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| OPINION | : | No. 06-406 |
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| of | : | August 15, 2007 |
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THE HONORABLE CHRISTINE KEHOE, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

Is a community college district required to terminate the employment of a student who becomes a member of the district's governing board?

CONCLUSION

A community college district is not required to terminate the employment of a student who becomes a member of the district's governing board.

ANALYSIS

Governing boards of community college districts must include at least one student member. Education Code section 72023.5¹ provides:

(a) The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, of one or more nonvoting students who are residents of California as determined pursuant to Part 41 (commencing with Section 68000). These students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

The students selected to serve on the governing board, in addition to being residents of California as determined pursuant to Part 41 (commencing with Section 68000), shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district. The term of the student members shall be one year commencing on June 1 of each year.

The nonvoting student members appointed pursuant to this section shall be entitled to mileage allowance to the same extent as regular members, but are not entitled to the compensation prescribed by Section 72425.

A nonvoting student member shall be seated with the members of the governing board and shall be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

The nonvoting student member shall not be included in determining the vote required to carry any measure before the board.

¹ All further section references are to the Education Code.

The nonvoting student member shall not be liable for any acts of the governing board.

(b) Notwithstanding subdivision (a), the student member or members selected to serve on the governing board of a community college district pursuant to subdivision (a) may do any of the following:

(1) Make and second motions at the discretion of the governing board.

(2) Attend closed sessions, other than closed sessions on personnel matters or collective bargaining matters, at the discretion of the governing board.

(3) Receive compensation, at the discretion of the governing board, up to the amount prescribed by Section 72425.

(4) Serve a term of one year commencing on May 15 of each year, at the discretion of the governing board.

(c) It is the intent of the Legislature that any decision or action, including any contract entered into pursuant thereto, upon the motion or second of a motion of a student member, shall be fully legal and enforceable against the district or any party thereto.

(d) The governing board of each community college district that affords the student member or members of the board any of the privileges enumerated in subdivision (b) shall, by May 15 of each year, adopt rules and regulations implementing this section. These rules and regulations shall be effective until May 15 of the following year.

While section 72023.5 governs the qualifications of the *student* members of a community college district's governing board, and specifies the conditions under which they serve, other statutes prescribe the qualifications and conditions of service of the *voting* members of a governing board. In particular, section 72103 states in part:

(a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the community college district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a community college district without further qualifications.

(b)(1) An employee of a community college district may not be sworn into office as an elected or appointed member of that community college district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a community college district and an elected or appointed member of that community college district's governing board prior to January 1, 1992, this subdivision shall apply when he or she is reelected or reappointed, on or after January 1, 1992, as a member of the community college district's governing board. This section does not apply to an individual who is usually employed in an occupation other than teaching and who also is employed part time by the community college district to teach no more than one course per semester or quarter in the subject matter of that individual's occupation.

The question presented for resolution concerns a community college student who has a part-time student job on campus at the time he is elected to the district's governing board. Must his campus employment be terminated, pursuant to the directive of subdivision (b)(1) of section 72103, upon his being "sworn into office"? We conclude that the employment termination requirement of section 72103 has no application to student trustees.

Preliminarily, we note that the Walter Stiern Act (§§ 70900-82548) governs the establishment and operation of community colleges throughout the state. (See 84 Ops.Cal.Atty.Gen. 26 (2001).) The community college system is under the control of the Board of Governors of the California Community Colleges (§§ 70900-70901.5, 71020-71051), whose responsibilities include providing general supervision over community college districts (§ 70901), issuing regulations (§ 70901.5, see Cal. Code Regs., tit. 5, §§ 50001-59509), and appointing a chief executive officer -- the Chancellor of the California Community Colleges -- to perform duties as delegated by the Board of Governors (§ 71090).

Locally, each community college is under the control of a board of trustees of the community college district in which the college is located. (§§ 70900, 70902, 72000-72682.) In administering the colleges within its district, a board of trustees is responsible for adopting regulations, employing staff, and delegating various duties to a chief executive officer and to other employees and committees (§ 70902). The Legislature has created two classes of governing board members: voting members (§72022-72023) and nonvoting student members (§ 72023.5).

In 62 Ops.Cal.Atty.Gen. 126 (1979), we were asked whether the eligibility requirements set forth in section 72103, applicable to the voting members of a governing board, were also applicable to the nonvoting student members of a governing board. We concluded that the requirements and qualifications of section 72103 were inapplicable to the student members. We stated:

Prior to the enactment of section 72023.5 (Stats. 1977, ch. 1184, § 7) section 72103 (formerly § 112, Stats. 1963, ch. 629, § 2, p. 1529, as amended by Stats. 1971, ch. 1748, § 31, p. 3749) clearly pertained exclusively to governing board members elected in accordance with sections 72022 and 72023. It is equally apparent that the Legislature did not intend to require student members selected under the provisions of section 72023.5 to meet all of the qualifications prescribed for governing board members in section 72103. The Legislature expressly set forth in section 72023.5 the eligibility requirements of student members. Specifically, such a member must be a resident of the district and enrolled in a community college of the district. No reference, express or implied, is made to the requirements of section 72103 that the member be 18 years of age, a citizen of the state, a registered voter, and not disqualified by the Constitution or laws of the state from holding a civil office.

