TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. CV 78-84
of	:	January 17, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Clayton P. Roche Deputy Attorney General	:	

SUBJECT: DIVISION OF JUDICIAL DISTRICTS—Boards of supervisors have authority to divide a judicial district. Such a division may occur during an incumbent judge's term of office. Barring code restrictions, salaries of judges of new districts may be set lower than incumbents' salaries. Until the Legislature provides differently, a justice court which becomes a municipal court will have a single judge.

The Honorable George N. Zenovich, Senator for the 14th District, has requested the opinion of this office on the following questions:

1. Can the Board of Supervisors of Madera County, which contains a justice court district which now has a population in excess of 40,000, divide the judicial district into two new districts, neither of which will exceed a population of 40,000?

2. If the answer to question one is in the affirmative, can such division take place during the terms of office of the incumbent judges of the district?

3. Assuming an affirmative answer to both questions one and two, can the salaries of the judges of the new districts be set lower than the salaries of the incumbent judges?

4. If a justice court such as found in Madera County which has two judges becomes a municipal court by operation of law, will the municipal court have one or two judges? If the answer is one judge, how will the selection be made?

The conclusions are:

1. The Board of Supervisors of Madera County may divide the judicial district which now has a population of 40,000 into two new districts, neither of which will have a population in excess of 40,000.

2. Such a division of the existing judicial district can take place during the terms of office of the present incumbents.

3. The salaries of the judges of the new districts can be set lower than the salaries of the incumbents. This of course assumes that the judges will not be entitled to the $30,000 per year salary specified in section 71702 of the Government Code.

4. If a justice court which has two judges becomes a municipal court by operation of law, the municipal court will have a single judge unless or until the Legislature provides differently. The single judge will be selected as provided in section 71080 of the Government Code.

ANALYSIS

Article VI, section 5 of the California Constitution provides for municipal and justice courts. As material herein it provides:

1. That "[e]ach county shall be divided into municipal court and justice court districts as provided by statute";

2. That "[t]here shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less," the population to "be ascertained as provided by statute";

3. That "[t]he Legislature . . . shall *prescribe* for each municipal court and *provide* for each justice court the number . . . and compensation of judges" (emphasis added); and

4. That "each municipal and justice court shall have one or more judges."

The statutory provisions relating to municipal and justice courts are found in section 71001 *et seq.* of the Government Code.[1]

Section 71040 provides that "[a]s public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges . . . of municipal and justice courts, and may change district boundaries and create other districts. . . ."

Section 71043 provides the manner in which district population shall be ascertained. Three alternatives exist: (1) the last federal census; (2) a special census conducted at the instance of the county; or (3) a court action to declare that the district currently exceeds 40,000.

It is significant to note the difference in language in Article VI, section 5, *supra*, with respect to the legislature's duties. It *prescribes* the number and compensation of municipal court judges, but only need *provide* for these matters as to justice court judges. In short, the Legislature itself does the former, and generally delegates the latter. (See *County of Madera v. Superior Court* (1974) 39 Cal. App. 3d 665, 669–670; 56 Ops. Cal. Atty. Gen. 315 (1973).) Thus, with respect to municipal courts, a perusal of the Government Code (§ 72600 *et seq*.) demonstrates that the Legislature has specifically provided by statute the precise number of judges for each municipal court. With respect to compensation of municipal court judges, that is set specifically in sections 68202–68203. The just-cited case and opinion of this office demonstrate that as a general proposition, no statute prescribes the number of justice court judges per district; that, therefore, the number is determined by the Constitution, and that it has historically been one judge per district. With respect to compensation of justice court judges, section 71600 provides that the "board of supervisors shall regulate the compensation of the judges . . . of justice courts.

In accordance with the above outlined structure for municipal and justice courts, the court in *County of Madera v. Superior Court, supra*, 39 Cal. App. 3d 665, held that the Board of Supervisors of Madera County had no authority to provide for two justice court judges in a single district. The board had purportedly consolidated two existing judicial districts into a single district to equalize the workload, but also attempted to provide for *two* judges. The consolidation ordinance was held to be completely invalid on the grounds that the provision with respect to judges was invalid and not severable from the remainder of the ordinance.

Thereafter, the Board of Supervisors of Madera County apparently again consolidated these two existing judicial districts. The surviving district was, and is, the

[1] All section references are to the Government Code.

