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OPINION	:	No. 15-1201
	:	
of	:	November 3, 2016
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THE HONORABLE GREGORY P. PRIAMOS, RIVERSIDE COUNTY COUNSEL, has requested an opinion on the following question:

Should vacancies that occur in unexpired terms on the Banning Library District Board of Trustees be filled by the Riverside County Board of Supervisors pursuant to Education Code section 19426, or by the remaining library district trustees in accordance with Government Code section 1780?

CONCLUSION

Vacancies that occur in unexpired terms on the Banning Library District Board of Trustees should be filled by the remaining library district trustees in accordance with Government Code section 1780.

ANALYSIS

The Banning Unified School District Library District was established by public vote in 1916. At the time, state law provided that “Any union high school district of this state may establish, equip and maintain a public library for the dissemination of knowledge of the arts, sciences and general literature, in accordance with the provisions of this act.”¹ For this purpose, the voters in a given school district were empowered to form a “union high school district public library district” or “unified school district public library district.”² Upon voter approval, the county board of supervisors would duly establish the library district by resolution, and place the library district in the control of the trustees of the corresponding school district.³

In accordance with this statutory scheme, the trustees of the Banning Unified School District also governed the Banning Unified School District Library District until 2006.⁴ In 2005, at the request of the Banning Unified School District governing board, the Legislature adopted Senate Bill 405, enacting Education Code section 18343.⁵ The measure expressly authorized the governing board of the Banning Unified School District to provide by resolution that, the Banning Unified School District Library District would be renamed the Banning Library District, and would thereafter be governed by a new board of trustees.⁶ That resolution was adopted in December 2005.⁷

In February 2006, the Riverside County Board of Supervisors appointed a five-member board of trustees for the Banning Library District “from the membership of the Library Commission of the [former] Banning Unified School District Library District.”⁸

¹ Stats. 1911, ch. 279, § 1; see now Ed. Code, § 18320.

² See Ed. Code, § 18311 (“union high school district” and “unified school district” are equivalent terms).

³ Stats. 1911, ch. 279, § 7; see now Ed. Code, § 18336.

⁴ See Ed. Code, §§ 18300 (library district trustees are the regularly elected school district trustees), 18330.

⁵ Stats. 2005, ch. 20, § 1; see *Banning Library District Announces New Board of Trustees*, Record Gazette (June 22, 2006), available at <http://www.recordgazette.net>.

⁶ Ed. Code, § 18343, subd. (a).

⁷ Resolution No. 05-12-06 of the Board of Trustees of the Banning Unified School District Library District.

⁸ See Ed. Code, § 18343, subd. (e); see also County of Riverside Board of Supervisors Agenda, http://www.rivcocob.org/agenda/2006/2006_02_07/02.20.pdf. A five-member “library commission” may be appointed by a unified school district library district board of library trustees “to manage and operate the library or libraries of the district.” (Ed.

Trustees to the Banning Library District board are now elected to staggered four-year terms.⁹ The question presented for our resolution concerns how a vacancy on the Banning Library District board of trustees should be filled when the vacancy occurs before the incumbent's term expires. Specifically, we are asked whether such vacancies should be filled under the procedures set forth in Education Code section 19426, which call for the county Board of Supervisors to fill the vacancy by appointment,¹⁰ or by those set forth in Government Code section 1780, which provide that the remaining library district trustees fill the vacancy by appointment or by calling an election.¹¹

Public libraries in California may be established under a number of different statutory schemes, depending upon the type of governmental entity providing the library service.¹² Two categories of library district merit discussion here. The first is one established by a school district—a “chapter 3” district,¹³ and the second is one established

Code, § 18440.) The board of commissioners generally exercises “any and all powers and duties authorized or required of the board of library trustees” in sections 18400-18411.

⁹ Ed. Code, § 18343, subs. (d), (f), (h).

¹⁰ Education Code section 19426 provides: “A vacancy in the board of library trustees shall be filled for the unexpired term by appointment of the supervising board of supervisors.” (See also Ed. Code, § 19520 [biennial election of trustees].)

¹¹ Government Code section 1780 provides, in pertinent part:

(a) Notwithstanding any other provision of law, a vacancy in any elective office on the governing board of a special district, other than [as specified], shall be filled pursuant to this section.

* * *

(c) The remaining members of the district board may fill the vacancy either by appointment . . . or by calling an election

Depending on when the vacancy occurs and when the next election is scheduled to occur, the person appointed to fill the vacancy may serve either until the next district election or for the balance of the unexpired term. (See Gov. Code, § 1780, subs. (d)(2), (d)(3).)

