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State of California

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OPINION	:	No. 12-107
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of	:	April 23, 2013
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Attorney General	:	
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TAYLOR S. CAREY	:	
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Proposed relator NAPA POLICE OFFICERS ASSOCIATION (“Napa POA” or “POA”), the exclusive bargaining unit for police officers and sergeants in the Napa Police Department, seeks leave to sue proposed defendant the CITY OF NAPA (“City”) in quo warranto on the following question: Does the City’s creation of a Human Resources Department and the appointment of a Human Resources Director usurp the authority of the office of Personnel Director in violation of the Napa City Charter?

CONCLUSION

The equitable remedies of declaratory and injunctive relief that the Napa POA seeks are not available in a quo warranto action. Accordingly, leave to sue in quo warranto is DENIED. The denial of this application, however, does not preclude the Napa POA from bringing another form of legal action alleging that the City’s actions have infringed upon its interests.

## ANALYSIS

Napa POA alleges that the City of Napa improperly amended its Charter in 2010 to change the organizational structure of its personnel functions and that, as a result, the new Human Resources Director is intruding into and “usurp[ing]” the responsibilities of the long-established Personnel Director. We conclude that this dispute is not one that gives rise to a quo warranto action and, on that basis, deny Napa POA’s application for leave to sue under that legal theory.

The pleadings establish that there is an inter-departmental conflict between two overlapping organs of City government, but they do not establish that there is a dispute over any individual’s claim of right to occupy either Directorship. The dimensions of the disagreement between the parties, and our reasons for concluding that this is not a quo warranto matter, are as follows.

In 1964, section 76.1 was added to the Napa City Charter, creating the Department of Personnel, which consists of a Civil Service Commission and a Personnel Director appointed by the Commission. Section 76.1 prescribes the functions of the Commission, which are subject to the approval of the City Council. The Commission’s tasks include appointing a Personnel Director; making, amending, and repealing rules and regulations for the classified service; providing administrative support to the City Council regarding problems of personnel administration; conducting hearings and appeals for members of the classified service in matters relating to employment; and holding hearings and making recommendations to the City Council regarding the adoption or revision of the position classification plan, allocations of positions, and salaries.<sup>1</sup>

Section 76.1 also prescribes the duties and responsibilities of the Personnel Director. These include acting as custodian of all personnel records; acting as agent for service of all notices, requests for hearings, complaints and other official documents; attending meetings of the Commission; administering provisions of section 76.1 and the rules established under this section<sup>2</sup> that are not specifically reserved to the City Council or the Commission;

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<sup>1</sup> See Napa City Charter § 76.1(B) (1) – (5).

<sup>2</sup> These rules, adopted pursuant to the authority granted by section 76.1(E), are formulated by the Commission subject to the approval of the City Council and administered by the Personnel Director. They establish governing procedures for the personnel program, including:

(1) The preparation, installation, revision and maintenance of a position classification plan and salary schedules covering all positions in the classified service.

preparing rules and rule amendments for the Commission's consideration; and preparing a position classification plan and class specifications, salary schedules or revisions for the Commission's consideration.<sup>3</sup>

In October 2010, the City Council adopted a "summary of principles," which essentially articulated a reorganization of the City's personnel functions. To that end, the Council established a Human Resources (HR) Department managed by an HR Director, who is appointed by the City manager and acts under the authority of the Council.<sup>4</sup> We now consider the claims that Napa POA makes in connection with its application for leave to sue the City in quo warranto.

The Napa POA alleges that the City's establishment of the HR Department and its appointment of an HR Director effect an "unlawful usurpation" of the duties and responsibilities of the long-established Personnel Department and its Director. The proposed complaint seeks, among other things, to enjoin the recently-established HR

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(2) The formulation of minimum standards and qualifications for each class of position, together with the salary to be attached to each position; provided, however, that said minimum standards and qualifications shall not require that all applicants for said classified service be residents of the City.

(3) The public announcement of vacancies and examinations and the acceptance of applications for employment.

(4) The preparation and conduct of examinations and the establishment and use of employment lists containing names of persons eligible for appointment.

(5) The certification and appointment of persons from employment lists to fill vacancies and the making of temporary and emergency appointments.

(6) The evaluation of employees.

(7) The transfer, promotion, demotion and reinstatement of employees in the classified service.

(8) The separation from the service of employees through lay-off, suspension, dismissal and for incapacity to perform required duties.

(9) The standardization of hours of work, attendance and leave regulations, working conditions and the development of employee morale, welfare and training.

(10) The maintenance and use of necessary records and forms.

<sup>3</sup> See Napa City Charter § 76.1(C) (1) – (5).

<sup>4</sup> The reorganization also reenacted the position of Personnel Director with the same powers and duties as prescribed in Charter section 76.1.

Director from exercising any duties reserved by the Charter to the Personnel Director; from certifying employment or promotional lists created under Charter section 76.1(C) (1) – (5); and from administering any rule made pursuant to Charter section 76.1(E) (1) – (10). The POA also asserts that notwithstanding the City Council’s plenary authority over matters of City government,<sup>5</sup> section 76.1 expressly limits the City’s authority over issues of personnel governance and that the establishment of the HR Department and appointment of the HR Director violate section 76.1. The POA further contends that, since its establishment, the new HR Department has systematically intruded upon and usurped the power and authority reserved to the Personnel Director and has, in effect, made that office subordinate to the HR Director, giving as an example the HR Director’s publication of employment eligibility lists that were formerly and properly within the province of the Personnel Director.

