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OPINION	:	No. 79-613
of	:	August 31, 1979
GEORGE DEUKMEJIAN Attorney General	:	
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SUBJECT: ALTERNATE MEMBERS OF THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE—Directors of state departments are the only members of the California Council on Criminal Justice who may designate alternates to attend meetings for voting and quorum purposes.

The Honorable Douglas R. Cunningham, Executive Director, Office of Criminal Justice Planning, has requested an opinion on the following questions:

1. May the legislative members of the California Council on Criminal Justice designate alternates pursuant to section 7.6 of the Government Code to attend council meetings who may be counted for quorum purposes and have their votes counted?

2. May any members of the California Council on Criminal Justice who are neither directors of state departments, nor constitutional officers who are specifically authorized by law to do so, designate alternates to attend council meetings who may be counted for quorum purposes and have their votes counted?

3. With respect to those council members who may designate alternates for voting and quorum purposes, are there restrictions as to who may be designated and how such alternates must be designated?

CONCLUSIONS

1. The legislative members of the California Council on Criminal Justice may not designate alternates pursuant to section 7.6 of the Government Code who may be counted for quorum purposes and have their votes counted.

2. There are no members of the California Council on Criminal Justice who may designate alternates who may be counted for quorum purposes and vote who are neither directors of state departments nor constitutional officers specifically authorized by law to do so.

3. As to the council members who may designate alternates for voting and quorum purposes, directors of state departments may only designate "exempt" deputies. There are no legal requirements as to how such alternates must be designated. The council, however, may adopt reasonable rules and regulations with respect to the manner in which alternates will be recognized where only one from a particular category may sit at a given meeting.

ANALYSIS

The California Council on Criminal Justice (hereinafter sometimes CCCJ) is established pursuant to section 13810 *et seq.* of the Penal Code essentially to act as the state planning agency in the areas of criminal justice and delinquency prevention.

The CCCJ consists of 38 members. Thirty-seven members are provided for by section 13810 of the Penal Code. The Chief Justice of the state is designated as a member pursuant to federal statute. (42 U.S.C.A. § 3723(a) (2).) Section 13810 provides:

> "There is hereby created in the state government the California Council on Criminal Justice, which shall be composed of the following: members: the Attorney General; the Administrative Director of the Courts; 19 members appointed by the Governor, including the Commissioner of the Department of the Highway Patrol, the Director of the Department of Corrections, the Director of the Department of the Youth Authority, and the State Public Defender; eight members appointed by the Senate Rules Committee; and eight members appointed by the Speaker of the Assembly.

"The remaining appointees of the Governor shall include different persons from each of the following categories: a district attorney, a sheriff, a county public defender, a county probation officer, a member of a city council, a member of a county board of supervisors, a faculty member of a college or university qualified in the field of criminology, police science, or law, a person qualified in the field of criminal justice research and six private citizens, including a representative of a citizens, professional, or community organization. The Senate Committee on Rules shall include among its appointments different persons from each of the following categories: a member of the Senate Committee on Judiciary, a representative of the counties, a representative of the cities, a judge designated by the Judicial Council, and four private citizens, including a representative of a citizens, professional, or community organization. The Speaker of the Assembly shall include among his appointments different persons from each of the following categories: a representative of the counties, a representative of the cities, a member of the Assembly Committee on Criminal Justice, a chief of police, a peace officer, and three private citizens, including a representative of a citizens, professional, or community organization directly related to delinquency prevention.

"The Governor shall select a chairman from among the members of the council."

It is to be noted that the membership provided by the foregoing section may be broken down into a number of separate categories or groupings. These groupings are significant for our analysis herein. There are:

1. Two constitutional officers, that is, the Attorney General and the Administrative Director of the Courts (Cal. Const., art. V, §§ 11, 13 and art. VI, § 6) who are designated by the statute itself and serve "ex-officio" as members of the CCCJ, that is, by virtue of their principal office;

2. Gubernatorial appointees who must also be the incumbents of various state offices, all of whom are directors of state departments or offices, and consequently also in a sense serve "ex-officio" as members of the CCCJ;

3. Legislative appointees, who must also be members of specific governmental bodies that is, the Senate Committee on Judiciary and the Assembly Committee on Criminal Justice.

4. Appointees of the Governor or the Legislature who must also hold another particular public office or employment (e.g., city councilperson, chief of police, district attorney), but who are selected on an individual basis, and hence are not automatically made members of the CCCJ "ex-officio" or required to be appointed by virtue of incumbency in their primary office or employment; and

5. Appointees of both the Governor and the Legislature who are selected to represent the interests of cities and counties, or who are private citizens.

