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OPINION	:	No. CV 78-104
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of	:	<u>March 23, 2023</u>
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SUBJECT: STUDENT MEMBERS—This opinion discusses eligibility requirements of student members of community college district governing boards. Some topics discussed are elections, officers, voting rights, fringe benefits, and transportation costs.

The Board of Governors of the California Community Colleges through Gary M. Gallery, legal counsel, has requested an opinion on the following questions:

1. Are the student members of community college district governing boards required to meet all eligibility requirements set forth in Education Code section 72103?
2. In addition to the eligibility requirements set forth in Education Code section 72023.5 and those which may be required under Education Code section 72103, may community college district governing boards establish additional eligibility requirements for student members, such as minimum academic standards, number of units completed, current unit load, day student status, prohibition of concurrent district employment or of concurrent occupation of any student body office?
3. Does Education Code section 72023.5 require that student members be selected in a majority vote election which is open to all community college students

enrolled in the district? Or, alternatively, may the community college district governing board establish procedures whereby the student board member is: (a) selected by the student body senate; (b) selected by the student body president; (c) the student body president of just one college in the district); or (d) appointed by the board?

4. Are student members required to be sworn in and given the oath of office in the same manner as are other members of the community college district governing board?

5. May a student member serve as either the president or secretary of the community college district governing board?

6. Are student members authorized to attend special meetings of the community college district governing board?

7. Is a student member entitled to make, amend and second motions which are to be voted upon by the community college district governing board?

8. Are student members entitled to all fringe benefits which are provided by a community college district governing board to the other members of the board?

9. Are student members entitled to transportation costs for visits to schools or conferences authorized for elected members of a community college district governing board?

The conclusions are:

1. Student members of community college district governing boards are not required to meet all eligibility requirements set forth in Education Code section 72103.

2. A community college district governing board may not establish eligibility requirements for student members in addition to those set forth in Education Code section 72023.5.

3. Student members are required to be selected by a majority or plurality vote in an election open to all community college students enrolled in the district.

4. Student members are required to be sworn and given the oath of office in the same manner as are other members of the community college district governing board.

5. A student member may not serve as the president of the community college district governing board. A student member may serve as the secretary of the community

college district governing board provided that such student member may not attend executive sessions of said board.

6. Student members are authorized to attend special meetings of the community college district governing board.

7. A student member is not entitled to make, amend, and second motions to be voted upon by the community college district governing board.

8. A student member is not entitled to all fringe benefits which are provided by a community college district governing board to other members of the board.

9. Student members are not entitled to transportation costs for visits to schools or conferences authorized for other members of a community college district governing board which are not conducted in conjunction with an annual, regular or special meeting of the board.

#### ANALYSIS

The series of questions presented concerns the interpretation and analysis of section 72023.5 of the Education Code<sup>1</sup> pertaining to student members of a community college district governing board:

“The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, one or more nonvoting students who are residents of the district. Such students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

“The students selected to serve on the governing board, in addition to being residents of the district, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. The term of the student members shall be one year commencing on July 1 of each year.

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<sup>1</sup> Hereinafter, all section references are to the Education Code unless otherwise indicated.

“The nonvoting student members appointed pursuant to this section shall be entitled to the mileage allowance prescribed by Section 72123 to the same extent as regular members, but are not entitled to the compensation prescribed by Section 72425.

“A nonvoting student member shall be seated with the members of the governing board and shall be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

“The nonvoting student member shall not be included in determining the vote required to carry any measure before the board.

“The nonvoting student member shall not be liable for any acts of the governing board.”

The first inquiry is whether a student member of a community college district governing board is required to meet all of the eligibility requirements set forth in section 72103. That section, prescribing the qualifications for election or appointment as a member of a governing board of a community college district, provides as follows:

“Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the community college district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a community college district.”

Prior to the enactment of section 72023.5 (Stats. 1977, ch. 1184, § 7) section 72103 (formerly § 1112, Stats. 1963, ch. 629, § 2, p. 1529, as amended by Stats. 1971, ch. 1748, § 31, p. 3749) clearly pertained exclusively to governing board members elected in accordance with sections 72022 and 72023. It is equally apparent that the Legislature did not intend to require student members selected under the provisions of section 72023.5 to meet all of the qualifications prescribed for governing board members in section 72103. The Legislature expressly set forth in section 72023.5 the eligibility requirements of student members. Specifically, such a member must be a resident of the district and enrolled in a community college of the district. No reference, express or implied, is made to the requirements of section 72103 that the member be 18 years of age, a citizen of the state, a registered voter, and not disqualified by the Constitution or laws of the state from holding a civil office.