The City counters that both state law and the City Charter grant the City Council broad authority to enact rules that are not specifically prohibited by either the charter or state law. It asserts that nothing in the City Charter prohibits the creation of an HR Department, and it disputes the Napa POA’s allegations that the reorganization has made the Personnel Director subordinate to the HR Director.

The parties’ submissions describe a decades-long effort to establish a stable system of personnel administration in the City. When Charter section 76.1 was adopted, it was assumed that with the creation of a Personnel Commission, the establishment of a Personnel Department, and the appointment of a Personnel Director to run it, these issues had finally been put to rest. But while that appears not to be the case, and whatever the conflicts between the parties, the remedy does *not* lie in the proposed quo warranto action under Code of Civil Procedure section 803. That section provides, in part:

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state.

Quo warranto is the form of action by which a person may challenge the right and title to public office of any person claimed to have “usurped” or claimed to be unlawfully holding that office, whether because of a lack of essential qualifications or other reasons, such as holding a second, incompatible office.<sup>6</sup> It provides the exclusive remedy in cases

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<sup>5</sup> Section 5 of the Napa City Charter prescribes in part, “[a]ll the powers of the City, except as otherwise provided in this Charter, are hereby vested in the City Council . . . .”

<sup>6</sup> See e.g. 86 Ops.Cal.Atty.Gen. 205 (2003) (member of county board of supervisors); 86 Ops.Cal.Atty.Gen. 194 (2003) (school district board member); 85 Ops.Cal.Atty.Gen.

where it is available because title to a public office cannot be tried by mandamus, injunction, writ of certiorari, or petition for declaratory relief.<sup>7</sup> Quo warranto may also be invoked to challenge the validity of a charter amendment or of a whole charter, as where it is alleged that the procedure for enacting or amending the charter was improper;<sup>8</sup> however, it may not be employed to pursue remedies for alleged violations of a valid charter.

In considering quo warranto applications, we scrutinize the issues presented to us to ensure that actions trying title to a public office are not brought lightly, but only when they are supported by fact and law, and further the interests of the public.<sup>9</sup> We carefully distinguish those proceedings for which quo warranto is appropriate from those for which it is not.<sup>10</sup> In so doing, we do not attempt to resolve the merits of the underlying controversy. Rather, we evaluate whether the application presents substantial issues of fact or law that warrant judicial resolution *in the context of a quo warranto action*, and whether granting the application will serve the public interest.<sup>11</sup>

Napa POA has alleged that the duties exercised by the HR Department and the HR Director violate the provisions of Charter section 76.1 in that they supplant the authority of the Personnel Department; they do not, however, challenge the City Council's legal authority to establish the HR Department. The facts presented for our consideration do not support a claim of usurpation. We have found usurpation to be the act of unlawfully laying claim to and displacing another from a given public office thereby causing a dispute as to the title of that office,<sup>12</sup> but have not extended the concept to include circumstances where

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239 (2002) (community services district director); 85 Ops.Cal.Atty.Gen. 90 (2002) (city council member); 81 Ops.Cal.Atty.Gen. 304 (1999) (city police chief); 76 Ops.Cal.Atty.Gen. 81 (1993) (water district director).

<sup>7</sup> *Nicolopoulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1225-1226 (2001) (internal quotations and citations omitted).

<sup>8</sup> *See Oakland Municipal Improv. League v. City of Oakland*, 23 Cal. App. 3d 165 (1972); 95 Ops.Cal.Atty.Gen. 50, 55-56 (2012); 95 Ops.Cal.Atty.Gen. 31, 32-33 (2012); 79 Ops.Cal.Atty.Gen. 169 (1993).

<sup>9</sup> *See* 9 Ops.Cal.Atty.Gen. 1, 2 (1947).

<sup>10</sup> 95 Ops.Cal.Atty.Gen. at 54.

<sup>11</sup> *Id.*; 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 90 Ops.Cal.Atty.Gen. 82, 84 (2007); 86 Ops.Cal.Atty.Gen. at 208-209; 12 Ops.Cal.Atty.Gen. 340, 341 (1949).

<sup>12</sup> 72 Ops.Cal.Atty.Gen. 15, 21 (1989). We do not conclude that the two governmental positions in question here necessarily meet the definition of "public office" as a matter of law, i.e., as opposed to a mere position of employment. *See Stout v. Democratic County Central Comm., etc.*, 40 Cal. 2d 91, 94 (1953); 76 Ops.Cal.Atty.Gen. 244, 245-248 (1993).

(as here) an asserted conflict arises between incumbents of two offices because one office shares an overlapping jurisdiction with another. There is no indication that the HR Director lays claim to the position or office of Personnel Director, or that the Personnel Director has been dispossessed of his/her office. Instead, what is described is an inter-departmental conflict arising from competition for jurisdictional supremacy between two similar organs of City government. Our conclusion draws support from the complaint itself, which seeks to enjoin the HR Director from encroaching upon the duties of the Personnel Director and from exercising any authority over that office, but does not seek to settle title to the office of Personnel Director.

The remedies that the Napa POA seeks are not available in a quo warranto action. Accordingly, leave to sue in quo warranto is DENIED. The denial of this application, however, does not preclude the Napa POA from bringing another form of legal action alleging that the City's actions have infringed upon its interests.<sup>13</sup>

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We need not decide this issue, however, because it is clear that, whatever the character of the two offices/positions, there has been no “usurpation” for purposes of evaluating the viability of a proposed suit in quo warranto.

<sup>13</sup> See 95 Ops. Cal. Atty. Gen. at 56 (where quo warranto is unavailable, party may pursue other legal action challenge contesting the validity of city charter amendment).