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OPINION	:	No. 15-501
	:	
of	:	October 27, 2015
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Proposed relator the CITY OF COMMERCE has requested leave to sue proposed defendant HUGO ARGUMEDO in quo warranto to oust him from the public office of city council member on the ground that his previous conviction for obstruction of justice constitutes “malfeasance in office,” and therefore precludes him from serving as a city council member.

CONCLUSION

Whether proposed defendant Argumedo’s conviction for obstruction of justice constitutes “malfeasance in office,” and therefore precludes him from serving as a city council member, presents substantial questions of law and fact warranting judicial resolution, and allowing the action to proceed would serve the public interest. Therefore, leave to sue in quo warranto is GRANTED.

ANALYSIS

Proposed defendant Argumedo currently sits on the city council for proposed relator the City of Commerce, but the question of his legal eligibility to serve in that capacity stems from Argumedo's conduct during an earlier term on the Commerce city council.¹ The parties do not dispute the basic underlying facts of the incidents at issue, which we briefly summarize below.

While Argumedo was serving on the city council in 2005, the council terminated the city's contract with then-City Attorney Francisco Leal. In response, Leal sued the city, claiming it owed him attorney's fees. The city counter-sued, alleging legal malpractice and violations of Government Code section 1090.²

On September 22, 2006, the city council met in a closed session to discuss negotiations regarding the lawsuits. The confidential minutes of that meeting reflect that the council discussed a settlement offer from Leal, under which Leal would pay the city \$20,000. On Argumedo's motion, the city council voted to make a counter-offer requesting Leal pay \$60,000 to \$70,000, based on the city's incurred attorney's fees and costs. The case settled in November 2006, with Leal agreeing to pay the city \$70,000. Leal failed to pay that amount, however, contending that the settlement agreement was void because the city council had never been advised of his previous \$20,000 settlement offer.

The city filed suit in March 2007 to enforce the settlement agreement. In opposition to the city's motion for summary adjudication, Leal filed a declaration, signed by Argumedo under penalty of perjury, which stated that Leal's \$20,000 settlement offer was never presented to the city council, and that Argumedo would have voted in favor of that offer had it been presented.³ The superior court denied the city's motion for summary adjudication, finding that Argumedo's declaration created a triable issue of fact.

¹ Argumedo was first elected to the city council in 1996, and again several times thereafter.

² This section provides 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."

³ In a closed-session meeting on December 4, 2007, at which Argumedo was present, the city council reviewed the minutes of the September 22, 2006, council meeting, which disclosed that the \$20,000 settlement offer from Leal had in fact been presented and considered. Argumedo declined to change or withdraw his declaration, however.

Ultimately, on March 3, 2008, the city’s enforcement action settled, with Leal agreeing to pay the city \$175,000.

In December 2010, the Los Angeles County District Attorney charged Argumedo with felony perjury.⁴ The criminal complaint alleged that Argumedo had knowingly submitted a false declaration to the superior court which stated that the \$20,000 settlement offer had not been presented to the city council. The district attorney later amended the complaint to add a misdemeanor charge of obstruction of justice, i.e., obstructing a public official (the judge) in the discharge of her duty.⁵ On December 20, 2010, Argumedo pleaded guilty to the misdemeanor obstruction of justice charge. The plea agreement required, among other things, that Argumedo resign from the city council and not run for or hold any public office for three years.

Argumedo was again elected to the Commerce city council in 2015. The city contends here, however, that Argumedo is disqualified from serving in this public office based on his previous conviction for obstruction of justice, and now seeks leave to sue in quo warranto to have the issue judicially determined. For the reasons discussed below, we grant the city’s application for leave to sue.

Nature of and Criteria for Quo Warranto

Code of Civil Procedure section 803 provides, “An action may be brought by the attorney-general, in the name of the people of this state, upon [her] 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, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state.”⁶ Thus, such an action—commonly referred to as “quo warranto”—is the “appropriate remedy to test the right of a person to hold public office.”⁷

⁴ Pen. Code, § 118, subd. (a).

⁵ Pen. Code, § 148, subd. (a)(1) (“Every person who willfully resists, delays, or obstructs any public officer, . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment”).