Under the maxim “*expressio unius est exclusio alterius*” the enumeration of items within a statute implies the exclusion of other items within the enumerated class. (55 Ops. Cal. Atty. Gen. 338, 340 (1972); 32 Ops. Cal. Atty. Gen. 238, 239 (1958).) Thus, the express inclusion in section 72023.5 of one of the requirements set forth in section 72103, i.e., residence within the district, implies the exclusion of the remaining requirements. Consequently, while section 72103 expressly includes the requirements that the member be 18 years of age, a citizen of the state, a registered voter, and not disqualified by the Constitution or laws of the state from holding a civil office, section 72023.5 impliedly excludes such requirements. In the event of an ostensible conflict between two state statutes, the more specific enactment will control over the more general one. (*Mitchell v. County Sanitation District* (1958) 164 Cal. App. 2d 133, 141; Civ. Code, § 3534; 59 Ops. Cal. Atty. Gen. 73, 79 (1976).) Section 72023.5 pertains specifically to student members and therefore controls over the more general provisions of section 72103. Moreover, if all of the requirements set forth in section 72103 were applicable to student members, the requirement in section 72023.5 that a student member be a resident of the district would be rendered meaningless, since that requirement is contained in section 72103. A cardinal rule of statutory construction is that an interpretation rendering some words surplusage is to be avoided. (*People v. Gilbert* (1969) 1 Cal. 3d 475, 480.) It will be presumed that every word, phrase, and provision of a statute was intended to have some meaning and to perform some useful office. (*Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal. App. 3d 222, 228–229.)

Finally, the extension to student members of the requirements specified in section 72103 is neither logically nor rationally indicated. Regular members of a governing board must be elected pursuant to sections 72022 and 72023 by electors who are themselves required to be citizens of the United States and 18 years of age. (Cal. Const., art. II, § 2.) Student members are chosen by the students enrolled in the community colleges of the district. (§ 72023.5.) The authority and duties of a student member are fundamentally different from those of a regular member. It is sufficient to note that a student member is not authorized to vote at a meeting or to attend executive sessions. (§ 72023.5.) Thus, the application of different qualifications is entirely reasonable. It may be additionally noted that the requirement that a member of the governing board be 18 years of age would have a far different effect upon the number of students who would be eligible for student membership than it has on the eligibility of electors in the community at large to be elected to the governing board. We perceive in the statutory scheme and purpose no legislative intent to disqualify such a substantial proportion of the students represented.

Although section 72103 does not apply to student members, other provisions pertaining to eligibility for public office should be examined. Government Code section 1020 provides:

“A person is incapable of holding a civil office if at the time of his election or appointment he is not 18 years of age and a citizen of the state.”<sup>2</sup>

A member of a governing board of a community college district is clearly a holder of a civil office. (Gov. Code, § 1001; *cf.* 55 Ops. Cal. Atty. Gen. 94, 95 (1972).) It remains to be determined, however, whether a student member holds a “civil office” within the purview of Government Code section 1020. The term is not limited to the enumeration of those officers designated in Government Code section 1001 as civil executive officers. (15 Ops. Cal. Atty. Gen. 146, 148 (1950).) It has been stated that the duties constitute the principal test of a civil or public office. (*Id.*, at p. 149.) The right, authority, and duty conferred by law must be continuing and permanent, not transient, occasional or incidental, involve an exercise of some of the sovereign power of the state, and require the exercise of judgment and discretion. (*Spreckels v. Graham* (1924) 194 Cal. 516, 528–530; 57 Ops. Cal. Atty. Gen. 498, 501 (1974); 57 Ops. Cal. Atty. Gen. 303, 306–307 (1974); 15 Ops. Cal. Atty. Gen. 146–149 (1950); 2 Ops. Cal. Atty. Gen. 461, 463–465 (1943).) The delegation of some portion of the sovereign functions of government is almost universally regarded as essential to the existence of a public office. (57 Ops. Cal. Atty. Gen. 498, 501 (1974).) Under the provisions of section 72023.5 a student member cannot vote, is not included in determining the vote required to carry any measure before the board, may not attend executive sessions of the board, is not compensated, and is not liable for any acts of the governing board. Although a student member is “seated with the members of the governing board” and “recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and discussion of issues,” he does not participate in the actual determination of a course of action. It cannot be said, therefore, that a student member exercises a part of the sovereign power of the government. Consequently, a student member does not hold a civil office and is not subject to the requirements of Government Code section 1020.<sup>3</sup> It may be noted that section 72103 expressly refers to the qualifications prescribed by law for the holding of a civil office, whereas section 72023.5 contains no such reference to such qualifications or to the term “civil office.” It is concluded that the student members of community college district governing boards are not required to meet all eligibility requirements set forth in section 72103.