The CCCJ meets no more than 12 times a year, and "[or is the intent of the Legislature that all council members shall actively participate in all council deliberations . . . Any member [except for illness or injury] who misses three consecutive meetings or who attends less than 50 percent of the council's regularly called meetings in any calendar year . . . shall be automatically removed from the council." (Pen. Code, § 13811.)

The CCCJ has adopted bylaws. Article IV thereof contains provisions regarding "Quorum, Voting And Attendance." Section 1 of Article IV provides that a quorum "shall consist of a majority of the members [who have been] designated or appointed," and that "a majority vote of the members present is necessary for Council action. . . ." Section 2 provides for proxies, and states:

> "Section 2. No vote by proxy will be honored except as provided in this section.
>
> "(a) Pursuant to Section 7.5 of the Government Code, a Council member who is also a director of a State department may designate a deputy director of that department holding a position specified in Section 4 of Article XXIV of the State Constitution, to act for him in his absence. "Not more than one director shall be represented by such a deputy at any one meeting, and any member who wishes to invoke this bylaw must first obtain the approval of the Chairman
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> "(b) Pursuant to Section 7.6 of the Government Code, a Council member who holds an office created by the State Constitution may designate a deputy of his office specified in Section 4 of Article XXIV of the State Constitution to act for him, except that no person designated by the Attorney General to represent him at a meeting shall act as presiding officer in his place.
>
> "(c) The above restrictions on representation apply only to voting. Any representatives of members of the Council are entitled to participate in the Council meeting."

The requester advises that this bylaw "has created hardship for some CCCJ members because alternates sent to Council meetings are not considered for quorum or voting purposes; and actual appointees are therefore considered absent for purposes of Penal Code Section 13811." The reason for the request for our opinion is to determine if Section 2 could be amended to make its restrictions less severe with respect to the appointment of alternates who may vote and be counted for purposes of a quorum.

1. May The Legislative Members Designate Alternates?

The first question presented is whether the legislative members of the CCCJ may designate alternates who may vote and be counted for purposes of a quorum.

It is to be noted initially that the law which provides for the establishment of the CCCJ contains no provisions for alternates. We thus must determine in answering this question, and also question two whether sections 7.5 and 7.6 of the Government Code[1], which are essentially incorporated in the CCCJ's bylaws, contain the only authority for the designation of alternates, and also whether the CCCJ has or has not applied sections 7.5 and 7.6 too stringently in its bylaws.

Under general legal principles, a public body or public officer may not delegate discretionary duties or functions. This rule has been set forth relatively recently by the California Supreme Court in *California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal. 3d 139, 144 as follows:

> "As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. (*Sacramento Chamber of Commerce v. Stephens*, 212 Cal. 607, 610 [299 P. 728]; *Webster v. Board of Education*, 140 Cal. 331, 332 [73 P. 1070]; *City of Redwood City v. Moore*, 231 Cal. App. 2d 563, 576 [42 Cal. Rptr. 72]; see 41 Cal. Jut. 2d. Public Officers, § 135; 2 McQuillan, Municipal Corporations, § 10.39.)"

The CCCJ performs duties which clearly require the exercise of judgment and discretion. (See Pen. Code, § 13813.) Accordingly, the Council correctly seeks to rely upon statutory authority such as sections 7.5 and 7.6 for determining which of its members may appoint alternates to act in their stead.

[1] Hereinafter all unidentified section references will be to the Government Code.

Sections 7.5 and 7.6 as well as section 7.7 were originally added to the law in 1953 to ameliorate the problem of time demands placed upon state department heads and constitutional officers who were also required by law to serve ex-officio as members of various boards and commissions. As stated in part in the urgency clause of the original enactment (Stats. 1953, ch. 463, pp. 1707–1708), "[i]n order to permit the state bodies to act with full efficiency, but without interfering with the operation of state departments and offices, it is necessary that *deputies fully acquainted with the affairs of the department or office* may be authorized to sit upon such state bodies in the place of their principals." (Emphasis added.) The original legislation, and the present legislation, provided and provides that the deputy meeting that specification is an "exempt deputy," that is, one who is exempt from civil service and thus essentially is not only a deputy, but a "confidential" deputy.

