

## James Dear

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**From:** Sunny Soltani <ssoltani@awattorneys.com>  
**Sent:** Monday, June 15, 2015 3:05 AM  
**To:** James Dear  
**Cc:** 'bhertz@campaignlawyers.com'  
**Subject:** Designation of Charles Davis  
  
**Importance:** High

Dear Jim-

Pursuant to your request, I'm sending this email in anticipation of tomorrow (well, really this morning) and the counting of the ballots. As I have already shared with you, my legal position is that Friday's vote to designate Mr. Charles as the elections official instead of you was not valid because the telephonic participation of the Mayor Pro Tem was not properly noticed pursuant to Government Code section 54953.(b) which requires the location of the person who is participating telephonically on the agenda.

Government code 36810 provides that "a majority of the council constitutes a quorum for transaction of business." Several AG opinions have then stated that "although [a body] may establish its quorum by bylaw, the Council may not define its quorum as less than a simple majority of the Council's full statutory membership." See, e.g., AG Opinion No. 10-901. Therefore, 3 out of 5 (i.e., the majority of the members of the legislative body) are required to be present for purposes of a quorum for conducting business.

So even though the 2 votes by Councilwomen Holmes and the Mayor would have been sufficient without MPT's participation for the designation to be valid (sine Mr. Davis has agreed to provide the services for free), we did not have 3 members properly present (lack of quorum). Hence, since the meeting where Mr. Davis was designated was not properly noticed as far as MPT's telephonic participation is concerned, Mr. Davis has not been properly designated as the election official. I have also advised the council and the acting city manager in a separate email of my opinion. I will share same with Mr. Davis tomorrow morning.

Thanks,  
Sunny