⁶ Code Civ. Proc., § 803.

⁷ 76 Ops.Cal.Atty.Gen. 157, 165 (1993); *Rando v. Harris* (2014) 228 Cal.App.4th 868, 875.

Where the action is based on the complaint of a private party, the Attorney General acts as a gatekeeper to the filing of a quo warranto action; a party must obtain the Attorney General's permission, or "leave to sue," before filing such an action in superior court.⁸ In evaluating whether to grant leave to sue, we do not endeavor to resolve the merits of the controversy, but rather "we decide whether the application presents substantial issues of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest."⁹

There Are Substantial Issues of Law and Fact as to Whether Argumedo's Conviction for Obstruction of Justice Disqualifies Him from Serving as a City Council Member

Article VII, section 8 of the California Constitution (section 8) directs that, "Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office or serving on juries."¹⁰ Section 8 contemplates legislative action to give it effect, and the Legislature enacted several statutes accordingly. Most relevant to our inquiry here is Government Code section 1021, which provides, "A person is disqualified from holding any office upon conviction of designated crimes as specified in the Constitution and laws of the State."¹¹

The city contends that Government Code section 1021 bars Argumedo from holding the office of city council member¹² because his conviction for obstruction of justice amounts to malfeasance in office within the meaning of section 8. Argumedo makes two arguments in opposition: (1) his conviction does not amount to malfeasance in office within the meaning of section 8; and (2) section 8 and Government Code section 1021 apply only to a current term of office rather than operating as a permanent disqualification. We address those arguments in turn.

1. Did Argumedo commit "malfeasance in office"?

Argumedo pleaded guilty to obstruction of justice under Penal Code section 148. Based on the criminal complaint and the district attorney's documentation, the factual basis for this conviction was that Argumedo provided the superior court with a declaration falsely attesting that the city council had not been presented with Leal's

⁸ *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1228-1229.

⁹ 95 Ops.Cal.Atty.Gen. 50, 51 (2012).

¹⁰ Cal. Const., art. VII, § 8, subd. (b).

¹¹ Gov. Code, § 1021.

¹² A city council member is a city officer. (Gov. Code, § 56025.)

\$20,000 settlement offer, which created a triable issue of fact, causing the superior court judge to deny, erroneously, the city’s motion for summary adjudication. Does this conviction, and the conduct on which it is based, amount to malfeasance in office within the meaning of section 8?

Malfeasance in office is not an offense enumerated in the Penal Code. Rather, section 8 appears to use “malfeasance in office,” as well as “other high crimes,” as catch-all phrases to encompass a variety of offenses. To determine the meaning of malfeasance in office, we apply the rules of constitutional interpretation.

The principles of constitutional interpretation are similar to those governing statutory construction. In interpreting a constitution’s provision, our paramount task is to ascertain the intent of those who enacted it. To determine that intent, we look first to the language of the constitutional text, giving the words their ordinary meaning. If the language is clear, there is no need for construction.¹³

The ordinary meaning of a word can be informed by dictionary definitions.¹⁴ Dictionaries consistently define malfeasance as “[a] wrongful, unlawful, or dishonest act; esp., wrongdoing or misconduct by a public official”¹⁵ or “wrongdoing or misconduct esp. by a public official.”¹⁶ The Constitution then adds to this the requirement that the malfeasance be committed “in office.” We believe the ordinary meaning of that phrase is that the act of malfeasance be related to the actor’s occupation of a public office.

Given this framework, we find there to be substantial questions of law and fact whether Argumedo’s conviction for obstruction of justice amounts to malfeasance in office that warrant judicial determination. In the course of this determination, a court can inquire into both the evidentiary basis supporting the facts at issue and whether the legal elements of Argumedo’s conviction satisfy the constitutional prohibition. For example, a court could evaluate whether the facts support findings that Argumedo disclosed the contents of a closed-session city council meeting without the council’s authorization;¹⁷

¹³ *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, internal citations and quotation marks omitted.

¹⁴ *Wasatch Property Management v. Degrade* (2005) 35 Cal.4th 1111, 1122.

¹⁵ Black’s Law Dict. (10th ed. 2014) p. 1100, col. 2.

