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OPINION	:	No. 79-1014
	:	
of	:	<u>February 20, 1980</u>
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SUBJECT: LIMITATION ON YEARS OF SERVICE—Members of area boards on developmental disabilities in counties with more than 100,000 population are subject to the provision of Welfare and Institutions Code section 4575(c), which limits a member's service on such boards to two consecutive 3-year terms.

The Area Board on Developmental Disabilities V has requested an opinion on the following question.

Are members of area boards on developmental disabilities in counties with more than 100,000 population subject to the provision of Welfare and Institutions Code section 4575(c), which limits a member's service on such boards to two consecutive 3-year terms, if they were appointed to such boards in 1974 under a previous law, or does Welfare and Institutions Code section 4579 allow reappointment of such members despite the two-term limitations?

CONCLUSION

Members of area boards on developmental disabilities in counties with more than 100,000 population are subject to the provision of Welfare and Institutions Code section

4575 (c), which limits a member's service on such boards to two consecutive 3-year terms, even though they were appointed to such boards in 1974 under a previous law. Welfare and Institutions Code section 4579 does not constitute an exception to this limitation.

ANALYSIS

A comprehensive statutory scheme directed to the needs of developmentally disabled persons is provided for in the "Lanterman Developmental Disabilities Services Act." (Welf. & Inst. Code, div. 4.5, §§ 4500–4846.)¹ An element in this statutory scheme is the statewide system of area boards on developmental disabilities." (§§ 4570–4613.)

Area boards were originally established by statute in 1969 (see former Health & Saf. Code, § 38050 *et seq.*, Stats. 1969, ch. 1594, § 14, pp. 3236–3238). At that time the primary function of area boards was a planning and coordinating one relating to services for the mentally retarded.² (See former Health & Saf. Code, §§ 38050 and 38057; Stats. 1969, ch. 1594, § 14, *supra*; 61 Ops. Cal. Atty. Gen. 68, 74 (1978); Ops. Cal. Atty. Gen. IL 74–189 (1974 unpublished).) In 1976 these former provisions were repealed, and the provisions of the current law were enacted which, among other things, significantly revised the functions of area boards. (Stats. 1976, ch. 1367, § 2, pp. 6225–6228; 61 Ops. Cal. Atty. Gen. 68, *supra*, at p. 74.) Under the current enactment, the primary function of the present area boards is to "protect and advocate the rights of all persons in the area with developmental disabilities." (§ 4590; see also § 4570 and see 62 Ops. Cal. Atty. Gen. 774 (1979); 61 Ops. Cal. Atty. Gen. 68, *supra*, at p. 69.)

The present question concerns the tenure of board members who have served on area boards under both the former and the current law.

Relevant to this question is section 4575 which specifies the number of members on area boards, by whom such members shall be appointed, and their tenure. With respect to tenure, section 4575 provides:

"After January 1, 1977, area boards shall be comprised, as follows:

¹ Hereafter all section references are to the Welfare and Institutions Code unless otherwise specified. The provisions of the "Lanterman Developmental Disabilities Services Act" were formerly found in section 38000 *et seq.* of the Health and Safety Code. (See Stats. 1976, ch. 1364, § 2.) In 1977 the provisions of that act were placed in the Welfare and Institutions Code and renumbered as indicated above. (Stats. 1977, ch. 1252, § 550.)

² In 1973 the term "mentally retarded" in the statutes relating to area boards was replaced by the term "developmentally disabled." (Stats. 1973, ch. 546, §§ 18–24, pp. 1053–1055.) The term "developmental disability" is defined in section 4512(a).

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“Of the members first appointed, five shall serve for one year. five shall serve for two years, and the remaining members shall serve for three years. Subsequent members shall serve for three years. In counties with more than 100,000 population, *no member shall serve more than two consecutive three-year terms.*” (Emphasis added.)

However, while section 4575 limits area board members to two 3–year terms, section 4579 provides that:

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“*Nothing in this chapter [§§ 4570–4613, the provisions governing area boards on developmental disabilities] shall prevent the reappointment or replacement of any individual presently serving on an existing area board, provided any such reappointment is in conformity to all of the criteria established in this chapter. Any individual presently serving on an existing area board may continue to serve beyond January 1, 1977, until a replacement is appointed, or 60 days, whichever comes first.*”³ (Emphasis added.)

In view of the provision in section 4579 that expressly negates anything in the statute which would otherwise prevent reappointment of members of existing boards, it might be argued that the two-term limitation in section 4575 does not apply to the reappointment of one who was serving on an area board in existence at the time the current law became effective on January 1, 1977. Whether this provision in section 4579, preserving the eligibility of members of existing boards for reappointment under the current law, does in fact constitute an exception to the two-term limit specified in section 4575 is the specific question we now consider.