¹² See 61 Ops.Cal.Atty.Gen. 512, 513 (1978); Ed. Code, §§ 18300-18571 (“Unified School Districts and Union High School Districts Public Libraries”), 18900-18965 (“Municipal Libraries”), 19100-19180 (“County Free Libraries”), 19400-19532 (“Library Districts”), 19600-19734 (“Library Districts and Museums in Unincorporated Towns and Villages”).

¹³ Chapter 3 (sections 18300-18571) of part 11 of division 1 of title 1 of the Education Code.

independently—a “chapter 8” district.¹⁴ The answer to the question presented to us depends on whether the Banning Library District continues to be a chapter 3 district, or whether it has become a chapter 8 district by virtue of the 2005 legislation. We conclude that the 2005 legislation did *not* change the character of the library district from a chapter 3 (school-established) district to a chapter 8 (independent) district.¹⁵

The Banning Unified School District Library District was originally created as a chapter 3 library district. Later, in 2005, the enactment of Education Code section 18343 changed the district’s name to “Banning Library District,”¹⁶ and substituted a new board of trustees, drawn from the existing library commission, for the school district board of trustees that had served until then as the library district’s governing board.¹⁷

In interpreting the 2005 legislation, our role is “to ascertain the intent of the Legislature in order to effectuate the law’s purpose. We may not, under the guise of construction, attempt to rewrite a statute and, within the framework of the language used, we must interpret it in a manner to make it workable and reasonable.”¹⁸ To that end, we note that nothing in section 18343 suggests an intention to change the statutory character of the district. To the contrary, section 18343 states:

The library district shall continue to receive revenues, including apportioned property taxes and authorized special taxes as if it were still the Banning Unified School District Library District. There shall be no change in district powers or responsibilities.

If the Legislature had intended to change the statutory character of the library district, it knew how to do so.¹⁹ But it did not, and we may not rewrite the statute to

¹⁴ Chapter 8 (sections 19400-19532) of part 11 of division 1 of title 1 of the Education Code.

¹⁵ The Banning Library District is one of only two library districts that are specially created by statute from a preexisting school-district public library district; the only other such district is the Blanchard/Santa Paula Library District created by Education Code section 18342.

¹⁶ See Ed. Code, §§ 18339, 18343, subd. (b).

¹⁷ Ed. Code, § 18343, subds. (c), (e).

¹⁸ 94 Ops.Cal.Atty.Gen. 59, 60 (2011), citing *Mt. Vernon Meml. Park v. Bd. of Funeral Dir. & Embalmers* (1978) 79 Cal.App.3d 874, 885.

¹⁹ See, e.g., Health and Saf. Code, § 4641.5 (“ . . . Any district which as a result of any annexation includes territory not solely within the boundaries of a single city shall thereafter be deemed to be a district formed pursuant to Article 2a (commencing with

conform to a presumed intent that could have been, but was not, expressed.²⁰ Accordingly, we conclude that the Banning Library District remains a chapter 3 library district.

Having so concluded, we turn to the question of what vacancy-filling rule applies to this district. Chapter 3 is silent about filling vacancies on the library district board of trustees.²¹ In contrast, chapter 8 includes a specific vacancy-filling procedure in Education Codes section 19426, which states, “A vacancy in the board of library trustees shall be filled for the unexpired term by appointment of the supervising board of supervisors.” Should this chapter 8 procedure fill the gap in chapter 3? We think not.

Taking the structure of chapter 8 as a whole into consideration, we believe that section 19426 applies *only* to chapter 8 library districts because its phrase “*the* board of library trustees” necessarily refers to a board organized pursuant to section 19420—which is also located within chapter 8. If the Legislature had intended for section 19426 to have a broader application it should at least have used the indefinite article here, that is to say “*a* board of library trustees” to so indicate.²² Besides, and perhaps more tellingly, the Legislature has expressly and separately addressed governing board vacancies in other kinds of library districts, though not in chapter 3.²³ Therefore, we do not construe

Section 4614.1) of this chapter even though it was not originally formed pursuant to that article”).

²⁰ See *People v. Statum* (2002) 28 Cal.4th 682, 692 (court’s role in construing statute is to determine objective meaning of its provisions, not rewrite statute to conform to presumed intent not expressed); cf. 73 Ops.Cal.Atty.Gen. 330, 333 (1990); 63 Ops.Cal.Atty.Gen. 736, 742 (1980).

²¹ This is not remarkable because, except for the Banning Library District and the Blanchard/Santa Paula Library District, the trustees of all chapter 3 unified school district library districts are composed of the trustees of the corresponding school districts. (Ed. Code, §§ 18300, 18339.) Vacancies on school district boards of trustees are addressed by other provisions of the Education Code not related to libraries. (See Ed. Code, § 5091.)

