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OFFICE OF THE ATTORNEY GENERAL
State of California

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Attorney General

OPINION	:	
	:	
	:	No. 23-1201
of	:	
	:	
	:	December 29, 2023
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Attorney General	:	
	:	
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Deputy Attorney General	:	

The BELLEVIEW ELEMENTARY SCHOOL DISTRICT has applied to this office for leave to sue JASON VASSAR in quo warranto to remove him from his seat on the School District’s Board. The application asserts that Vassar is subject to removal under Government Code section 1770(b) because he is mentally incapacitated and unable to perform his job duties.

We conclude that there are substantial issues of law and fact as to whether the requirements of section 1770(b) are satisfied. We further conclude that the public interest will be served by allowing the proposed quo warranto action to proceed. Consequently, the application for leave to sue is GRANTED.

BACKGROUND

The Bellevue Elementary School District serves students at Bellevue Elementary School in Tuolumne County. The School District is governed by a three-member School Board elected by voters in the District.¹ Since November 2015, Jason

¹ See Bellevue School Board Members, <http://mybellevue.org/bellevue-school-board-and-site-council/> (as of Dec. 27, 2023).

Vassar has served as a member of the Board. His current term will end in November 2026.

The School District contends that Vassar is mentally incapacitated and can no longer perform his job duties. In support, it has submitted sworn declarations and supporting documentation describing the following sequence of events.²

On October 30, 2023, Vassar met with senior School officials. According to the District, Vassar stated at the meeting that he was the messiah chosen by God; that high-ranking government officials were out to get him; that he is being harassed by technology; and that he is hearing voices that he interprets to be God's instructions to him to carry out revelations. He also reported being recently detained after he attempted to enter an Air Force base, believing that the Air Force would protect him from unknown antagonists.

Shortly after the meeting, Vassar emailed three lengthy "manifestos" to the same officials. Written in a stream-of-consciousness style, the documents contained violent threats and delusional thoughts. In one document, for example, Vassar wrote: "I was kind of shocked to read in Revelations that I was going to be executioner for God and kill your children." In another passage, he stated: "I'm going to tear this planet apart starting with my home town, Sonora."

After law enforcement was notified, the County Sheriff met with Vassar. Vassar reiterated his beliefs, including that "the Sheriff would die in this revelation that is upon us." As later disclosed in court filings and testimony, Vassar was then taken into custody under Welfare and Institutions Code section 5150, which authorizes a 72-hour involuntary detention when "a person, as a result of a mental health disorder, is a danger to others, or to themselves."³ His detention was ultimately extended an additional 11 days for a total of 14 days "of intensive treatment related to the mental health disorder," after a finding that he continued to pose a danger to himself or others.⁴

A few days after Vassar was taken into custody, the School District obtained a temporary restraining order against him. After Vassar left a threatening voicemail on the office line of a School official, that official also obtained a temporary restraining order.

² In these proceedings, Vassar has not disputed the District's description of events. If he wishes to do so, he will have another opportunity before the superior court.

³ Welf. & Inst. Code, § 5150, subd. (a). Section 5150 and related provisions "provide for prompt evaluation and treatment of persons with serious mental disorders . . . , to guarantee and protect public safety." (*People v. Triplett* (1983) 144 Cal.App.3d 283, 286.) The statute "provides for escalating periods of involuntary confinement . . . in approved psychiatric facilities." (*Ibid.*)

⁴ Welf. & Inst. Code, § 5250; see 87 Ops.Cal.Atty.Gen. 62, 67-68 (2004).

On November 28, 2023, the School District obtained a permanent restraining order. The order bars Vassar from any contact with the District's students, staff, or physical facilities for three years. As a result, he is prohibited from attending all School Board meetings, either in person or via video conference.

The School District now requests our permission to file a quo warranto lawsuit in superior court seeking Vassar's removal from the School Board. In that lawsuit, the District would seek to obtain a court declaration that Vassar's seat has become vacant under Government Code section 1770(b). That section provides that an office becomes vacant if, in a quo warranto proceeding, the office holder is declared mentally incapacitated due to disease, illness, or accident and there is reasonable cause to believe the office holder will not be able to perform the office duties for the remainder of the term.⁵ Vassar did not file an opposition to the District's quo warranto application.

ANALYSIS

Quo warranto is a civil action used to challenge an incumbent public official's right or eligibility to hold a given public office.⁶ This form of action is codified in section 803 of the Code of Civil Procedure, which provides that "[a]n 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."⁷

Where, as here, a party seeks to pursue a quo warranto action in superior court, that party must first obtain the Attorney General's consent to do so. In determining whether to allow an action to proceed, we do not attempt to resolve the merits of the controversy. Rather, we consider (1) whether quo warranto is an available and appropriate remedy; (2) whether the application raises a substantial issue of law or fact that warrants judicial resolution; and (3) whether authorizing the quo warranto action will serve the public interest.⁸ Here, all three conditions are satisfied, and we therefore grant leave to sue.