Madera Judicial District. Thereafter, the Legislature enacted section 71040.5 (Stats. 1974, Ch. 749, § 1, p. 1659), a special statute applicable to Madera County only. It states:

> "In the event that the board of supervisors of Madera County consolidated the Madera Judicial District and the Sierra Judicial District into the same district, any justice court established in the consolidated district shall have two judges. The judges shall be selected as otherwise provided by law."

We are advised that the two incumbent judges of the Madera Judicial District hold terms of office which both expire on January 1, 1983. It is also our understanding that both judges would be qualified to hold the office of municipal court judge. (See Cal. Const., art. VI, § 15.) Finally, we are advised that the board of supervisors has taken no action to establish a municipal court in the district either through a declaratory relief action or a special census. Apparently, however, there exists the possibility that the Madera Judicial District now contains more than 40,000 residents, making it eligible to have a municipal court.

With this factual and legal background, we proceed to the specific questions presented.

1. The Questioned Division of the Existing District

The first question presented is whether the existing Madera Judicial District, which we assume now has a population in excess of 40,000 persons, may be divided into two districts, neither of which will exceed such population. We conclude that the board of supervisors, acting pursuant to the authority granted in section 71040, *supra*, may divide the existing district in such a manner.

This office has held a number of times that the board of supervisors' power granted by section 71040 is virtually plenary. In a relatively recent letter opinion (I.L. 75–286) we were faced with the question whether eight existing justice courts could be consolidated into a single, county-wide municipal court so that the consolidation would take effect on the final day of the incumbents' terms of office (January 2, 1976) and thus avoid an election for existing justice court judges in June, 1975. We summarized the discretion which reposes in the board of supervisors as follows:

> "Article VI, section 5 of the California Constitution, insofar as it provides for the division of counties into judicial districts, is implemented primarily by section 71040, which states:

> 'As public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges and other officers of municipal and justice courts, and may change district boundaries and create other districts. No city or city and county shall be divided so as to lie within more than one district.' (Footnote omitted.)

"In a letter opinion issued in 1968, I.L. 68/143, this office *stated with respect to section* 71040, when read in conjunction with sections 71042 and 25200;[2]

> 'It is clear that the above statutes confer on the Board of Supervisors the discretionary power to alter judicial district boundaries "as the public convenience requires." It is equally clear that this power includes the power to consolidate existing judicial districts. *Proulx v. Graves*, 143 Cal. 243 (1904); *In Re Stanton*, 128 Cal. App. 659 (1933); 7 Ops. Cal. Atty. Gen. 141 (1946). See also *In Re Mize*, 11 Cal. 2d 22 (1938).'

Significantly, 7 Ops. Cal. Atty. Gen. 141 (1946), cited in such opinion held that a consolidation of the then 'townships' under the similarly worded predecessor to section 71040 into a single county township for the purpose of electing justices of the peace was proper. It was stated therein that 'we see no reason why the supervisors should not create a single township for the county should they consider that "convenience requires" such an arrangement.' *Id*. at 142. See also, generally 56 Ops. Cal. Atty. Gen. 315 (1973), and 41 Ops. Cal. Atty. Gen. 115 (1963), relating to the power of boards of supervisors under section 71040.

"Significant also to the inquiry herein is the fact that nothing in section 71040 limits the discretion of the board of supervisors as to the time when they may effect a redistricting. Thus, the board could do so during an election year, during a non-election year, during the term of incumbents, or at the end of their terms. See I.L. 68/143, *supra*, at page 3:

> 'Moreover, nothing in these statutes prohibits consolidation during an incumbent's term [the issue in such opinion].'

---

[2] Section 71042 requires the Judicial Council to provide boards of supervisors with its recommendations as to consolidations or other alterations of judicial district boundaries. These, however, are advisory.

Section 25200 provides that "[T]he board of supervisors may divide the county into election, school, road, supervisorial, sanitary, and other districts required by law, change their boundaries, and create other districts, as convenience requires."