²² See *Honchariw v. County of Stanislaus* (2013) 218 Cal.App.4th 1019, 1034 (“The Legislature’s use of the definitive article ‘the’ is significant because the definite article ‘the’ refers to a specific person or thing. . . . In contrast, use of the indefinite articles ‘a’ or ‘an’ signals a general reference”). See also *Pineda v. Bank of America* (2010) 50 Cal.4th 1389, 1397; 64 Ops.Cal.Atty.Gen. 567, 569 (1981). Cf. 69 Ops.Cal.Atty.Gen. 290, 293 (1986) (Legislature uses words like “any” or “a” to indicate “an indiscriminate and broad coverage designating an object as merely one of a general class or kind . . . as opposed to one that is distinct from others of the same kind”).

²³ See Ed. Code, § 18913 (chapter 5 “Municipal Libraries”), 19426 (chapter 8 “Library

section 19426 as applying to any library districts other than those organized under chapter 8.²⁴ We thus conclude that vacancies in unexpired terms on the Banning Library District board of trustees should *not* be filled pursuant to section 19426.²⁵

Finding no specific vacancy-filling provision for chapter 3 library districts, we turn to Government Code section 1780, a general statute that provides for the filling of vacancies on the governing boards of “special districts” other than school districts and a few other specified districts not relevant here.²⁶ The Banning Library District meets the definition of a “special district”²⁷—i.e., one created pursuant to law for the purpose of carrying out specified governmental functions in a limited geographical area²⁸—and we

Districts”), 19612 (chapter 9 “Library Districts and Museums in Unincorporated Towns and Villages”).

²⁴ Cf. *Gutierrez v. Board of Retirement of Los Angeles County Employees Assn.* (1998) 62 Cal.App.4th 745, 749 (court refrained from expanding scope of retirement benefits set out in detailed statutory scheme).

²⁵ It has been suggested to us that simultaneous 1998 amendments to sections 18342 (relating to Blanchard/Santa Paula Library District) and 19420 (relating to chapter 8 library districts) evinced the Legislature’s intent to treat the Blanchard/Santa Paula Library District as a chapter 8 library district. From this supposition, it is argued that a similar intent should be inferred with respect to the Banning Library District because the Blanchard and Banning districts are organizationally similar. (Compare Ed. Code, § 18342 with Ed. Code, § 18343.) We are not persuaded.

²⁶ Government Code section 1781 states: “The provisions of Section 1780 shall not apply to a school district, a district organized pursuant to Division 6 (commencing with Section 11501) of the Public Utilities Code, or a district subject to the provisions of Chapter 5 (commencing with Section 22825) of Part 5 of Division 11 of the Water Code.”

²⁷ Chapter 8 library districts are also special districts and, by virtue of Government Code section 1780’s initiatory words of supersession—“Notwithstanding any other provision of law” (see 73 Ops. Cal.Atty.Gen. 296, 299 (1990))—it would seem that the statute would prevail over section 19426. It does not, however, because section 19426 (Stats. 1976, ch. 1010, § 2, operative April 30, 1977) was enacted *after* Government Code section 1780 (Stats. 1975, ch. 1059, § 1.3). (See *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310 (“If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation].”))

²⁸ See, e.g., *In re Madera Irrigation District* (1891) 92 Cal. 296, 318; see also Gov. Code, § 56036, subd. (a) (defining “special district” as “an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or

have not been given any reason to construe it as anything other than that.²⁹ Therefore, the general vacancy-filling rule applies to it.

We conclude that vacancies that occur in unexpired terms on the Banning Library District Board of Trustees should be filled by the remaining library district trustees in accordance with Government Code section 1780.

proprietary functions within limited boundaries and in areas outside district boundaries when authorized by the commission pursuant to [the Local Government Reorganization Act]”); 45 Cal.Jur.3d Municipalities § 6 (unified or union high school library district is a “district or special district” for most purposes); California State Library, *California Special District Public Libraries, 1995*, at www.library.ca.gov/services/docs/specdist.pdf.

²⁹ It is also asserted that the Banning Library District is not subject to Government Code section 1780 because, owing to the district’s “birth” from the Banning Union High School District, it is a “school district” excluded by Government Code section 1781, but we reject that assertion. The progenitor of the Banning Library District was not the Banning Union High School District itself, but rather the Banning Unified School District *Library District*, a separate district created by separate election, and established by resolution of the board of supervisors. (Ed. Code, §§ 18330, 18336.)