Thus, section 7.5 presently provides:

> "Whenever, by any law, the director of any state department is made a member of a state board, commission, or committee, or of the governing body of any state agency or authority, the director may designate *a deputy director of that department holding a position specified in subdivision (g) of Section 4 of Article XXIV of the Constitution to act as such member in his place and stead, to all intents and purposes as though the director were personally present,* including the right of the deputy to be counted in constituting a quorum, to participate in the proceedings of the board, commission, committee or other governing body, and to vote upon any and all matters. Not more than one director shall be represented by such a deputy at any meeting or session of a board, commission, committee or other governing body. The director so designating such a deputy shall be responsible for the acts of the deputy acting under such designation in the same manner and to the same extent that the director is responsible for the acts of the deputy performing his official duties as deputy director of the department." (Emphasis added.) [2]

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[2] Article XXIV was renumbered Article VII in 1976. Section 4(g) provides:

"Sec. 4. The following are exempt from civil service:

. . . . . .

"(g) A deputy or employee selected by each officer, except members of boards and commissions, exempted under Section 4(f)."

Section 4(f) refers to, as applicable to our inquiry, "[s]tate officers directly appointed by the Governor with or without the consent or confirmation of the Senate. . . ."

At the time section 7.5 was enacted in 1953, the section referred to a "deputy director . . . holding a position specified in subsection (5) of subdivision (a) of Section

And Section 7.6 presently provides:

> "Whenever, by any law, any officer whose office is created by the Constitution is made a member of a state board, commission, or committee, or of the governing body of any state agency or authority, *such officer may designate a deputy of his office holding a position specified in subdivision (c) of Section 4 of Article XXIV of the Constitution to act as such member in his place and stead* to all intents and purposes as though he were personally present, including the right of the deputy to be counted in constituting a quorum, to participate in the proceedings of the board, commission, committee or other governing body, and to vote upon any and all matters. The constitutional officer so designating a deputy shall be responsible for the acts of the deputy acting under such designation in the same manner and to the same extent that the constitutional officer is responsible for the acts of the deputy performing his official duties as a deputy of the office of the constitutional officer.
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> "The Lieutenant Governor may designate *any person in his office holding a position specified in subdivision (c) or (f) of Section 4 of Article XXIV of the Constitution to act as a deputy for the purposes of this section only*, provided that the Lieutenant Governor may not appoint a person to act as a deputy for him at meetings of the Senate, or of the Regents of the University of California, or of the Trustees of the California State University and Colleges.
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> *"The Attorney General may also designate any person in his office holding a position specified in subdivision (m) of Section 4 of Article XXIV of the Constitution to act as a deputy for the purpose of this section,* provided, that no person designated by the Attorney General pursuant to this section to act as a member on any state board, commission, committee or governing

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4 of Article XXIV" which provided:

"Sec. 4(a) The provisions hereof [civil service] shall apply to, and the term 'state civil service' shall include, every officer and employee of this State except:

. . . . . .

"(5) One person holding a confidential position to any officer mentioned in paragraphs (1), (2), or (4) hereof. . . ."

Paragraphs (1), (2) and (4) referred to elective state officers, state officers appointed by the Governor, and state officers appointed by the Legislature.

Chapter 373, Statutes of 1979 will correct the constitutional reference to Article VII in sections 7.5, 7.6 and 7.8.

body of which the Attorney General is presiding officer shall act as presiding officer in his place.

"The Superintendent of Public Instruction may designate *any person in his office holding a position specified in Section 2.1 of Article IX of the California Constitution to act as a deputy for the purposes of this section,* provided that the Superintendent of Public Instruction may not appoint a person to act as a deputy for him at meetings of the State Board of Education, of the Regents of the University of California, or of the Trustees of the California State University and Colleges.

"Notwithstanding the foregoing provisions of this section, not more than one officer subject to this section shall be represented by a deputy subject to this section at any meeting or session of the State Lands Commission." (Emphasis added.)[3]

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[3] The first and last paragraphs are essentially the original 1953 enactment. The special provisions of paragraphs two, three and four were added subsequently. (See Stats. 1970, ch. 1232, § 1, p. 2159, *re* superintendent of Public Instruction; Stats. 1967, ch. 450, § 1, p. 1661, *re* Lieutenant Governor; Stats. 1971, ch. 673, § 1, p. 1330, *re* Attorney General.)

As originally enacted in 1953, paragraph one of section 7.6 referred to subsections (5) and (6) of subdivision (a) of section 4 of Article XXIV, which provided:

"Sec. 4. (a) The provisions hereof [civil service] shall apply to and the term 'state civil service' shall include, every officer and employee of the State except:

. . . . . .

