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| OPINION | : | No. 11-401 |
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| of | : | July 13, 2012 |
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THE HONORABLE TED GAINES, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. May a term served on a town council that was served prior to the effective date of a local initiative term-limit ordinance be counted against the term limit imposed by that ordinance?

2. If city voters enact an ordinance imposing a two-consecutive-term limit on the Town Council and in the same election elect or re-elect members to the Town Council, where the terms of the newly elected and re-elected members commence shortly before the effective date of the ordinance, may the new term be counted as the first of the two terms subject to the limitation?

CONCLUSIONS

1. A term served on a town council that was served prior to the effective date of a local initiative term-limit ordinance may not be counted against the term limit imposed by that ordinance.

2. If city voters enact an ordinance imposing a two-consecutive-term limit on incumbency on the Town Council and in the same election elect or re-elect members to the Town Council, where the terms of the newly elected and re-elected members commence shortly before the effective date of the term limit ordinance, the new term may be counted as the first of the two terms subject to the limitation, such that an incumbent Town Council member may serve consecutively his or her current term and one more.

Background

We have been provided the following information to assist in our analysis of the questions presented for our consideration. The Town of Loomis is a small general-law city located in Placer County, California. It is governed by a five-member Town Council, each member being elected to a four-year term of office. Because the terms of Town Council members are staggered, elections for Town Council seats are held every two years.

In 2009, a group of local citizens obtained sufficient signatures to place a term-limit measure on the ballot. The measure's sponsors sought to have it placed on the ballot in a special election to be held in June of 2010; however, the Placer County Registrar of Voters determined that it was not a proper matter for the June ballot and the Town Council agreed to place the measure, titled "Measure A," on the November 2010 general election ballot. Measure A posed the following question:

Shall the proposed ordinance entitled "An Initiative of the Loomis Town Citizens Enacting Term Limits" which provides: (1) five council members serve 4-year terms; (2) terms shall be staggered; (3) no member can serve more than two consecutive 4-year terms; (4) a member who has served two terms prior to August 1, 2010 must sit out eight years; and (5) current members can complete their terms, be adopted?

Measure A was passed by a majority of the votes cast in the November election. In the same election, the Loomis voters re-elected two members who had already served more than two terms, and elected one new member to the Town Council. Members' terms of office formally end on the second Tuesday in December of alternate years—a date that coincides with the Town Council's regular December meeting. Newly elected and re-elected members are typically sworn in at the December meeting, as occurred in this case. The Placer County Registrar of Voters submitted the final vote tallies for Measure A and for candidates for membership on the Town Council in December 2010. The Town Council voted to accept the vote at its December 14, 2010, meeting.

Question 1

We are asked whether terms served on a town council prior to the effective date of an ordinance limiting the terms of office of council members may be counted against the ordinance's two-consecutive-term limit.

Government Code section 36502 governs the application of local term-limit measures proposed by initiative. Subdivision (b) provides, in relevant part:

Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council Any proposal to limit the number of terms a member of the city council may serve on the city council . . . *shall apply prospectively only*^[1] and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

We must determine whether Measure A violates the “prospective only” provision of Government Code section 36502. Our task is one of statutory interpretation. When we are called upon to interpret the meaning or coverage of a statute or constitutional

¹ Emphasis added.

provision, our primary task is to determine what the Legislature or electorate intended.² In doing so, we “look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.”³ If there is no ambiguity in the language of the statute, then the plain meaning of the language governs.⁴

We find no ambiguity in the requirement of Government Code section 36502(b) that locally enacted term-limit provisions must apply prospectively. “By definition, a prospective law . . . means a law which has no effect on rights, obligations, acts, transactions, and conditions performed or existing before the statute was adopted.”⁵

The effective date of an ordinance determines when its provisions have the force of law. The effective date of initiative ordinances adopted by city voters is specified in Elections Code section 9217, which provides that an ordinance “shall be considered as adopted upon the date that the vote is declared by the legislative body, and shall go into effect ten days after that date.”⁶

Article XX, section 3 of the state Constitution (Cal. Const. art. XX, § 3) requires members of the Legislature and public officers and employees, among others, to take and subscribe an oath of office before entering upon their duties.⁷ We have previously

² *Freedom Newsps., Inc. v. Orange Co. Employees Ret. Sys.*, 6 Cal. 4th 821, 826 (1993).

³ *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987).

⁴ *People v. Coronado*, 12 Cal. 4th 145, 151 (1995); *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

⁵ *Estate of Messner*, 190 Cal. App. 3d 818, 822 (1987) (citations omitted).

⁶ We received comments from proponents of the measure urging us to interpret Measure A so as to give it legal effect as of the date that the Town Council met to declare the vote, which was December 14, 2010—the same date upon which the new and re-elected members were administered their oaths of office. In light of the express terms of Elections Code section 9217, such an interpretation is not possible.

⁷ “‘Public officer and employee’ includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or

concluded that the taking of the oath of office constitutes the moment at which a person's term of office begins for purposes of term limits.⁸ This is so because "a person elected . . . is not entitled to begin exercising his or her . . . duties until the results of the election [are] certified and the oath of office is taken."⁹

Loomis Town Council members who were elected in the November 2, 2010, election took the oath of office on December 14, 2010. On the same date, the Town Council declared the results of the election. As Elections Code section 9217 provides that a municipal initiative ordinance adopted by the voters does not become effective until ten days after the city's governing body declares the result of an election, Measure A did not become effective until December 24, 2010, ten days after the new and returning Town Council members subscribed their oaths.

The critical question is whether subdivision (4) of Measure A, which provides that "a member who has served two terms prior to August 1, 2010, must sit out eight years," has any legal effect. We conclude that it does not.

