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OPINION	:	No. 14-901
of	:	May 6, 2016
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THE HONORABLE ISADORE HALL III, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

If a school district's employment contract with its superintendent provides an annual cash allowance in lieu of medical benefits that the superintendent would otherwise receive, may the district expend an equivalent annual sum for each school board member to purchase an individual whole life insurance policy in lieu of medical benefits that each board member would otherwise receive?

CONCLUSION

Notwithstanding that a school district's employment contract with its superintendent provides an annual cash allowance in lieu of medical benefits that the superintendent would otherwise receive, the district may not expend an equivalent annual sum for each school board member to purchase an individual whole life insurance policy in lieu of medical benefits that each board member would otherwise receive.

ANALYSIS

A school district superintendent's employment contract includes a provision that provides the superintendent $8,000 cash each year in lieu of health insurance. We are asked whether the district may, in lieu of purchasing health insurance for each of its school board members, expend an equivalent sum of $8,000 per board member per year, to purchase individual policies of whole life insurance for the board members. For the reasons discussed below, we conclude that the district may not do so because the proposed expenditure is not an authorized purchase of a health and welfare benefit under the controlling statutes.

The Government Code sets out a comprehensive statutory scheme regulating the provision of health and welfare benefits to officers and employees of local agencies.[1] Within this scheme, Government Code section 53201 authorizes school district boards[2] to provide health and welfare benefits to their officers and employees, including the board members themselves.[3] Government Code section 53202.3 requires that "[a]ll plans, policies or other documents used to effectuate the purposes of this article shall provide benefits for large numbers of employees." Government Code section 53208.5 limits the amount of such benefits, stating that they "shall be no greater than the most generous schedule of benefits being received by any category of [the district's] nonsafety employees."[4]

For purposes of these statutes, a "health and welfare benefit" is defined as "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or a service basis, and includes group life insurance as defined in subdivision (b) of this section."[5] Given this language, we have previously assumed that the phrase "health and welfare benefit" includes *group* whole life insurance made available

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[1] See Article 1 ("Group Insurance") (commencing with section 53200) of chapter 2 of part 1 of division 2 of title 5 of the Government Code.

[2] The governing board of a school district is a "legislative body" within the meaning of these statutes. (Gov. Code, § 53200; 77 Ops.Cal.Atty.Gen. 50, 51 (1994).)

[3] Gov. Code, § 53201.

[4] Gov. Code, § 53208.5, subd. (b).

[5] Gov. Code, § 53200, subd. (d). We have previously concluded that, by virtue of this definition, Government Code section 53208 does not permit a school district to simply make cash payments to board members in lieu of providing them with health insurance benefits. (83 Ops.Cal.Atty.Gen. 124 (2000).)

to a large number of employees.[6] However, we have not previously considered the question whether the phrase also includes *individual* whole life insurance of the sort contemplated here.[7] We now conclude that it does not.

Critically, Government Code section 53202.3, mentioned above and located within the same article as section 53201, mandates that "[a]ll plans, policies or other documents used to effectuate the purposes of this article shall provide benefits for *large numbers of employees*."[8] In construing a statute, we look first to its plain language to discern the Legislature's intent, venturing behind that language only in the case of uncertainty or ambiguity.[9] Section 53202.3 clearly expresses the Legislature's intent that health and welfare benefit policies and plans provided to local agency officers and employees may include group life insurance.[10] With equal clarity, the plain terms of that statute do not expressly include individual policies of whole life insurance.[11]

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[6] See 73 Ops.Cal.Atty.Gen. 296, 299 (1990).

[7] See 4 Snyder, Compensation and Benefits (HR Series) (2015) § 45:72 ("Types of whole life insurance").

[8] Emphasis added. As we have previously recognized, this provision constitutes a "specific limitation" on the benefits that may be conferred upon members of a local agency's governing body (including a school board); they are not available "unless they are also available to large numbers of [the local agency's] employees." (73 Ops.Cal.Atty.Gen., *supra*, at p. 300.)

[9] See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 (*Dyna-Med, Inc.*).

[10] Indeed, as we noted earlier (see fn. 1, *supra*), the article heading encompassing both sections 53201 and 53202.3 is entitled "Group Insurance." Although article headings are not necessarily dispositive of legislative intent, when the heading is an official heading—as is the case here (see Stats. 1949, ch. 81, § 1, p. 285)—and not a heading adopted by the publisher, then the heading is relevant for purposes of discerning the Legislature's intent. (See *Keyes v. Cyrus* (1893) 100 Cal. 322, 325 [headings enacted by Legislature "are a portion of the statute, and may be examined for the purpose of determining the particular intent of the legislature with regard to the chapters in which they are placed"]; *Culbertson v. San Gabriel Unified School Dist.* (2004) 121 Cal.App.4th 1392, 1398 ["Because the Legislature promulgated this article heading, it is entitled to considerable weight"]; *People v. Rocca* (1980) 106 Cal.App.3d 685, 691-692 ["Title, chapter and section headings enacted by the Legislature as parts of a code may properly be given weight in construing legislation though they will not control a plain provision in a code section"].)

