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OPINION	:	No. 80-1104
of	:	FEBRUARY 6, 1981
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The Honorable Brian A. Bishop, County Counsel, Nevada County, has requested an opinion on the following question:

May a person simultaneously serve as a member of the board of directors of a public utility district and as a member of the board of supervisors of the county in which the district is located?

CONCLUSION

A person may not simultaneously serve as a member of the board of directors of a public utility district and as a member of the board of supervisors of the county in which the district is located.

ANALYSIS

We are informed that a member of the board of directors of a public utility district has recently been elected to the board of supervisors of the county in which the district is located. The question we must resolve is whether the person may hold both offices at the same time. We conclude that upon his assumption of the office of county supervisor, his office of public utility district director is automatically forfeited.

The members of a board of directors of a public utility district and of a board of supervisors of a county hold public offices. (See Pub. Util. Code §§ 15955, 16003,[1] Gov. Code, § 24000 subd. (o); *People ex. tel. Chapman v. Rapsey* (1940) l6 Cal. 2d 636, 639, 640; *Coufter v. Pool* (1921) 187 Cal. 181,186–187.)

We are unaware of any constitutional or statutory enactment or local regulation expressly allowing or prohibiting the simultaneous holding of these two public offices. (See Gov. Code § 1126; 63 Ops. Cal. Atty. Gen. 710, 718, 719 (1980); 3 McQuillin, *Municipal Corporations* (rev. ed. 1973) § 12.67, p. 296.) Hence, our task is to examine the common law prohibition against the holding of "incompatible offices" as that doctrine has been applied in California. (See *People ex rel. Chapman v. Rapsey*, *supra*, 16 Cal. 2d 636, 641.)

In *People ex rel. Bagshaw v. Thompson* (1942) 55 Cal. App. 2d 147, 150, the Court of Appeal stated, "Public policy requires that when the duties of two offices are repugnant or overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest, their discharge by one person is incompatible with that interest."

In *People ex rel. Chapman v. Rapsey*, *supra*, 16 Cal. 2d 636, 642, the Supreme Court quoted from 46 Corpus Juris 941 as follows:

> "'At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible. The inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the

[1] All section references hereafter are to the Public Utilities Code unless otherwise indicated.

supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other or to audit the accounts of the other.'"

The purpose of the prohibition against holding incompatible offices has been stated in McQuillin to be as follows:

"Public policy demands that an officeholder discharge his duties with undivided loyalty. The doctrine of incompatibility is intended to assure performance of that quality. Its applicability does not turn upon the integrity of the person concerned or his individual capacity to achieve impartiality, for inquiries of that kind would be too subtle to be rewarding. The doctrine applies inexorably if the offices come within it, no matter how worthy the officer's purpose or extraordinary his talent.

". . . . . .

"Neither is it pertinent to say that the conflict in duties may never arise, it is enough that it may, in the regular operation of the statutory plan. Nor is it an answer to say that if a conflict should arise, the incumbent may omit to perform one of the incompatible roles. The doctrine was designed to avoid the necessity for that choice." (3 McQuillan, *supra*, at pp. 295, 296, fns. omitted.)

In determining whether the holding of two particular offices is incompatible with the public interest, the nature, powers, and functions of each office must be examined. (*People ex rel. Chapman v. Rapsey*, *supra*, 16 Cal. 2d 636, 642; *People ex rel. Bagshaw v. Thompson*, *supra*, 55 Cal. App. 2d 147, 150; 3 McQuillin, *supra,* at p. 296.)

While the range of duties of a county supervisor needs little discussion, the functions of a public utility district board *member* requires some elaboration. Under the Public Utility District Act (§§ 15501-18055), a district has general statutory authority to do the following:

"A district may acquire, construct, own, operate, control, or use, within or without or partly within and partly without the district, works for supplying its inhabitants with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter, and may do all things necessary or convenient to the full exercise of the powers granted in this article." (§ 16461.)

> "A district may acquire, construct, own, complete, use, and operate a fire department, street lighting system, public parks, public playgrounds, golf courses, public swimming pools, public recreation buildings, buildings to be used for public purposes, and works to provide for the drainage of roads, streets, and public places, including, but not limited to, curbs, gutters, sidewalks, and pavement of streets. For the purposes of this division all of the foregoing projects shall be consider and a public utility or public utility works." (§ 16463.)