> "Also, there is nothing in section 71040 which states that a redistricting which results in the establishment of a municipal court or courts can be done only after the Legislature has enacted a statute prescribing the number of judges for such district or districts and providing for its organization and staffing. [Footnote omitted]"

Or as we held in 41 Ops. Cal. Atty. Gen. 115, 120 (1963), in which we ruled that a board of supervisor's powers extended to altering the boundaries of judicial districts in which municipal courts had been established:

> "The Legislature delegated the division of the county into judicial districts to the board of supervisors, a condition being 'as public convenience required . . . .' § 1040. The power of the board of supervisors to change judicial district boundaries has been long recognized. See *In re Mize*, 11 Cal. 2d 22, 24 (1938) (Pol. Code § 4015, essentially the predecessor of Gov. Code § 71040).
>
> "The sole restriction upon the power of the board of supervisors to alter judicial district boundaries emanates from the Constitution, which provides that 'no incorporated city or city and county shall be divided so as to lie partly within one district and partly within another.' Const. Art. VI, § 11. Subject to this restriction, the board of supervisors has power over the boundaries of every judicial district within the county, including those in which municipal courts have been established."

(See also, generally, *Phelps v. Brennan* (1976) 16 Cal. 3d 508, 510; I.L. 61–17, LB 369/703.)

Accordingly, it is immaterial whether the Madera Judicial District is a justice court district, is a municipal court district, may be declared a municipal court district in the near future, or contains more or less than 40,000 residents. If the board of supervisors, in the exercise of its discretion, should determine that "public convenience requires" that the district be divided into two districts, each with less than 40,000 residents, it may so divide the district.

In so concluding we note the fact that the usual situation would be *consolidation* of small districts, not the division of a large district. This is evident from the discussion in *Phelps v. Brennan*, *supra*, 16 Cal. 3d 508, 510 with respect to the present statutory scheme in relation to the court reform approved by the voters in 1950. However, the pertinent statutes such as section 71040 do not restrict the board of supervisors to consolidation or other action which would enlarge one or more districts. Accordingly, we apply the

language according to its clear import.[3]

Finally, with respect to question one, we assume that one of the factors prompting the question is the fact that the Madera Judicial District may be eligible to have a municipal court, and that this might somehow affect the board's powers.[4] We note there is some prior actual precedent for the "disestablishment" of an anticipated municipal court. Thus, in letter opinion, I.L. 64–102, we discussed the situation where, after the Legislature had already enacted legislation to provide for staffing for a municipal court soon to be established in Visalia, the board of supervisors redistricted, transferring some of the territory of that district to another. Thus, the anticipated municipal court was not established despite the implementing legislation.

2. Redistricting During The Incumbent Judges' Terms of Office

The second question presented is whether redistricting of the Madera Judicial District may be accomplished during the terms of office of the incumbent judges. This very issue was discussed and answered with respect to redistricting (consolidating) judicial districts in Monterey County in letter opinion 1.L. 68–143. In that opinion one of the questions presented was whether a consolidation of two judicial districts could be made effective during the term of each judicial office rather than at the expiration of the terms. We held, at pages 3–4:

> "Moreover, nothing in these statutes [secs. 71040, 71042 and 25200, *supra*] prohibits consolidation during an incumbent's term. (Footnote omitted.) Indeed, the statute governing succession to newly created justice courts, and the only one of which we are aware which by its terms would appear to be applicable to the consolidation of such courts, specifically contemplates changes before the end of the incumbent's terms. § 71080. Compare § 71180.3 . . . .[5]

[3] Interestingly, in 7 Ops. Cal. Atty. Gen. 141 (1946), discussed above in the quotation from letter opinion I.L. 75–286, we applied the predecessor to section 71040 (Pol. Code, § 4015) according to its clear import, despite the fact that to the best of our knowledge, redistricting to create a single township was apparently unique. We relied upon the discretion of the board as to what they considered "convenience requires."

[4] We note parenthetically that a municipal court comes into being automatically if the federal or a special county census determines the requisite population exists, or a court so finds in a declaratory relief action brought for that purpose. (See I.L. 64,102, I.L. 61–17, LB 369/703.)

[5] Section 71080, the succession statute, is discussed at length, *infra*, in question four.