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<sup>2</sup> Citizens of the state are also citizens of the United States. (Gov. Code, § 241; U.S. Const., Amend. 14, § 1.) With regard to the minimum age requirement, Government Code section 275.2 does not provide in the contrary. (57 Ops. Cal. Atty. Gen. 498, 500 (1974).)

<sup>3</sup> We have previously held that Government Code section 1020 is unconstitutional to the extent that it precludes a noncitizen from holding any civil office. (61 Ops. Cal. Atty. Gen. 528 (1978).) The validity of the minimum age requirement was not considered. (*Id.*, fn. 5.) The constitutional issues are not pertinent so the present discussion since it is concluded that the statute is inapplicable to student members.

The second inquiry is whether a community college district governing board may establish eligibility requirements for student members, such as minimum academic standards, number of units completed, current unit load, day student status, prohibition of concurrent district employment or of concurrent occupation of any student body office, in addition to the eligibility requirements set forth in section 72023.5. That section provides in pertinent part that the students selected to serve on the governing board, in addition to being residents of the district, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. As previously noted, under the maxim “*expressio unius est exclusio alterius*” the inclusion of one or more qualifications implies the exclusion of others. Moreover, student members are chosen by the students. The statute does not provide for participation in the selection by the governing board. Thus, while the board may prescribe the *procedures* by which the students choose their representative, it may not circumscribe their choice by means of imposing eligibility limitations. It is concluded that a community college district governing board may not establish eligibility requirements for student members in addition to those set forth in section 72023.5.

The third inquiry is whether student members must be selected in a majority vote election which is open to all community college students enrolled in the district. Section 72023.5 expressly provides that student members shall be chosen and subject to recall “by the students enrolled in the community colleges of the district.” Every person who is a student and who is enrolled in one of the community colleges of the district is equally eligible to participate in the selection process. In the absence of any statutory indication or inference to the contrary, the participation of each such person must be equally weighted. In view of the statutory language presented, no other intent can be reasonably ascribed to the legislature. It is concluded that student members must be selected in an election by a majority or plurality of all community college students enrolled in the district.

The fourth inquiry is whether student members are required to be sworn and given the oath of office in the same manner as are other members of the community college district governing board. California Constitution, article XX, section 3 provides that “. . . all public officers and employees . . . except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe . . . the oath or affirmation therein prescribed. That section further provides that the term “public officer and employee” includes every officer and employee of the state or of its political subdivisions, including any division or instrumentality thereof. Thus, the provision applies to public officers (*cf.* Gov. Code, §§ 1360, 1367, 1303, 1026) and to public employees (*cf.* Gov. Code, § 3101–3107, 1027; and see *Smith v. County Engineer* (1968) 266 Cal. App. 2d 645, 653; *San Francisco Police Officers Assn. v. City and County of San Francisco* (1977) 69 Cal. App. 3d 1019, 1023) including employees of a community

college district (*cf. Chilton v. Contra Costa Community College Dist.* (1976)55 Cal. App. 3d 544). The constitution and cited statutes requiring public employees to take and subscribe the oath preempt the field (*San Francisco Police Officers Assn. v. City and County of San Francisco, supra*, 69 Cal. App. 3d, at 1024) and are mandatory (*Smith v. County Engineer, supra*, 266 Cal. App. 2d, at 653–654).

The constitutional requirement applies to all public officers and employees except such inferior officers and employees *as may be by law exempted*. With the exception of those persons who may be by law exempted, the requirement is universal and absolute. A student member is not exempted by any law from the subject provisions. Although the role of a student member is limited, he does perform some of the functions which are traditional prerogatives of the duly elected members of the board. For this reason, section 72023.5 provides that he “shall be recognized as a full member of the board at the meetings.” It is concluded therefore that student members are required to be sworn and given the oath of office in the same manner as are other members of the community college district governing board.

