading of the city charter, the city must hold a special election to choose an interim successor to fill the remainder of the late Joe Serna Jr.'s mayoral term.

Jackson is expected to make his recommendation to the City Council at its afternoon meeting today. Jones, in turn, said he plans to present Stevens' research, which concludes the council must appoint a caretaker mayor until a new four-year mayor takes office next November.

Moreover, Jones said he plans to present a second document, a resolution from a former city attorney, Joe Coomes, laying out the legal argument for the City Council to appoint an interim mayor, rather than hold a special election.

Coomes, however, said on Monday that he is not offering his opinion, just responding to Jones' request for help in framing his arguments. "It's the council's call," Coomes said. "If the council wants to make the decision this way, there is a basis for interpreting the city charter this way. I am not criticizing the city attorney's opinion. I am not commenting on it."

Serna's term officially expires on the last Tuesday of November, 2000. So far, six candidates -- four of them council members -- have announced they will run for the succeeding four-year term. The candidates will vie in a March primary; and if no one wins more than 50 percent of the vote, the two top vote-getters will face off in November.

The debate over how to fill the post in the meantime began with Serna's death on Nov. 7.

The city charter requires the council to appoint an interim mayor if the mayor's office is vacated "within" one year of the next general election. Otherwise, the charter calls for a special election.

The next general election is scheduled for Nov. 7, 2000.

Notably, both sides have cited some of the same case law, but have come up with different readings. Ultimately, the issue may have to be decided by a court, said Jimmie Yee, who as vice mayor has been filling in for Serna.

Nathan Barankin, a spokesman for state Attorney General Bill Lockyer, added, "The first caveat is everything is litigable. This is basically a dispute that hinges on the wording of a local ordinance, not state law."

His office does sometimes offer opinions for local governments, but has not been asked by the city to give its opinion on the matter, Barankin said Monday.

Councilman Robbie Waters, who is running for mayor, questioned Jones' tactic of bringing in outside attorneys.

"I don't know why Mr. Jones would go out for a second opinion," Waters said. "We pay for a city attorney. He is our lawyer. I plan to support our attorney and vote, 'yes' on his recommendation."

The pending decision could have significant political ramifications for the mayoral candidates. The winner of a special election, likely to be held in March, could then run for the permanent four-year seat as the incumbent.

There has been much speculation that Waters, the only Republican so far in the nonpartisan race, would have the upper hand in a special election, since the five Democrats opposing him would split the Democratic vote.

Jones, a Democrat, said his move was not political, and that he chose Coomes and Stevens because they are "excellent lawyers in the community whose opinion would be viewed as objective and neutral."

"I'm doing this independent of any of the positions that candidates for mayor might have," he said. "This is a clear legal issue, not a policy or political issue."

At the center of the dispute is the charter's use of the word "within." Stevens says it means 365 days or less; City Attorney Jackson concludes it means 364 days or less.

The attorneys agree that the leap year day next year should not be included in the count.

Jackson could not be reached Monday about the two outside opinions. When he issued his report on Friday, Jackson acknowledged that the law is open to interpretation and that the council is free to reject his opinion.

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