"Furthermore, it is well settled that an incumbent has no vested interest or property right in an office that is paramount to the public interest, and which would prevent the elimination of his office during his incumbency. *Deupree v. Payne*, 197 Cal. 529, 538 (1925). As the court said in *Deupree*:

> 'That such board of supervisors in so dealing with such a situation [the creation of a municipal court and the consolidation of parts of old judicial districts] could entirely abolish a particular township we have no doubt, and that by so doing they could also do away with the justice's court formerly existing therein, we have also no doubt, and if in so doing the effect thereof was to put our of being both the office of justice of the peace and the incumbent of such office in his official capacity, we can perceive no obstacle in the way of such a consequence, since it is well settled that there is no vested right in an incumbent to an office, nor any property right therein paramount to the public interest. [citations].' *Ibid*.

Consequently, for the foregoing reasons, it is our opinion that consolidation of judicial districts may be made operative during an existing term of office; it need nor await the expiration of current judicial terms.

(See also, *Bell v. Board of Supervisors* (1976) 55 Cal. App. 3d 629, 632–633, wherein the court discussed its prior but moored opinion holding that an incumbent could be divested of his office upon redistricting; I.L. 75–286, *supra*. Compare *Phelps v. Brennan*, *supra*, 16 Cal. 3d 508, redistricting to take effect after expiration of existing terms.)

Accordingly, since there is no difference between consolidation or "de-consolidation" of judicial districts in the statutes with respect to when it may be accomplished, it is concluded that the board of supervisors may, if it so desires, divide the Madera Judicial District into two districts during the terms of office of the incumbent judges.

3. Judicial Salaries In The New Districts

The third question presented assumes that the board of supervisors enacts a redistricting ordinance during the terms of office of the present incumbents of the Madera Judicial District. It then posits the question whether the salaries of the judges of the new districts can be set lower than the salaries of the incumbent judges. We conclude that the salaries may be set lower than those presently received by the incumbents.

The question as phrased appears to presuppose a possible continuation of the present judicial offices from the old district into the two new districts. If this were the case, then the applicability of article III, section 4 of the California Constitution would have to be decided. That section provides:

> "Salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations."

Absent some prohibition such as article III, section 4, however, the body or officer which sets salaries may also reduce them at will, even during the term of an incumbent. (See 61 Ops. Cal. Atty. Gen. 384, 386 (1978); 28 Ops. Cal. Atty. Gen. 103, 105 (1956); 12 Ops. Cal. Atty. Gen. 224, 225 (1948); I.L. 60–30, LB 367/360A and cases cited in these opinions.)

Since section 71600 grants boards of supervisors the authority to regulate the salaries of justice court judges, but for the possible applicability of article III, section 4, no serious question would even appear to arise with regard to the question asked. Whether the two new judgeships were considered to be continuations of prior offices, *or new offices,* authority would exist under section 71600 to reduce salaries or lower them. If salaries may be reduced during a term of office, a fortiori, they can be set lower for a *new* office which supersedes that office.

However, in 60 Ops. Cal. Atty. Gen. 153 (1977), this office held that judges are "state officers" *for purposes of article III, section 4*; that therefore, the attempt by the Legislature to "freeze" these judges' salaries by an amendment to section 68203, the "cost-of-living escalator" for these judges, was unconstitutional. This "escalator" is not normally applicable to justice court judges.[6] Because of this holding, however, we cannot rely upon cases and opinions holding that an officer's compensation may be reduced during his term to resolve question three.

Consequently, we must directly decide the issue whether the judgeships in the superseding courts established through redistricting would be new offices. We conclude that they would be. This conclusion is evident from the holding of the Court in *Phelps v.*

[6] The limited exception is with respect to those justice court judges selected as "circuit judges" or "certified" by the Chairman of the Judicial Council as acceptable for assignment to "other courts" by reason of membership in the State Bar for five years. These provisions were added in 1974. The salary of these special justice court judges was originally set at $30,000, plus cost of living increases. (See § 71700 *et seq*.) Significantly, these provisions were not in the law in 1972, when article III, section 4 was first adopted, raising some question regarding an intent to include the traditional justice court judges within the scope of article III, section 4.

Brennan, *supra*, 16 Cal. 3d 508. In that case the board of supervisors redistricted the justice courts in Shasta County from eight to four in number. The redistricting was to be effective on January 3, 1977, the day after the terms of office of the incumbent judges expired. The central issue in the case was whether the reapportioned districts were newly established districts, or a continuation of existing districts which had been enlarged. This was material in order to determine whether the offices for the reapportioned district judgeships should appear on the June 1976 Primary Election ballot.