The fifth inquiry is whether a student member may serve as either the president or secretary of the community college district governing board. Sections 72025, 72125, and 72402 which were enacted prior to the enactment of section 72023.5 expressly provide that the president shall be elected by the board from among its members. These statutes clearly referred to those regular members who were eligible to cast a vote. Section 72023.5 delineates the function of a student member and contains no indication of legislative intent to change the meaning of the earlier enacted provisions. On the contrary, while a student member is “seated with” the members of the board and “recognized as a full member of the board at the meetings,” he cannot vote or be counted in determining the vote required to carry any measure before the board, and may not attend executive sessions of the board. (§ 72023.5.) We cannot attribute to the Legislature an intent to permit the exclusion of the president of the board from such functions. Consequently, it is concluded that a student member may not serve as president of the board.

The board is also required to select a secretary. (§§ 72025, 72030, 72125.) Section 72405 provides as follows:

“The governing board of any community college district may employ a person not a member of the board to act as secretary and bookkeeper for the board, and may delegate to such secretary the duties prescribed in subdivisions (a) and (c) of Section 72600”

Government Code section 54957.2 provides that a local agency may designate a clerk or other officer or employee of the local agency to attend each executive session of the

legislative body and to keep and enter in a minute book a record of topics discussed and decisions made at the meeting. A student member is, however, expressly excluded from attendance at any such executive session of the board. (§ 72023.5.) Since the governing board is not compelled to designate its secretary as the person authorized to attend executive sessions, it is concluded that a student member who is otherwise qualified may serve as secretary of the board provided that such student member may not attend executive sessions of the board.

The sixth inquiry is whether a student member is authorized to attend special meetings of the community college district governing board. Section 72129 provides for special meetings at the call of the president of the board or of a majority of its members. Section 72023.5 provides in pertinent part that student members shall have the right to attend “each and all meetings” of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the board. Section 72122 provides for the holding of executive sessions. The term “each and all meetings” is universal and absolute and includes special meetings and executive sessions. Thus, the exclusion of student members from executive sessions is stated in the form of an express exception. Special meetings are not included within the exception. As previously noted, under the maxim “*expressio unius est exclusio alterius*” the inclusion of one or more qualifications implies the exclusion of others. Since the meaning of the term “each and all meetings” is unequivocal and special meetings are not expressly excluded, it is concluded that a student member is authorized to attend such meetings of the board.

The seventh inquiry is whether a student member is entitled to make, amend and second motions which are to be voted upon by the board. It is clear that a student member is not authorized to vote. (§ 72023.5.) The voting process in parliamentary procedure is universally initiated by the presentation of a motion. Thus, such presentation is an integral function of the voting process. A motion is both a formal proposal that an official course of action be followed, and an indication that the proposal has, in the judgment of at least one of the voters, sufficient merit to warrant the consideration of the voting membership as a whole. For the same reason, a motion typically requires a second. Since a student member may not vote, a motion presented by such member would be void of such assurances. If a course of action sought to be proposed by a student member is viewed by any voting member as worthy of consideration, the voting member may present it in the form of a motion. On the other hand, if a suggested course of action is not deemed sufficiently meritorious by any voting member, the presentation of such a motion would be a futile exercise.

Finally, section 72023.5 provides that a student member is entitled to receive all materials presented to the board members, and to participate in the questioning of witnesses and the discussion of issues. No reasonable inference may be drawn from the purview of

such expressly stated powers that the Legislature intended to confer the power to make a motion. On the contrary, the term “discussion of issues” is so manifestly limited as to clearly imply the exclusion of the power to present a motion. It is concluded therefore that a student member is not entitled to make, amend and second motions to be voted upon by the board.

The eighth inquiry is whether a student member is entitled to all fringe benefits which are provided by a community college district governing board to the other members of the board. Government Code section 53201 provides that the legislative body of a local agency,<sup>4</sup> subject to such conditions as may be established by it, may provide for any health and welfare benefits of its officers and employees<sup>5</sup> who elect to accept such benefits. Any member of a legislative body may participate in any such benefit plan without regard to any statutory limitation upon compensation. (Gov. Code, § 53208; 54 Ops. Cal. Atty. Gen. 124 (1971).) Consequently, a community college district governing board is authorized to provide health and welfare benefits for its members, including a student member who is otherwise precluded under section 72023.5 from receiving compensation. However, neither the provisions of the Government Code referred to above, nor of the Education Code require that equal benefits be provided to all classes of employees or officers. On the contrary, the Legislature clearly perceived a distinct classification between regular members who are entitled to compensation (§ 72425), and student members who are not (§ 72023.5). Nothing in this statutory scheme implies that student members should otherwise be treated equally with regular members. Nor is there any constitutional requirement of uniform treatment of various categories of personnel, but only that there be a reasonable basis for each classification. (*Bilyeu v. State Employees' Retirement System* (1962) 58 Cal. 2d 618, 623.) Such a basis clearly exists with respect to the distinction between student members and regular members. The former serve one year terms (§ 72023.5) while the latter are elected to four year terms (§§ 72022, 72023). Both the student member's authority and liability for the acts of the governing board are specifically limited. (§ 72023.5.) Such differences would plainly justify a distinction with regard to benefits and compensation. (*Cf. Bilyeu v. State Employees' Retirement System, supra.*) It is concluded therefore that a student member is neither statutorily nor constitutionally entitled to all fringe benefits which may be provided by a community college district governing board to the other members of the board.