"A general law city has only those powers expressly conferred upon it by the Legislature. . . . The powers of [a general law] city are strictly construed, so that any fair, reasonable doubt concerning the exercise of a power is resolved against the corporation."¹⁰ Elections Code section 36502 requires that local term limit ordinances, such as Measure A, be applied prospectively—that is, regardless of their technical provisions, they may only be given legal effect from their effective date forward. Measure A did not become effective until December 24, 2010, roughly five months after its stated cutoff date, and ten days after two re-elected Council members were sworn into office. If the August 1, 2010, cutoff date contained in the measure were to be enforced, it would change the legal effect of past service, and thus deprive current council members of offices for which they were eligible and to which they were re-elected *prior* to the effective date of the measure.

instrumentality of any of the foregoing." Cal. Const. art. XX, § 3.

⁸ See 86 Ops.Cal.Atty.Gen. 43 (2003).

⁹ 86 Ops.Cal.Atty.Gen. at 45.

¹⁰ *Cawdrey v. City of Redondo Beach*, 15 Cal. App. 4th 1212, 1224 n. 8 (1993) (internal quotation marks and citations omitted).

We conclude, therefore, that subdivision (4) of Measure A violates the “prospective only” clause of Government Code section 36502(b) and is therefore void. We conclude further that terms served prior to its effective date cannot be counted against any term limits established by the ordinance.

Question 2

We are asked whether, if city voters enact an ordinance imposing a two-consecutive-term limit on Town Council members and in the same election elect or re-elect members to the Town Council, where the terms of the newly elected and re-elected members commence shortly before the effective date of the ordinance, the new term may be counted as the first of the two consecutive terms subject to the limitation.

We have already concluded that subdivision (4) of Measure A is invalid because it violates the prospective-only requirement for local initiative term-limit measures contained in Elections Code section 36502. The balance of Measure A, however, does not suffer the same infirmity. Measure A’s remaining provisions provide that Town Council members serve four-year terms; that such terms will be staggered; that a member may only serve two consecutive four-year terms; and that current members may complete their terms.

Our examination of the scope and application of the surviving provisions of Measure A is guided largely by the well established principle that “the right to hold public office is a fundamental right of citizenship that can be curtailed only if the law clearly so provides. Any ambiguity in a law affecting that right must be resolved in favor of eligibility to hold office.”¹¹

The question for analysis, then, is whether the two-consecutive-term limitation begins with the term commencing on December 14, 2010, or at the completion of that term. If it is the latter, then members whose terms began on December 14 could potentially serve a total of twelve years before reaching the end of their second consecutive term—four years for the current term, plus eight years for the consecutive terms subject to the two-term limitation. The only alternative interpretation would be to

¹¹ *Woo v. Super. Ct.*, 83 Cal. App. 4th 967, 977 (2000).

start the clock with the current term—which commenced ten days before the term-limit ordinance took effect—after which a member could serve one more full term before reaching the two-term limit.

Measure A does not tell us whether partial terms are to be counted against the two-term limit. As the court observed in *Schweisinger v. Jones*,¹² “‘Term’ has no fixed meaning. [I]t is impossible to formulate any definition which will comprehend all of the uses made of the word. Therefore, it is necessary in each case to interpret ‘term’ so as to effectuate the statutory scheme pertaining to the office under examination.” In applying the rule, the court noted that, “[i]n doing so, we indulge in a presumption that constitutional and legislative provisions were not intended to produce unreasonable results.”¹³

Applying those principles here, we conclude that the voters intended Town Council members to serve—at most—eight years, not twelve, after the effective date of the ordinance before being subject to the two-term limit. We therefore conclude that the term commencing December 14, 2010, should be treated as the first of these terms.¹⁴ Although it is true that the terms of the newly elected or re-elected Town Council members began ten days before Measure A became effective, this period is trivial in comparison to the four years of a full term. Consequently we believe that the most reasonable interpretation of measure A is that it applies to the partial terms (four years minus ten days) that members re-elected in 2010 will have served since the ordinance took effect. Interpreting Measure A as excluding *all* partial terms, no matter how close to four years they come, would lead to unreasonable results. For example, a member could resign shortly before the completion of his or her term, so that the partial term would not

¹² 68 Cal. App. 4th 1320, 1324 (1998) (internal quotes and citations omitted).

¹³ *Schweisinger*, 68 Cal. App. 4th at 1324; *see also Barber v. Blue*, 65 Cal. 2d 185, 187-188 (1966).

¹⁴ We reach this conclusion based on the facts presented here. We do not consider, therefore, a circumstance in which the declaration of the vote (*see* Elec. Code § 10263) or the administration of the oath of office (*see* Elec. Code § 10265) might have been significantly delayed.

count against the limitation, and then stand for election to a new term in the succeeding election—and so on, *ad infinitum*.¹⁵

Our interpretation does not result in a retroactive application of Measure A's term limits. A retroactive law changes the legal effect of past transactions.¹⁶ That is not the case here. By counting *current* terms against the two-term limit, we are giving effect to these terms for what they are: valid terms of office, lawfully held by duly elected public officers.

Accordingly, we conclude that if city voters enact an ordinance imposing a two-consecutive-term limit on incumbency on the Town Council and in the same election elect or re-elect members to the Town Council, where the terms of the newly elected and re-elected members commence shortly before the effective date of the ordinance, the new term may be counted as the first of the two terms subject to the limitation, such that an incumbent Town Council member may serve consecutively his or her current term and one more.

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¹⁵ See generally *Schweisinger*, 68 Cal. App. 4th at 1326-1327 (discussing this hypothetical).

¹⁶ *In re Estrada*, 63 Cal. 2d 740, 746 (1965).