The Court held that the reapportioned districts were new districts containing newly established justice courts. In its language it also alluded to the obvious: that newly established judicial districts would have new judicial offices. Thus, after holding that the succession provisions of section 7 1080[7] were not operative because there were no incumbents in office of January 3, 1977 in the superseded courts (their offices having expired on January 2, 1970), the Court stated further with reference to section 71080:

> "The discernible legislative intent in enacting section 71080 also compels a conclusion that a justice court judge for a judicial district to be established on January 3, 1977, cannot be selected by election on June 8, 1976, a date prior to the establishment of the district. Section 71080.5 provides for an election at a time prior to the establishment of a new judicial district but only if it is to be a municipal court district. The Legislature has thus departed from the general provisions of section 71080 to provide by special statute for an election which anticipates the establishment of a *new judicial office* in the case of a municipal but not a justice court district, and we can only conclude that the Legislature intended that section 71080 not be construed to provide for a parallel election in the case of a justice court. Our view of the interrelationship of sections 71080 and 71080.5 thus forecloses any contention as made herein that section 71080 authorizes the selection of the judges of the three new Shasta County justice court districts by an election held prior not only to the vacancy but also prior to the establishment of the court wherein the vacancy is anticipated." (16 Cal. 3d at pp. 512–513, emphasis added.)

(See also, generally, *Bell v. Board of Supervisors*, *supra*, 55 Cal. App. 3d at p. 633[8]; *Deupree v. Payne* (1925) 197 Cal. 529, 538; I.L. 54, LB 300/1000.)

---

[7] For the full text of section 71030, see analysis on question four, *infra*.

[8] The language in the *Bell* case is extremely persuasive on this point. However, as already noted, it is probably technically dicta since the court was discussing its holding in a prior, superseded opinion, and the appeal had in fact been mooted by subsequent legislation.

If, as in *Phelps*, the consolidation of eight justice courts into four such courts created new judicial offices in the four new districts, it likewise follows that the 'de-consolidation" of the Madera Judicial District in two judicial districts of less than 40,000 inhabitants would create two new judicial offices in the two new districts. The fact that the Madera Judicial District has two incumbent judges, instead of the usual one judge, would be immaterial. The establishment of the new court would necessarily abolish the old courts, and the judicial offices attached thereto. We accordingly so hold.

Therefore, since there are no restrictions on the power of the board of supervisors to set the salary of a justice court judge in a new district, the board may in its discretion set the salaries for the judges in the two new districts at a rate lower than that received by the two incumbents in the present single Madera Judicial District. This, of course, assumes the salaries of these judges are not controlled by section 71700 *et seq*. (See note 6, *supra*.)

4. The Number of Judges In A New Municipal Court

The fourth and final question assumes the actual establishment of a municipal court in the present Madera Judicial District by a definitive determination that the district contains in excess of 40,000 residents. (§ 71043, *supra*.) Since the Madera Judicial District contains two instead of the usual one incumbent judge, the question is presented as to the number of judges the municipal court will have ipso facto upon such "definitive determination." We conclude that unless or until the Legislature should provide otherwise, the new municipal court district would have only one judge.

The Legislature, of course, may anticipate that the establishment of a municipal court is imminent, and provide for the number of judges and staffing of the court in advance. (See, e.g., discussion in I.L. 61–17, LB 369/703, *supra*.) Absent such advance legislation, however, we must look to the existing constitutional and statutory provisions to determine the number of judges a municipal court will have.

As noted at the outset, article VI, section 5 provides that each municipal court shall have one or more judges. Absent legislation to the contrary, a municipal court when it comes into being will be entitled to only one judge pursuant to the constitutional provision. (See *Corey v. Knight* (1957) 150 Cal. App. 2d 671, 672, 676, 681; *Cf. County of Madera v. Superior Court*, *supra*, 39 Cal. App. 3d 665 and 56 Ops. Cal. Atty. Gen. 315 (1973), *supra*, same holding with respect to justice courts.)

Although the Legislature has by special statute provided for two justice court judges in the "consolidated" district now known as the Madera Judicial District (§ 71040.5, *supra*), it has not provided that these two judges should become municipal court judges should the district become a municipal court district by operation of law. This office cannot

add such a proviso under the guise of "interpretation." (See *People v. One La Salle, Etc*. (1937) 23 Cal. App. 2d 237, 238; *Johnson v. City of Glendale* (1936) 12 Cal. App. 2d 389, 394.)