[11] We note that Government Code section 53208 exempts from "statutory restriction[s] relating to interest in contracts" board-member participation in any health and welfare plan benefits "permitted by this article." Accordingly board-member participation in a

Some argue, however, that the limitation imposed by section 53202.3 was superseded by the enactment of section 53208.5.[12] Subdivision (b) of that statute provides, in pertinent part:

> Notwithstanding any other provision of law, the health and welfare benefits of any member of a legislative body of any . . . school district . . . shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.[13]

The argument is that this provision (hereafter section 53208.5(b)) should be read as expanding, rather than limiting, school board discretion to provide benefits to its members. This reasoning rests upon the premise that the district superintendent may be considered a nonsafety-employee "category of one" for purposes of section 53208.5(b). If so, the theory goes, then purchasing the individual whole life insurance policy proposed here for each board member would satisfy section 53208.5(b) because the $8,000 annual premium for

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permitted plan would not run afoul of the proscriptions of Government Code section 1090, which mandates, in pertinent part, that "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." Section 1090 is applicable to members of school boards. (See Educ. Code, § 35233.) By necessary implication, if the health benefit plan that the board adopts for itself is *not* permitted by article 1 ("Group Insurance") (commencing with section 53200), then participation in the plan would fall outside the "safe harbor" afforded by section 53208 and could potentially violate the provisions of section 1090. (Cf. 89 Ops.Cal.Atty.Gen. 217, 219 (2006) [community college district board member's financial interest in employee health benefits as a retired faculty member was not within the "safe harbor" of section 53208].)

[12] Gov. Code section 53202.3 was enacted in 1961 (Stats. 1961, ch. 1938, p. 4090, § 5); section 53208.5(b), in 1994 (Stats. 1994, ch. 1065, § 2).

[13] Gov. Code, § 53208.5, subd. (b). The term "nonsafety employee" is commonly used to refer to an employee who does not have safety-related duties, e.g., law enforcement or security. "Safety employees" are sometimes given more generous health and welfare or pension plans than are afforded to nonsafety employees. (See, e.g., *Terry v. Garcia* (2003) 109 Cal.App.4th 245, 250 ["California recognizes its obligation to compensate public safety employees for the hazards they face and the injuries they receive. Public safety employees receive special pay, disability and retirement benefits"].)

each policy would not exceed the $8,000 annual cash payment that the district pays its superintendent in lieu of providing health and welfare benefits. Finally, because the proposed arrangement would not offend section 53208.5(b), section 53202.3 would present no bar, either, because the introductory clause of section 53208.5(b) ("Notwithstanding any other provision of law") negates the "large number of employees" limitation of section 53202.3. We find this argument to be "clever but not persuasive."[14]

Although the words "notwithstanding any other provision of law" are indeed "words of supersession,"[15] their function is to indicate a legislative intent to supersede *inconsistent* or *contrary* provisions.[16] But section 53202.3 is not inconsistent with or contrary to section 53208.5(b). Indeed, because both statutes are part of one comprehensive scheme, it is our responsibility to read the two statutes together in order to harmonize them.[17] The reasoning set forth above would, in contrast, have section 53208.5(b) effect an implied "pro tanto" repeal of section 53202.3,[18] a result that is strongly disfavored in the absence of an irreconcilable conflict.[19]

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[14] *Spellman v. Securities, Annuities & Ins. Services, Inc.* (1992) 8 Cal.App.4th 452, 464.

[15] See 73 Ops.Cal.Atty.Gen., *supra*, at p. 299 ("words of supersession with respect to any inconsistent provision").

[16] See *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, 1647 (phrase expresses legislative intent to have the specific statute control over "other law which might otherwise govern," and declares the legislative intent to "override all contrary law" [citations and internal quotation marks omitted]); *Faulder v. Mendocino County Bd. of Sup'rs* (2006) 144 Cal.App.4th 1362, 1373 (phrase declares legislative intent "to override all contrary law").

[17] See *Aguilera v. Loma Linda University Medical Center* (2015) 235 Cal.App.4th 821, 835 ("We construe statutes with reference to the entire statutory scheme of which they are a part and sections relating to the same subject must be read together so that the whole may be harmonized and retain effectiveness" [citations and internal quotation marks omitted]); *Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 210; 81 Ops.Cal.Atty.Gen. 118, 120 (1998), citing *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 876 ("It is a well settled rule of statutory construction that statutes relating to the same subject matter must be read together and harmonized if possible").

[18] See *Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557, 573 ("When one subsequently enacted statute limits the scope of an earlier statute, such limitation is designated a partial repeal").

[19] See *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805, internal quotation marks omitted. ("Absent an express declaration of legislative intent, [courts] will find an implied repeal only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are

And in this instance, we find there to be no conflict at all. We give section 53208.5(b) a common sense reading[20] by looking to its plain language.[21] On its face, the statute clearly limits school board discretion, rather than expanding it: "the health and welfare benefits . . . shall be no greater than . . . ." Thus both section 53208.5(b) and section 53202.3 limit the discretion that local legislative members have in providing health and welfare benefits for themselves while they are in office. Section 53202.3 limits their discretion in relation to the scope of intended *beneficiaries*—i.e., the policy or plan that they approve for themselves "shall provide benefits for large numbers of employees." And section 53208.5(b) limits their discretion in relation to the scope of intended *benefits*—i.e., their own benefits "shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees." We therefore reject the argument that section 53208.5(b) is intended to negate the limitation of section 53202.3.

We conclude that, notwithstanding that a school district's employment contract with its superintendent provides an annual cash allowance in lieu of medical benefits that the superintendent would otherwise receive, the district may not expend an equivalent annual sum for each school board member as the premium for an individual whole life insurance policy in lieu of medical benefits that each board member would otherwise receive.

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irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation"); 97 Ops.Cal.Atty.Gen. 5, 11, fn. 27 (2014); 95 Ops.Cal.Atty.Gen. 121, 127, fn. 32 (2012) (we will not find an implied repeal "based merely on superficial inconsistencies between two statutes").

[20] See *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992 (statute "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity" [internal quotation marks and citations omitted]); *Dyna-Med, Inc.*, *supra*, 43 Cal.3d at p. 1392; 81 Ops.Cal.Atty.Gen. 362, 364 (1998).

[21] See *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 229 ("The plain language of the act supports a restrictive view").