⁵ Gov. Code, § 1770, subd. (b); see Educ. Code, § 5090 ("Vacancies on school district governing boards . . . are caused by any of the events specified in Section 1770 of the Government Code").

⁶ Code Civ. Proc., § 803; *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225; 76 Ops.Cal.Atty.Gen. 157, 162-163 (1993).

⁷ Code Civ. Proc., § 803; see *Rando v. Harris* (2014) 228 Cal.App.4th 868, 873; 97 Ops.Cal.Atty.Gen. 12, 14 (2014).

⁸ *Rando v. Harris*, *supra*, 228 Cal.App.4th at p. 879; 72 Ops.Cal.Atty.Gen. 15, 20 (1989).

First, quo warranto is an available and appropriate remedy. Section 1770(b) itself provides that the mechanism to determine whether a vacancy has arisen is “a quo warranto proceeding.”⁹ And if Vassar’s seat becomes vacant under section 1770(b), then he would be “unlawfully hold[ing] . . . public office” on the Board within the meaning of the quo warranto statute.¹⁰

Second, there are substantial issues of law and fact as to whether the requirements for a vacancy are satisfied here. For a vacancy to arise under section 1770(b), there must be an “adjudication . . . declaring that” the office holder “is physically or mentally incapacitated due to disease, illness, or accident.”¹¹ Here, Vassar’s involuntary commitment under Welfare and Institutions Code section 5150 required a finding that he posed “a danger to others, or to [himself]” “as a result of a mental health disorder.”¹² And the extension of that involuntary commitment by 11 days required a finding, subject to judicial review, that “the person is, as a result of a mental health disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.”¹³ Given those findings, and the allegations of his threatening and erratic behavior, we find a substantial question as to whether Vassar is “mentally incapacitated due to disease [or] illness.”¹⁴

Section 1770(b) also requires there to be “reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term.”¹⁵ As we have previously explained, the “reasonable cause to believe” standard does not require “certainty beyond doubt.”¹⁶ Here, Vassar has three years remaining in his term of office. Throughout that entire period, he is subject to a permanent restraining order barring him from making any contact with School students, staff, or facilities. The order expressly prohibits him from attending School Board meetings—not only in person, but also via video conference. In light of those restrictions

⁹ Gov. Code, § 1770, subd. (b).

¹⁰ Code Civ. Proc., § 803; see 78 Ops.Cal.Atty.Gen. 134 (1995) (approving quo warranto application alleging vacancy under Government Code section 1770(b)).

¹¹ Gov. Code, § 1770, subd. (b).

¹² Welf. & Inst. Code, § 5150, subd. (a).

¹³ Welf. & Inst. Code, § 5250, subd. (a).

¹⁴ Gov. Code, § 1770, subd. (b).

¹⁵ Gov. Code, § 1770, subd. (b).

¹⁶ See 78 Ops.Cal.Atty.Gen., *supra*, at pp. 136-137 (analogizing “reasonable cause to believe” in section 1770(b) to the probable cause standard for a criminal arrest and the “reasonable probability” standard for civil conspiracy).

and his alleged behavior, as well as the absence of any evidence that he is currently receiving treatment that could alter his condition, there is at least “a substantial issue” as to whether the record establishes “reasonable cause to believe that [Vassar] will not be able to perform the duties of his office for the remainder of his term.”¹⁷

Of course, we are merely reaching the threshold determination that the District has raised substantial questions as to Vassar’s mental capacity and ability to serve. Vassar may contest the District’s allegations in the superior court quo warranto proceedings by bringing forth evidence, for example, that his condition has improved such that he will be able to have the restraining order modified and resume his duties. The superior court will be in a position to evaluate and weigh conflicting evidence and argument on these key questions in reaching its ultimate conclusion whether to remove Vassar from the School Board.

Third, it is in the public interest to have a court conclusively resolve the dispute. If Vassar is unable to carry out his job duties, then the public interest will be served by a judicial determination that allows a new Board member to assume office—especially given that the Board has only three members.¹⁸ And we agree with the District that the public interest will also be served by promptly addressing this potentially volatile situation.

Accordingly, the application for leave to sue in quo warranto is GRANTED.

¹⁷ 78 Ops.Cal.Atty.Gen., *supra*, at p. 137 (granting quo warranto application based on § 1770(b) where official had suffered a stroke and there was “no indication as to the date when he might be able to return to his duties of office”).

¹⁸ See 78 Ops.Cal.Atty.Gen., *supra*, at p. 137 (“Both the City of Modesto, as a public entity, and the city’s residents have an interest in the timely and effective execution of the public duties of all city officers and employees”).