¹⁶ Merriam-Webster’s Collegiate Dictionary (10th ed. 1999) p. 704, col. 2.

¹⁷ Gov. Code, § 54963. The court could also consider whether Argumedo qualified for an exception to this provision, such as “[e]xpressing an opinion concerning the propriety or legality of actions taken . . . in closed session” (Gov. Code, § 54963,

violated the city's attorney-client privilege without authorization; or misled a judge so that she erroneously denied the city's motion for summary adjudication, which in turn subjected the city to continued and unnecessary litigation. The court could also determine the legal questions whether Argumedo's acts constituted malfeasance and whether those acts were intrinsically related to Argumedo's position as a city council member. As we previously observed when evaluating whether certain acts constituted a violation of official duties, "We do not have here an offense that involves purely 'private' conduct."¹⁸ Argumedo provided a declaration in litigation between the city and its former attorney, purporting to provide information that he had access to exclusively based on his status as a city council member. Thus, we believe the question whether Argumedo's conviction constitutes malfeasance in office within the meaning of article VII, section 8 of the California Constitution presents substantial issues of law and fact that warrant judicial resolution.

2. Is Argumedo's exclusion from holding public office permanent?

Argumedo also maintains that section 8 and its enabling legislation apply only to a conviction suffered during a current term of office, rather than imposing a lifetime ban on holding office. Section 8 specifies that "Laws shall be made to exclude persons convicted" of various crimes from serving in office.¹⁹ What here is the meaning of "exclude"?

Exclude is defined as "to prevent or restrict the entrance of," or "to bar from participation, consideration, or inclusion."²⁰ The plain meaning of "exclude . . . from office," then, would be to prevent a person from assuming an office or to bar the person's consideration for office. We see no ambiguity in this constitutional language, nor any implication that the exclusion is temporary. Additionally, the full text of section 8, subdivision (b) is: "Laws shall be made to exclude persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes from office *or serving on juries*."²¹ Certainly the exclusion from juries is permanent, rather than limited to a jury an individual might be sitting on when convicted. It would be a strained and unusual construction to intend one exclusion to be permanent and the other temporary without so specifying.

subd. (e)(2).)

¹⁸ 75 Ops.Cal.Atty.Gen. 64, 69 (1992).

¹⁹ Cal. Const., art. VII, § 8, subd. (b).

²⁰ Merriam-Webster's Collegiate Dictionary (10th ed. 1999) p. 404, col. 2.

²¹ Cal. Const., art. VII, § 8, subd. (b), italics added.

Argumedo fails to address this constitutional language, and focuses instead on the statutory language, but this is of no moment as the same result obtains. Government Code section 1021 provides, “A person is disqualified from holding any office upon conviction of” the crimes designated in section 8. In ascertaining the meaning of “disqualified,” we turn to well-established rules of statutory construction.

The “first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] must 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.”²² If the statutory language is clear, we “follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”²³ On the other hand, where ambiguity exists, “consideration should be given to the consequences that will flow from a particular interpretation.”²⁴

“Disqualify” means “[t]he act of making ineligible; the fact or condition of being ineligible,”²⁵ or “to deprive of the required qualities, properties, or conditions; make unfit.”²⁶ These definitions do not connote a fleeting condition, but rather a status of ineligibility or unfitness. Additionally, a permanent disqualification from office is a longstanding and common collateral consequence of a conviction.²⁷ Nevertheless, we acknowledge that a potential ambiguity exists given that in several statutes the Legislature has used the phrase “forever disqualified” with reference to disqualifications from office,²⁸ but has not done so here.

²² *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 (*Dyna-Med*).

²³ *Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186, internal quotation marks and citations omitted.

²⁴ *Dyna-Med, supra*, 43 Cal.3d at p. 1387.

²⁵ Black’s Law Dict. (7th ed. 2000) p. 383, col. 1.

²⁶ Merriam-Webster’s Collegiate Dictionary (10th ed. 1999) p. 336, col. 1.