"(5) One person holding a confidential position to any officer mentioned in paragraph (1), (2) or (4) hereof . . . .

"(6) One deputy for the Legislative Counsel and for each state officer elected by the people, each such deputy to be selected by the officer to be served."

(See note 2, *supra*, *re* references in subdivision 4(a) (5).)

Article VII, section 4, subdivision (c) [referred to in present paragraph one of section 7.6] provides:

"Sec. 4. The following are exempt from civil service;

. . . . . .

"(c) Officers elected by the people and a deputy and an employee selected by each elected officer."

We note at this point that paragraphs two, three, and four permit the appointment of exempt individuals who are not deputies for purpose of section 7.6.

And finally, section 7.7 provides that "[t]he provisions of Sections 7.5 and 7.6 do not affect or modify in any manner the provisions of Section 7."[4] Section 7, which will be discussed at greater length herein refers to the powers and duties of "deputies" generally.

This office has had the occasion to construe sections 7.5, 7.6 and 7.7 a number of times since their enactment in 1953.[5] These opinions disclose the following principles which are germane to a resolution of the questions presented in this request for our opinion.

1. Sections 7.5 and 7.6 apply where the director of a state department or a constitutional officer serve on another board or commission ex-officio or are required to be appointed by law. As the language of these sections themselves state, the officer must be made a member of a board or commission "by any law." (See also 24 Ops. Cal. Atty. Gen. 56, 58 (1954).)

2. Sections 7.5 and 7.6 apply only to *state* officers and *state* boards and commissions insofar as they restrict the appointment of deputies to *exempt* deputies, and insofar as they limit the numbers of alternates who may appear at any given meeting. Thus, in 52 Ops. Cal. Atty. Gen. 75, 78 (1969) it was concluded that a county treasurer could have his deputy sit on the county retirement board without considering the limitations of sections 7.5 and 7.6.

3. Insofar as sections 7.5 and 7.6 specify that an officer may appoint a *deputy* to act in his place or stead, this means a deputy in the true legal sense. Thus, in 34 Ops. Cal. Atty. Gen. 25 (1959) we concluded that the Lieutenant Governor could not appoint his executive secretary to act for him on the Toll Bridge Authority because the Lieutenant Governor has no deputies. We, however, pointed out that the Legislature could authorize such representation if it so desired. As can be seen above, section 7.6 now permits the Lieutenant Governor to appoint certain persons as "alternates."

Additionally, in 29 Ops. Cal. Atty. Gen. 145, 149 (1957) we concluded that the two appointive members of the District Securities Commission could not be represented by alternates, since they were not authorized by law to have deputies.

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[4] Additional special provisions were enacted subsequent to 1953 in sections 7.8 and 7.9 with respect to the State Allocation Board, and the Controller and Treasurer respectively, and appearance by deputies or assistants. These need not be set forth in full herein for our purposes.

[5] See generally 56 Ops. Cal. Atty. Gen. 399 (1973); 52 Ops. Cal. Atty. Gen. 75 (1969); 50 Ops. Cal. Atty. Gen. 120 (1967); 36 Ops. Cal. Atty. Gen. 213 (1960); 34 Ops. Cal. Atty. Gen. 25 (1959); 32 Ops. Cal. Atty. Gen. 254 (1958); 29 Ops. Cal. Atty. Gen. 145 (1957); 24 Ops. Cal. Atty. Gen. 56 (1954); 15 Ops. Cal. Atty. Gen. 271 (1950); Letter Opinions, I.L. 75–220 and I.L. 71–52.

4. Section 7, providing for the exercise of powers and duties by deputies[6] was added to the Government Code to insure that the principal officer could delegate duties which involved the exercise of judgment and discretion, as well as ministerial duties. At common-law the rule was that only *ministerial* duties could be delegated to deputies, and there was some question whether under then existing statutes (the predecessor to secs. 1194 and 24100) the restrictive nature of that rule had been abrogated (see 52 Ops. Cal. Atty. Gen. 75, 77 (1969); but see 51 Ops. Cal. Atty. Gen. 135, 139 (1968), and compare 31 Ops. Cal. Atty. Gen. 121, 125–126 (1958). See also, e.g., *Eden Memorial Park Assn. v. Dept.* (1963) 59 Cal. 2d 412, 419; *People v. Woods* (1970) 7 Cal. App. 3d 382, 387; *People v. Hagan* (1954) 128 Cal. App. 2d 491,494).