A comparison of section 71083.1 is also enlightening. It provides:

> "Notwithstanding any other provision of law, upon the consolidation or annexation by the board of supervisors of the entire territory of two or more existing municipal court districts, the number of judgeships for the consolidated municipal court shall be the combined number of judgeships previously authorized for each of the component courts."

One might argue that the Madera Judicial District, upon becoming a municipal court, would present an analogous situation to that found in section 71083.1. However, it still would not fall within its terms. In short, if the Legislature desires that there be, ipso facto, more than one municipal court judge in a new district before it enacts staffing legislation, it so specifically provides (*Cf. Phelps v. Brennan*, *supra*, 16 Cal. 3d at pp. 512–513, quoted above).

Accordingly, we conclude that a municipal court, if established in the Madera Judicial District by reason of population, would have a single judge unless or until the Legislature provides differently.

The subsidiary question remains as to how the single municipal court judge will be selected. We assume that the municipal court would come into being during the terms of the present incumbents. We are advised that both judges would be eligible to the office of municipal court judge. (See Cal. Const. art. VI, § 15.)

The resolution to the question appears to be found in section 71080, the so-called "succession statute" alluded to above a number of times. It provides:

> "(a) *After January 1, 1952, upon the establishment of a municipal or justice court, the judges of existing courts inferior to the superior court* in any city, township, or judicial subdivision situated wholly or partly in the district or city and county for which a municipal or justice court is established *shall, if eligible, become the judges of such municipal or justice court* until the election or appointment and qualification of their successors. The time for election and qualification of their successors shall be that previously fixed for the election and qualification of their successors for the court and office superseded, had such courts not been superseded, but in no event shall any such election of successors be held within 10 months of

succession to the office of the new court.

> *"(b) If the number of eligible incumbent judges who have not filed a written statement with the county clerk disclaiming their desire to succeed to office exceeds the number of judicial offices provided by law for such municipal or justice court, such incumbents shall not automatically succeed to judicial positions in the municipal or justice court, and the existing courts shall continue to function within the district until the first judge or judges of such municipal or justice court are elected by the qualified electors of the district at the first general state election held following the expiration of 90 days and qualify.*
>
> "*In any election for the first judge or judges of such municipal or justice court, only such incumbents may appear on the ballot and be elected,* and the provisions of Article I (commencing with Section 25300) of Chapter 3 of Division 13 of the Elections Code shall not apply. *If only one such incumbent is to be elected, the incumbent receiving the highest number of votes cast shall be declared elected.* If two or more incumbents are to be elected, those incumbents equal in number to the number to be elected who receive the highest number of votes for the office shall be declared elected. The incumbents elected shall become the judges of such municipal or justice court until the election or appointment and qualification of their successors. The time for election and qualification of their successors shall be that previously fixed for the election and qualification of their successors for the court and office superseded, had such courts not been superseded, but in no event shall any such election of successors be held within 10 months of succession to the office of the new court." (Emphasis added.)

Assuming that the two present incumbents are still in office when a municipal court is established, and both desire to succeed to the new municipal court judgeship, it appears that under subdivision (b) above, there would be a delay in the operation of the new municipal court until the "general election"[9] to be held in 1980. At that time, the incumbents would run against each other for the single position.[10] The one receiving the

[9] "General election" would include the primary election as an integral part thereof. (*Immel v. Langley* (1959) 52 Cal. 2d 104.)

[10] It might be argued that section 71080, insofar as it would delay the operation of the new municipal court, would be unconstitutional as in conflict with article VI, section 5 requiring a municipal court in districts with 40,000 persons.

However, we note that the court reorganization proposition approved by the electorate at the November 7, 1950 General Election specifically validated, inter alia, Stats. 1949, Ch. 1510. The

highest number of votes would be elected.

*****

predecessor to present section 71080 was contained in that chapter, and contained the language found in subdivision (b). Therefore, article VI, section 5 and 71080 must be read together and harmonized. (See Ballot Pamp. Proposed Amends, to Cal. Const. with Arguments to Voters, Gen. Election (Nov. 7, 1950) arguments in favor of proposition 3, p. 5.)