Under the maxim “*expressio unius est exclusion alterius*” the enumeration of items within a statute implies the exclusion of other items within the enumerated class. [Citations.] Thus, the express inclusion in section 72023.5 of one of the requirements set forth in section 72103, i.e., residence within the district, implies the exclusion of the remaining requirements. Consequently, while section 72103 expressly includes the requirements that the member be 18 years of age, a citizen of the state, a registered voter, and not disqualified by the Constitution or law of the state from holding a civil office, section 72023.5 impliedly excludes such requirements. In the event of an ostensible conflict between two state statutes, the more specific enactment will control over the more general one. [Citations.] Section 72023.5 pertains specifically to student members and therefore controls over the more general provisions of section 72103. Moreover, if all of the requirements in 72103 were applicable to student members, the requirement in section 72023.5 that a student member be a resident of the district would be rendered meaningless, since that requirement is contained in section 72103. A cardinal rule of statutory construction is that an interpretation rendering some words surplusage is to be avoided. [Citation.] It will be presumed that every word, phrase, and provision of a statute was intended to have some meaning and to perform some useful office. [Citation.]

Finally, the extension to student members of the requirements specified in section 72103 is neither logically nor rationally indicated. Regular members of a governing board must be elected pursuant to section 72022 and 72023 by electors who are themselves required to be citizens of the United States and 18 years of age. [Citation.] Student members are chosen by the students enrolled in the community colleges of the district. (§ 72023.5) The authority and duties of a student member are fundamentally different from those of a regular member. It is sufficient to note that a student member is not authorized to vote at a meeting or to attend executive sessions. (§ 72023.5) Thus, the application of different qualifications is entirely reasonable. It may be additionally noted that the requirement that a member of the governing board be 18 years of age would have a far different effect upon the number of students who would be eligible for student membership than it has on the eligibility of electors in the community at large to be elected to the governing board. We perceive in the statutory scheme and purpose no legislative intent to disqualify such a substantial proportion of the students represented.

(*Id.* at pp. 128-130.) We further pointed out that section 72103's reference to "holding a civil office" had no relevance to a student member's circumstances. We observed:

Under the provisions of section 72023.5 a student member cannot vote, is not included in determining the vote required to carry any measure before the board, may not attend executive sessions of the board, is not compensated, and is not liable for any acts of the governing board. Although a student member is "seated with the members of the governing board" and "recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and discussion of issues," he does not participate in the actual determination of a course of action. It cannot be said, therefore, that a student member exercises a part of the sovereign power of the government. Consequently, a student member does not hold a civil office It may be noted that section 72103 expressly refers to the qualifications prescribed by law for the holding of a civil office, whereas section 72023.5 contains no such reference to such qualifications or to the term "civil office." It is concluded that the student members of community college district governing boards are not required to meet all eligibility requirements set forth in section 72103.

(*Id.* at pp. 130-131.) Although section 72103 has been amended since our 1979 opinion (see Stats. 1995, ch. 432, § 3; Stats. 1991, ch. 1065, § 3), adding in part the employment termination provision in question, we find that the rationale of our prior opinion remains

persuasive today. It is section 72023.5, and not section 72103, that prescribes the qualifications and conditions under which a student may serve on a district's governing board. Unlike a voting member (§ 72103), a student member need not be 18 or older, or a resident of the community college district, or a registered voter. Instead, he or she must simply be a resident of the state and enrolled in at least five semester units at a district college. (§ 72023.5.) The employment termination provision contained in section 72103 does not apply to student members.

Further support for our interpretation of section 72103 may be found in the statute's legislative history. When the employment termination language was proposed in 1991, the committee reports referred to the proposal as a conflict-of-interest provision applicable to voting members of school district and community college district boards. For example, the report by the Assembly Committee on Education on Senate Bill No. 1154 (1991-1992 Reg. Sess.), as amended May 8, 1991, stated:

Purpose. According to the sponsors, California School Boards Association and the Governor's Office of Child Development and Education, this legislation will correct a serious problem for school district governing boards. Currently, a teacher who is employed by the district may also sit on the school district governing board. The employee/school board member must excuse herself or himself from votes where there is a conflict of interest. The sponsors contend that this results in a governing board that is incapable of executing its duties.

The committee reports refer to the qualifications of voting board members; no mention is made of student members or nonvoting members of governing boards. Since student members do not vote, the rationale for establishing the employment termination directive would not apply to them.

Finally, we note that section 72103 itself has an exception for a regular voting member "who is usually employed in an occupation other than teaching and who also is employed part time by the community college district to teach no more than one course per semester or quarter in the subject matter of that individual's occupation." (§ 72103, subd. (b)(2); see 84 Ops.Cal.Atty.Gen. 126, 128-129 (2001).) Our interpretation of section 72103 with respect to student trustees is fully consistent with this statutory exemption for certain district employees whose primary occupations do not involve teaching.

We conclude that a community college district is not required to terminate the employment of a student who becomes a member of the district's governing board.