5. Insofar as section 7.7 provides that "[s]ections 7.5 and 7.6 do not affect or modify in any manner the provisions of Section 7," this means that deputies appointed pursuant to sections 7.5 and 7.6 still have all the powers and duties of their principals, as provided in section 7, if they are properly sitting pursuant to sections 7.5 or 7.6. (See 24 Ops. Cal. Atty. Gen. 56, 59 (1954).) However, only one such deputy *from each category* may sit at any one time, that is, one deputy of a constitutional officer and one deputy of a state departmental director, and be counted for quorum purposes and effectively vote. (50 Ops. Cal. Atty. Gen. 120, 122 (1967); 29 Ops. Cal. Atty. Gen. 145, 149 (1957).) In this regard, the Attorney General would be a "constitutional officer" despite the fact that he is also by statute made Director of the State Department of Justice (*ibid*; see § 12510).

6. And finally, in summary, "sections 7.5 and 7.6 establish[] *an exclusive method* by which only the exempt deputies therein referred to may represent a director or constitutional officer who is an appointive or ex-officio member of a board, commission, or other body at meetings of such . . . body, unless under the organic law establishing such body, there is a special provision setting forth another means whereby an alternate may appear for and represent the principal." (24 Ops. Cal. Atty. Gen. 56,59 (1954).)

As noted at the outset, CCCJ has in effect incorporated sections 7.5 and 7.6 into its bylaws. The basic inquiry in this request for our opinion is whether such bylaws may be revised to permit the appointment by CCCJ members of more alternates who may vote and be counted for quorum purposes. The resolution of this problem requires an examination of two basic questions:

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[6] Section 7 states in full:

"Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise."

1. May CCCJ members who would otherwise fall within the contemplation of sections 7.5 or 7.6, but who have no exempt deputy, appoint alternates?

2. Are there members of the CCCJ who may appoint alternates who are neither constitutional officers or directors of state departments within the contemplation of sections 7.5 and 7.6?

We now direct our inquiry to the first basic question. According to the roster of CCCJ members provided to us, the present "constitutional officers" designated by statute to be ex-officio members, or whose appointment is required, and hence also essentially serve ex-officio (see 24 Ops. Cal. Atty. Gen. 56, 58 (1954)) are the Chief Justice of the California Supreme Court, the Attorney General, and the Administrative Director of the Courts. (Penal Code § 13810, *supra*, 42 U.S.C.A. § 3723.) Each of these officers has designated a "permanent" alternate. The request for our opinion does not raise any question as to the propriety of these officers having designating "alternates." However, there are several additional constitutional officers to be considered, that is, the legislative members of the CCCJ. May they appoint alternates?

Section 13810 of the Penal Code provides that the Senate Committee on Rules shall appoint a member of the Senate Committee on Judiciary and that the Speaker of the Assembly shall appoint a member of the Assembly Committee on Criminal Justice. Although a particular member of these committees is not designated, the members would still, in our opinion, serve essentially ex-officio within the meaning of section 7.6. We so concluded in an analogous situation in letter opinion I.L. 71–52. That opinion involved the Ventura-Los Angeles Mountain and Coastal Study Commission. The law required one of the members of the State Lands Commission (the Director of Finance, the Controller or the Lieutenant Governor) to serve on the commission without designating which one. We concluded that sections 7.5 and 7.6 would allow either the Director of Finance or the Controller to designate an alternate.[7]

However, despite the fact that the legislators would qualify as "constitutional officers" within the meaning of section 7.6 (see Cal. Const., art. IV, sec. 2), we conclude that they may not appoint alternates since they do not have deputies, "exempt" or otherwise. As noted above, this office has heretofore held that sections 7.5 and 7.6, insofar as they specify that an officer must be represented by a deputy, means exactly that; that

[7] We concluded, however, that the Lieutenant Governor would not be able to act through an exempt "deputy" in this particular situation if he were designated to serve. This was so because section 7.6 does not permit the Lieutenant Governor to designate an exempt "deputy" to serve on the State Lands Commission. Derivatively, he should not be able to do so where he serves on a "third" commission in that status.

therefore, an officer or other member of a board or commission who has no deputy may not appoint an alternate to serve in his stead unless specifically sanctioned by legislation (See 34 Ops. Cal. Atty. Gen. 25 (1959), *supra*; 29 Ops. Cal. Atty. Gen. 145, 149 (1957), *supra*.) We see no reason to change our opinion in this regard under the "guise" of statutory interpretation. (*Cf. Kirkwood v. Bank of America* (1954) 43 Cal. 2d 333, 341.) This is particularly true when the term "deputy" has a settled legal meaning. As stated in *Pacific Coast Dairy v. Police Court* (1932) 214 Cal. 668, 676–677:

> ". . . when a statute employs words or phrases having a well-settled common law meaning of which a reasonable man in the ordinary conduct of his affairs is fully aware it is not for the court to determine that the statute is ambiguous or indefinite because through a strained construction of these words and phrases some ambiguity might arise. . . ."