²⁷ *The Collateral Consequences of a Criminal Conviction* (Oct. 1970) 23 Vand. L. Rev. 929, 987 (“[m]ost states have constitutional and statutory provisions disqualifying persons convicted of certain crimes from holding public office”); *id.* at p. 993 (noting that New Hampshire is the only state to have adopted the Uniform Act on the Status of Convicted Persons, which provides that a felon regains the right to hold public office at discharge); *id.* at p. 1000 (“[i]n the absence of a pardon, the offender, even though rehabilitated, will be unable to hold public office in most states”).

²⁸ See Gov. Code, § 1097 (person prohibited from making or being interested in contracts who willfully does so “is forever disqualified from holding any office in this

Attempting to resolve this ambiguity in his favor, Argumedo points to two other statutes that implement section 8. Government Code section 1770 directs that a public office becomes vacant upon an officer’s “conviction of a felony or of any offense involving a violation of his or her official duties.”²⁹ And Government Code section 3000 provides that “[a]n officer forfeits his office upon conviction of designated crimes as specified in the Constitution and laws of the State.”³⁰ Argumedo contends that the disqualification set out in section 1021 refers only to the current term of office because it must be read as operating simultaneously with the vacancy in section 1770 and the forfeiture in section 3000. In support, Argumedo cites *Helena Rubenstein International v. Younger* (1977) 71 Cal.App.3d 406 (*Rubenstein*). There, the court noted that Government Code sections 1021, 1770, and 3000 must be read together and harmonized, concluding that the three consequences they define—disqualification, vacancy, and forfeiture—necessarily occur simultaneously.³¹

We think *Rubenstein* inapposite. The “sole substantive issue presented” in *Rubenstein* was whether a sitting Lieutenant Governor “was ‘convicted’ within the meaning of the applicable California constitutional provision (former art. XX, § 11^[32]) and relevant implementing statutes for the purpose of exclusion from holding public office upon the rendition of the jury verdict, . . . , or the judgment,”³³ Given that the Lieutenant Governor was in office upon his conviction, there could be no other result than that he was disqualified from office, forfeited his office, and vacated his office simultaneously. The only question was whether those events were triggered by the jury’s verdict or the trial court’s judgment on sentencing, and the appellate court did not

state”); Pen. Code, § 88 (“Every Member of the Legislature, and every member of a legislative body of a city, county, city and county, school district, or other special district convicted of any crime defined in this title [Of Crimes Against the Legislative Power], in addition to the punishment prescribed, forfeits his or her office and is forever disqualified from holding any office in this state or a political subdivision thereof”). But we note that in at least one other place, the Legislature has expressly imposed only a temporary ban based on certain convictions. (Gov. Code, § 1021.5 [imposing five-year ban on public employment based on certain convictions].)

²⁹ Gov. Code, § 1770, subd. (h).

³⁰ Gov. Code, § 3000.

³¹ *Rubenstein*, *supra*, 71 Cal.App.3d at p. 421.

³² Cal. Const., art. XX, § 11 was the predecessor to section 8, and was identical to it in all respects relevant to this opinion. (*Rubenstein*, *supra*, 71 Cal.App.3d at p. 412, fn. 6.)

³³ *Rubenstein*, *supra*, 71 Cal.App.3d at p. 411. The court held that the “conviction” occurs only upon the rendition of judgment. *Ibid.*

consider whether the Lieutenant Governor was forever disqualified from office. Cases cannot provide authority on issues not considered.³⁴

More relevant, we believe, is *Lubin v. Wilson* (1991) 232 Cal.App.3d 1422 (*Lubin*). There, Paul Carpenter served as a member of the State Board of Equalization beginning in 1987. In September 1990, Carpenter was convicted of federal racketeering, extortion, and conspiracy based on events that occurred when he was a state senator, before he joined the Board of Equalization. In November 1990, Carpenter was reelected to the Board of Equalization. The Secretary of State did not allow Carpenter to file his oath of office in January 1991, and Carpenter—along with several voters—sought mandate to compel his installation on the Board of Equalization.³⁵

The court rejected various challenges to the statutory scheme embodied in Government Code sections 1021, 1770, and 3000, including under the First Amendment and the ex post facto clause. At no time did the court express concern that the conviction involved conduct in a former office, or that the conviction occurred before Carpenter was elected or attempted to assume his seat.³⁶ Unlike in *Rubenstein* where the question involved a currently sitting office-holder, in *Lubin* the court actually barred Carpenter from assuming office based on a conviction suffered before the new term. Thus, although not directly on point, we find *Lubin* supports our view that a court may find that the disqualification codified in Government Code section 1021 is permanent.