The powers of a district are generally exercised by its board of directors. (§ 16031.) The board employs personnel (§§ 16034, 16192) and acquires the necessary property and equipment to perform the district's activities. (§ 16531.) Each director is elected to a four year term from territorial units within the district or from the district at large. (§§ 15915, 16001.)

In prior opinions, we have examined the interrelationship that exists between the governing of a public utility district and the county in which it is located. We have noted that districts are not, strictly speaking, county districts or subdivisions and that after a district begins operations, "the supervisors of the county within which the district may be located have very limited functions to perform in connection therewith. (6 Ops. Cal. Atty. Gen. 206, 206 (1945).) In 24 Ops. Cal. Atty. Gen. 188, 190 (1954), we stated that "the district is a separate and distinct entity and the board of supervisors has, with few exceptions, little or nothing to do with the conduct and operation of the district."

Nevertheless, the Legislature has provided several specific ties between a district and a county, such as: (1) to form a district, a petition is presented to the county supervisors who then call a formation election (§ 15702), (2) the annexation of territory by a district is subject to a hearing by the county supervisors, who may determine that certain territory shall not be annexed (§ 17376), (3) the "vacancy in the office of director from an unincorporated territorial unit shall be filled by appointment by the board of supervisors § 16003), (4) sewage disposal facilities may be jointly acquired, constructed, and used by a district and the county (§§ 16871, 16875), (5) a district may contract with a county for the use of the former's sewage disposal facilities (§ 16876), (6) a district may contract with a county concerning the use of any water works or other facilities for supplying water (§§ 16882-16883), (7) "a county may lease equipment, perform work, or furnish goods for any district" (Gov. Code § 23008), (8) the board of supervisors may "grant, convey, quitclaim, assign, or otherwise transfer" any real or personal property to a district (Gov. Code § 25365), and (9) a county and a district "may jointly exercise any power common to both of them. (Gov. Code § 6502.)

We have previously concluded that such types of possible interrelationships meet the test for finding an incompatibility of offices. (37 Ops. Cal. Atty. Gen. 146 (1961) [county supervisor and soil conservation district director]; 30 Ops. Cal. Atty. Gen. 184 (1957) [county supervisor and rapid transit district director]; 21 Ops. Cal. Atty. Gen. 94 (1953) [county supervisor and school district trustee]; 15 Ops. Cal. Atty. Gen. 265 (1950) [county supervisor and hospital district director]; see also *People ex. rel. Chapman v. Rapsey*, *supra*, 16 Cal. 2d 636 [county supervisor and bridge and highway district director].

Perhaps closest to the situation presented herein is our opinion in 24 Ops. Cal. Atty. Gen. 188 (1954), where we concluded that the offices of county supervisor and general manager of a public utilities district were incompatible.

Consistent with these prior opinions, we believe that a person who is both a county supervisor and public utilities district director would have divided loyalties in potentially numerous situations, including the setting of policies and the approving of contract negotiations. What would be best for the district need not necessarily be best for the county, and vice versa. Accordingly, we believe that the simultaneous holding of these two offices would be incompatible with the interests of the public. (See 63 Ops. Cal. Atty. Gen. 607, 610 (1980); 37 Ops. Cal. Atty. Gen. 146, 148 (1961); 24 Ops. Cal. Atty. Gen. 188, 191 (1954).)

The consequence of finding an incompatibility of offices is that the first office held is automatically vacated upon the commencement of duties in the second office; the first office is terminated as effectively as if the person had officially resigned. (*People ex rel. Chapman v. Rapsey*, *supra*, 16 Cal. 2d 636, 644; *People ex rel. Bagshaw v. Thompson*, *supra*, 55 Cal. App. 2d 147, 154; 63 Ops. Cal. Atty. Gen. 623, 647, fn. 1 (1980); 3 McQuillin, *supra*, at pp. 295, 296.)

The conclusion to the question presented, therefore, is that a person may not simultaneously serve as a member of the board of directors of a public utility district and as a member of the board of supervisors of the county in which the district is located.

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