(See also, e.g., *Gravelly Ford Co. v. Pope & Talbot Co*. (1918) 36 Cal. App. 556, 565: "In the absence of unequivocal statutory direction, we are unwilling to sanction a construction . . . which would be so radical a departure from the construction given them where elsewhere found in the constitution and laws of the state."; 2A Sutherland, Statutory Construction (Rev. Ed. 1973.) § 50.03, pp. 277–278.)

It has been suggested, however, that our opinion in 29 Ops. Cal. Atty. Gen. 145 (1957), *supra*, might support a contrary conclusion. In that opinion we concluded that the Superintendent of Banks could appoint an alternate pursuant to section 7.5. However, in that opinion we demonstrated that the Superintendent of Banks was in fact and in law a director of a state department within the requirements of section 7.5. We thus stated that "[w]e conclude that the Superintendent of Banks may he represented by an exempt deputy under Government Code section 7.5 then, because he—though called by a different name—is the 'director' of a State department-the Banking Department-in the same sense and degree as any one other is a director of a State Department. (Fin. Code §§ 200, 210–215)." (*Id*., at p. 149.)

We thus avoided the absurd result of excluding a departmental director from the scope of section 7.5 merely because he was referred to as a "superintendent" and not a "director." *We in no way expanded nor liberalized the scope of section 7.5*. However, that would be required if a legislator were to appoint a "consultant" or other legislative employee to serve as an alternate, since a legislator clearly has no deputies. "A deputy is one authorized to exercise the office or rights which the officer possesses, for and in place of the latter." (*Wilbur v. Office of City Clerk* (1956) 143 Cal. App. 2d 636, 643–644; see also *People v. Woods*, *supra*, 7 Cal. App. 3d at p. 387; *People v. Purcell* (1937) 22 Cal. App. 2d 126, 133; *Foucht v. Hirni* (1922) 57 Cal. App. 685, 691–692; *Sarter v. Siskiyou County* (1919) 42 Cal. App. 530, 536.) And unless legal authority to do so has been

provided, an officer may not appoint a deputy or deputies. (*Rauer v. Lowe* (1895)107 Cal. 229, 232–233; 59 Ops. Cal. Atty. Gen. 97, 100–101 (1976); 3 McQuillan, Municipal Corporation (Rev. 3d Ed. 1973) § 12.127, pp. 537–538.) In short, 29 Ops. Cal. Atty. Gen. 14 (1957), *supra*, does not support the proposition that a non-deputy may be appointed as an alternate pursuant to sections 7.5 and 7.6 where these statutes specify that a deputy may be so appointed.

It is also to be recalled that the expressed legislative purpose in enacting sections 7.5 and 7.6 in 1953 was to permit exempt *deputies* to sit in lieu of constitutional officers and directors of state departments on boards and commissions. (See urgency clause, *supra*, Stats. 1953, ch. 463, p. 1707–1708.) Since that time where the Legislature has seen the need to liberalize or make exceptions to that requirement, it has specifically done so. (See, e.g., § 7.6, *supra*, with respect to the Lieutenant Governor, Attorney General and Superintendent of Public Instruction.) Thus, the Legislature knows how to express itself in this regard when it desires to make exceptions to the deputy requirement (*Cf. Dew v. Appleberry* (1979) 23 Cal. 3d 630, 635; *Safer v. Superior Court* (1975) 15 Cal. 3d 230, 237–238.) As stated in *Dew v. Appleberry*, *supra*, in a somewhat different context: "If the Legislature intends that the tolling provisions not extend the limitations period *whenever* the defendant is amenable to jurisdiction, it can easily so state." Likewise, if the Legislature intends sections 7.5 or 7.6 to apply to exempt assistants who are not deputies, "it can easily so state."

Accordingly, it is concluded that neither the wording of section 7.6 nor the legislative intent behind its enactment permit a legislator who is appointed to the CCCJ as required by law to appoint an alternate to serve in his place and stead. We so construe the statute. Since there are no additional state "constitutional officers" who are currently members of the CCCJ (that is, other than the Chief Justice, the Administrative Director of the Courts, the Attorney General, and the two legislators who have been the subject of the above discussion) no further consideration need be given to section 7.6 herein.