In addition, viewing the statutory scheme as a whole,³⁷ we see that Government Code sections 1021 and 3000 have existed in their current forms since 1943,³⁸ when they were enacted as part of a bill that “assemble[d], codifie[d], and consolidate[d] the law relating to the organization, operation and maintenance of a system of government for the State and its local units.”³⁹ Given that Government Code section 3000 provides that an officer forfeits an office upon a conviction enumerated in section 8, Government Code

³⁴ *In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388.

³⁵ *Lubin, supra*, 232 Cal.App.3d at p. 1426.

³⁶ E.g., *id.* at p. 1427 (rejecting contention that Government Code section 1770 is ambiguous and noting, “The fact the charges stemmed from activities during Carpenter’s senate term does not cloud the statute’s applicability”).

³⁷ *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063 (“we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose”).

³⁸ Stats. 1943, ch. 134, § 1021, p. 954; Stats. 1943, ch. 134, § 3000, p. 976.

³⁹ Legis. Counsel, Rep. on Sen. Bill No. 958 (1943 Reg. Sess.) p. 1.

section 1021 must mean something different. And we presume that the different meaning is its plain meaning: upon conviction of a crime enumerated in section 8, not only does an officer forfeit his or her current office, but the officer is also disqualified from future office holding.

We are not persuaded by Argumedo's assertion that we must read the disqualification imposed by Government Code section 1021 as applying only to a currently held office in order to avoid what he characterizes as an absurd result—that one who obtains a reversal of conviction on appeal is nevertheless forever barred from public office. First, of course, Argumedo's own conviction has not been appealed, much less reversed. In any event, although the hypothetical result Argumedo posits may be harsh, it is not absurd, but rather intended. Government Code section 1770.1 provides:

The disqualification from holding office upon conviction, as provided in Section 1021, or the forfeiture of office upon conviction, as provided in subdivision (h) of Section 1770 and Section 3000, is neither stayed by the initiation of an appeal from the conviction, nor set aside by the successful prosecuting of an appeal from the conviction by the person suffering the conviction.⁴⁰

This language expresses the Legislature's "intent to preclude convicted individuals from holding public office from the moment of entry of 'trial court judgment,' regardless of a later successful appeal."⁴¹ Thus, while a lifetime ban on holding office may be severe, "[t]he statutory scheme advances the compelling interest for honesty, integrity and confidence of the public in government, which is greater than the convicted person's interest in the office."⁴²

Allowing the Action to Proceed Would Serve the Public Interest

As our analysis reveals, there are substantial legal and factual questions regarding Argumedo's eligibility to serve on the Commerce city council in light of the obstruction of justice conviction at issue here. We additionally conclude that allowing this action to proceed "would serve the overall public interest in ensuring 'the integrity of public office

⁴⁰ Gov. Code, § 1770.1.

⁴¹ *Lubin, supra*, 232 Cal.App.3d at p. 1429.

⁴² *Ibid.* We are also not swayed by Argumedo's contention that the term of his plea agreement, which prevented him from serving in office for only three years, entitles him to hold office now, without regard to other laws. A plea agreement cannot supersede constitutional and statutory prohibitions on holding office.

and in the qualifications of their officials.’”⁴³ Ordinarily we view the need for judicial resolution of substantial questions of law or fact as sufficient public interest to grant leave to proceed in quo warranto.⁴⁴ There is no reason to depart from that general rule here. Both the City of Commerce and the public have an interest in judicial determination of Argumedo’s eligibility for continued service as a city council member. Accordingly, the leave for application to sue in quo warranto is GRANTED.

⁴³ 97 Ops.Cal.Atty.Gen. 12, 19 (2014), quoting 95 Ops.Cal.Atty.Gen. 43, 49 (2012).

⁴⁴ 95 Ops.Cal.Atty.Gen., *supra*, at p. 49.