The resolution of this question depends upon whether the current statute created new offices of area board members or effected a continuation of the old offices. (The Legislature may abolish or change the tenure of offices it has created even though the tenure of incumbents might be affected. *Martello v. Superior Court* (1927) 202 Cal. 400. 408; *Azevedo v. Jordan* (1965) 237 Cal. App. 2d 521, 529.)

If new offices were created by the current statute, then service as a board member in the office established under the prior law would not be comprehended by the two-term limitation of the current statute because that limitation makes no reference to service in

³ In this context the phrase “existing area board” refers to those boards existing prior to January 1, 1977. (§ 4571; see also §§ 4575 and 4579.)

other offices.

On the other hand if the Legislature intended the new law merely to effect a continuation of the office established under the prior law, then the current statute's two-term limitation would apply to terms served under the prior law since that limitation makes no distinction as to the time period during which the terms are served. (See *Sayer v. Brown* (Ga. 1904) 46 S.E. 649, 652–653, where it was declared: “An act creating an office may be amended by completely changing the powers and duties appertaining thereto, without destroying the office, or removing therefrom the person who is filling it.”)

Most pertinent to a determination of the issue of whether the office was continued is section 4571 which provides:

“The area boards in existence as of January 1, 1976, shall continue to exist, within the same geographic regions of the state after January 1, 1977, but shall thereafter be constituted and shall operate according to the provisions of this division.” (Emphasis added.)

Thus, while the functions of the area boards were significantly revised in 1976, the Legislature continued the preexisting boards in reconstituted form rather than create new boards. (See 61 Ops. Cal. Atty. Gen. 68, *supra*, at p. 74.) Such express preserving of the continued existence of the area boards would strongly indicate that the offices of which such boards are constituted were likewise intended to continue in existence.

An even more direct indication of the legislative intent concerning the continuance of the office of area board member is the specific terminology of section 4579 which speaks of “reappointment” of those serving on existing area boards. The term “reappointment,” as opposed to the term “appointment,” embodies the concept of repetition and connotes reinstatement to a previously existing position, riot placement in a newly created position. (See *Koblik v. L.A. City Junior College Dist.* (1946) 74 Cal. App. 2d 713, 718-719, where the court concluded that the term “reappointment” did not apply to the reemployment of a laid off permanent teacher in a substitute as opposed to a permanent teaching position.)

It would thus appear that the Legislature intended a continuation of the office of area board member established under the previous law. It follows then that the two-term limitation specified in section 4575 would be applicable to service as an area board member under both the previous and the current laws since such service is a continuous entity.

A persuasive indication, that this conclusion correctly reflects the Legislature's intent, is the fact that precisely this same two-term limitation found in the current law was also contained in the former law, having been added in 1975. (Former Health & Saf. Code,

§ 38053; Stats. 1975, ch. 694, § 6, p. 1643.) Thus members of “existing boards” were already subject to the same two-term limitation at the time the current law was enacted. As stated in *Orange County Water Dist. v. Farnsworth* (1956) 138 Cal. App. 2d 518 (in which the court was construing a statute that, like the statute considered here, also reorganized a governmental agency): “Where a statute is repealed and some of it is at the same time reenacted, the reenacted provisions of the repealed act *continue in force without interruption*.” (*Id.* at p. 524; emphasis added. See also Ops. Cal. Atty. Gen. No. 2075 (1911, unpublished) utilizing this principle to conclude that a public office continued after amendment of a statute.)

We therefore conclude that terms served on area boards under the prior law should be considered in connection with the two-term limitation under the current law.

The provision in section 4579, that “nothing in this chapter shall prevent the reappointment . . . of any individual presently serving on an existing area board . . .,” does not require a different conclusion in view of the fact that immediately qualifying this provision is the proviso that “any such reappointment is in conformity to all of the criteria established in this chapter.” (§ 4579.)

In commenting upon the effect of provisos upon the operation of a statute, the Supreme Court in *People ex rel. Happell v. Sistho* (1943) 23 Cal. 2d 478, stated:

“It is an accepted rule of statutory construction that a proviso is used to limit and qualify that which immediately precedes it and to expressly negative construction that would prevail in the absence of a proviso.” (*Id.* at p. 493.)

Thus while the fact of serving on an area board at the time the current law became effective, cannot in itself prevent reappointment under the current law, failure to satisfy all of the criteria referred to by the proviso in section 4579 does preclude such reappointment whether or not one was a member of an existing board. One of the criterion for reappointment established under the old law and continued in the current statute is that one not have already served “two consecutive 3-year terms.

Thus in counties of over 100,000, if members of an area board have served two consecutive 3-year terms, they may not be reappointed under the current law to the area board even though they were originally appointed in 1974 under the former law and were serving on such board at the time the current law became effective.