Since all directors of state departments appear to have an exempt deputy who would meet the specification of section 7.5 with regard to appointment of an alternate to the CCCJ (see Cal. Const., art. VII, § 4 subds. (f) and (g), no further consideration need be given to that section either. Each departmental director may clearly appoint an alternate. (See, e.g., 24 Ops. Cal. Atty. Gen. 56, 58, (1954), *supra*:

> "Section(s) 7.5 and 7.6 . . . are . . . , applicable whenever *by any law a director or constitutional officer is made an appointive* or ex-officio *member of any state board*. . . ." (Emphasis added.)

Accordingly, we see no authority for the CCCJ to revise its bylaws to liberalize or expand the appointment of alternates for constitutional officers. And its bylaws already permit all directors of state departments who serve on the CCCJ by designation or appointment under the requirements of section 13810 of the Penal Code to appoint alternates; therefore, no amended bylaw would be required in this respect.

2. Are There Additional CCCJ Members Who May Appoint Alternates?

We now reach the second question, that is, whether there are members of CCCJ who may appoint alternates who are neither constitutional officers nor directors of state departments within the contemplation of sections 7.5 and 7.6.

Initially, we note that the CCCJ in its bylaws has taken a very narrow approach to this question by restricting the appointment of alternates to those members who fall within the purview of sections 7.5 and 7.6. (Bylaw, sec. 2, *supra*.) Apparently this has been done because of provisions of section 13810, of the Penal Code, *supra*, which provides that "[i]t is the intent of the Legislature that all council members shall actively participate in all council deliberations required by" the CCCJ's organic law, and further provides for removal for certain specified nonattendance at meetings. Another possible consideration is the fact that, although certain officers such as local officers who sir on the CCCJ have deputies, they do not as individuals sit ex-officio or by a mandatory statutory appointment. Thus, there is a question as to whether the deputy would be empowered to act for the principal officer in what is clearly a second, independent office.

The question then, is whether the CCCJ has been unnecessarily restrictive in the manner in which it has drafted its bylaws. In our view, it has not been unnecessarily restrictive. We conclude that section 7 would not permit the CCCJ members who have deputies (or other assistants "authorized pursuant to law by the officer, to perform their duties") to appoint alternates where the members' selection is required to be based upon their incumbency in a particular category of office (e.g., from district attorneys).

As previously noted, section 7 states:

> "Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

Additionally, section 1194 provides:

> "When not otherwise provided for, each deputy possesses the powers and may perform the duties *attached by law to the office of his principal*." (Emphasis added.)

An examination of section 13810 of the Penal Code, *supra*, discloses that appointments to the CCCJ are to be made from certain categories of public officials who by law will usually have deputies. Thus the Governor must appoint a district attorney, a sheriff, a county public defender, and a county probation officer. Also, the Speaker of the Assembly must appoint a chief of police who conceivably could have a deputy or other assistant authorized by law to act for him in all matters. The question, then, is whether sections 7 and 1194 constitute authority for these officers to appoint alternates, that is, assign deputies, to attend meetings of the CCCJ who can be counted for quorum purposes and vote.

This office has heretofore concluded that an officer who serves on a board or commission in *an ex-officio status* may act through his deputy on that body without further statutory authority. Thus, in 52 Ops. Cal. Atty. Gen. 75 (1969), *supra*, already discussed at length above, we concluded that a deputy county treasurer could sit on the county retirement board in lieu of his principal by virtue of section 7. No case law has been found in California on this subject since the time section 7 was enacted in 1943. The above opinion concluded that section 7 had modified prior case law to the contrary. (See also 5 Ops. Cal. Atty. Gen. 40 (1945).) However, our research did disclose one out-of-state case. In *Policemen's Pension Fund Board v. Frey,* 113 A. 2d 232 (Pa. 1955), the Supreme Court of Pennsylvania held that a deputy city controller could act for his principal on a pension fund board where the city controller was, ex-officio, a member of that board. The Court reasoned as follows:

> "The intent of the legislature to empower the deputy controller fully to perform all the functions of the city controller is clearly indicated.
>
> *"The Controller's membership on the Pension Board, with its rights and duties, is conferred and imposed by law and not by the act of the members of the fund.*
>
> "Having the power to create the office of controller, the legislature may designate an officer to act in his stead. It must be assumed that the legislature, in making the controller an *ex officio* member of the Board, was cognizant of its prior enactment authorizing the deputy controller to act in his stead and the Act of 1935 must be construed accordingly." (*Id*. at p. 233, emphasis added.)