The final inquiry is whether a student member of a community college district governing board is entitled to transportation costs for visits to schools which are required

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<sup>4</sup> The term “local agency” refers to any public agency of the state, including a school district.

<sup>5</sup> The term “employees” includes members of the legislative body. (Gov. Code, § 53200, subd. (e).)

of the board under section 72236<sup>6</sup> or to conferences authorized for elected board members. Section 72023.5 provides in pertinent part that student members shall be entitled to the mileage allowance prescribed by section 72123 to the same extent as regular members. Section 72123 provides in part as follows:

“Each member of the governing board of a community college district may be allowed for travel necessary to attend annual, regular and special meetings of the governing board the rate of mileage determined by the governing board.”

This section refers to annual, regular and special meetings. No express reference is made to school visitations or conferences. The principal inquiry, then, is whether such school visitations or conferences are annual, regular, or special meetings within the purview of section 72123. An annual meeting is held for the specified purposes of organization and election of a president and secretary. (§ 72125.) The regular business of the board may also be conducted at such a meeting. (§ 72124.) Regular meetings of the board (§§ 72120, 72126) are held for the purpose of conducting its regular business (§ 72121). Special meetings may be called (§ 72129) for the transaction of business specified in the call, except that by unanimous consent any business matter may be transacted (§ 72131). School visitation is a statutory obligation imposed in addition to, and apart from, the conduct of annual, regular, and special meetings. The purpose and function of such visitations are to examine into the management, needs, and conditions of the schools. The exclusive function is fact finding.<sup>7</sup> There is no requirement for an agenda or the taking of minutes as in the case of a meeting. (*Cf.* § 72121.) There is no provision for the transaction of business. Indeed, the purely investigative function may be performed by the district superintendent or his assistants. (§ 72236.) Consequently, school visitations are not annual, regular, or special meetings within the purview of section 72123.

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<sup>6</sup> The section provides as follows:

“The governing board of any community college district shall visit each school in its district at least once each term, and examine carefully into the management, needs, and conditions of the schools. In any district which employs district superintendents of schools, it shall either visit the schools or provide that they shall be visited by the district superintendent of schools or his assistants.

<sup>7</sup> The problem of defining the term “meeting” has been presented in connection with the secret meeting laws. (Gov. Code, § 54950 *et seq.*; 11120 *et seq.*) Divergent viewpoints as to whether fact finding per se falls within the scope of such laws have been propounded. (See *Adler v. City Council* (1960) 184 Cal. App. 2d 763, 773; *cf. Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal. App. 2d 41, 47–48.) We do not consider the problem here. The present inquiry is not whether a school visitation is a meeting but whether it is an annual, regular, or special meeting within the specific context of section 72123.

Nor do conferences which are not conducted in conjunction with an annual, regular, or special meeting of the governing board fall within the provisions of section 72123.<sup>8</sup> Moreover, section 72023.5 provides specifically that student members shall be recognized as full members of the board at the meetings. Thus, student members are not entitled to recognition and have no authority or responsibility apart from their limited participation at the meetings of the board.<sup>9</sup> There would be no basis, therefore, for an allowance for transportation costs for any function other than attendance at the meetings. It is concluded that a student member is not entitled to transportation costs for visits to schools or for conferences which are not conducted in conjunction with an annual, regular or special meeting of the governing board.

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<sup>8</sup> Again, related questions in connection with the secret meeting laws are not apposite. (See generally, 43 Ops. Cal. Atty. Gen. 36 (1964); 42 Ops. Cal. Atty. Gen. 61 (1963).)

<sup>9</sup> Section 72423 provides that the governing board of each community college district shall provide for the payment of the traveling expenses of any representatives of the board when performing services directed by the board. The present inquiry, however, relates only to a student's service as a student member of the board i.e., not as a representative of the board, but of the students.