With respect to the local officers enumerated above, we, of course, have a situation different from the "ex-officio" situation. The local officers presumptively will be selected from the given categories because of some individual qualifications. (See, generally, Ops. Cal. Atty. Gen. No. N.S. 2667 (1940).) Does this mean that, as incumbents of the second office, the CCCJ, they may not act through a deputy? In our view it does mean this.

In our opinion the key distinction is found in the language emphasized above in section 1194 and also the *Pennsylvania* case. Section 1194 points out that the deputy has the same powers "attached by law to the office of the principal." The powers attached by law to the office, for example, of district attorney in California do not include those of a member of the CCCJ. While there are fifty-eight district attorneys in California, only one district attorney has such powers. More important, those powers are not conferred upon him by operation of law (as would be the case with respect to an ex-officio office), but by the act of an individual, the Governor (the distinction relied upon as the test in the *Pennsylvania* case, above).

In short, when the Governor selects a district attorney or other local officer who has deputies to sit on the CCCJ, he selects *that individual* presumptively for his personal qualifications. He in no way selects that individual's deputies, whose qualification may vary extensively from that of a highly qualified senior assistant or deputy to those of a virtual novice in the office who would have little or no background experience to bring to the CCCJ were he designated as an alternate. The fact that the principal officer might select a senior deputy is immaterial. If the principal officer has the power to select a deputy, he has the power to select any deputy unless otherwise expressly provided by law. (§ 7, *supra*; compare §§ 7.5 and 7.6.) In our opinion section 13810 of the Penal Code was not intended to permit such a result. We so conclude.

Accordingly, the local officers who are appointed from designated categories of officers and who have deputies are in the same position as the remaining CCCJ members, that is, those appointed to represent certain entitles, interests, or to just represent the public. As noted at the outset herein, duties involving the exercise of judgment and discretion may not be delegated unless authorized by law. (*Calif. Sch. Employees Assn. v. Personnel Commission*, *supra*, 3 Cal. 3d at p. 144.) This rule would be applicable to the local officers and the remaining members alluded to above.

3. Who May Be Designated As Alternates?

The third question presented posits the issue whether there are any restrictions as to who may be designated as alternates and how they must be designated.

As to those members falling within the ambit of sections 7.5 and 7.6, the sections themselves set forth the restrictions as to who may be designated to sit for the member, vote and be counted for purposes of a quorum. This is done through the cross reference in the sections to the appropriate subdivision of Article XXIV (now Article VII), section 4, of the California Constitution. As discussed at length above, the usual rule is that the appointee must be an exempt *deputy*, although in some cases the section permits exempt employees to be designated.

As to the procedural aspects of the appointment of alternates, the general problem was discussed at length in 50 Ops. Cal. Atty. Gen. 120, 123 in the context of sections 7.5 and 7.6. Thus, we stated:

> "Section 1191 provides that when not otherwise provided for, the appointment of deputies shall be made in writing and filed in the office of the appointing authority or the office of its clerk. This requirement has reference only to the original appointment of the deputy and does not impose a requirement for a written designation in each instance in which the deputy may he called upon to act for his principal.
>
> "There is no requirement that there be any writing, or any other communication, in order to establish the authority of a deputy to sit in place of an ex-officio member. To be eligible a deputy must have been appointed to an exempt position and section 1191 must have been complied with in regard to that appointment. The presence of an eligible deputy at a meeting in the absence of his principal is sufficient to confirm his right to participate in the meeting. Nothing more is required. Whether advance notification of the representation of an ex-officio member by a deputy at a meeting may be convenient or desirable is immaterial. If advance notification is made, it may be made by any means appropriate in the discretion of the ex-officio member. Since the sole purpose of such notification is to advise, it may he made to any person who can make the information known to the board, including, but not necessarily, the chairman.
>
> "If both the Superintendent of Public Instruction and the Controller intend that their respective deputies represent them at a specific meeting, a problem arises in that only one of these constitutional officers may be so represented. The statutes are silent on which of the two eligible deputies can participate in a meeting in this situation. We believe that the chairman can properly recognize either of the two eligible deputies. He may, but is not compelled to, consider prior communications or notifications from the constitutional officer to be represented since notification is not a prerequisite

> to representation. We believe the board may properly adopt rules to cover such contingency. This situation could be avoided, of course, by coordination between the two constitutional officers."

Essentially, the particular alternates need only be deputies appointed as required by law.

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