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OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-505
	:	
of	:	<u>July 22, 1980</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Lawrence Keethe	:	
Deputy Attorney General	:	

SUBJECT: REFUND OF FILING FEE—A candidate for judge of the superior court is not entitled to a refund of his or her filing fee when the Secretary of State has, subsequent to the payment of said fee, cancelled the election concluding that the vacancy should be filled by appointment rather than by election under the provisions of article VI, section 16(c), of the California Constitution.

The Honorable George P. Kading, County Counsel, Santa Barbara County, has requested an opinion on a question which he have phrased as follows:

Is a candidate for judge of the superior court entitled to a refund of his or her filing fee when the Secretary of State has, subsequent to the payment of said fee, cancelled the election concluding that the vacancy should be filled by appointment rather than by election under the provisions of article VI, section 16(c), of the California Constitution?

CONCLUSION

A candidate for judge of the superior court is not entitled to a refund of his or her filing fee when the Secretary of State has, subsequent to the payment of said fee, cancelled the election concluding that the vacancy should be filled by appointment rather than by election under the provisions of article VI, section 16(c), of the California Constitution.

ANALYSIS

We have been presented with the following scenario. The six-year term of a judge of the superior court was set to expire on January 5, 1981. An election was set for June 3, 1980. The candidate filed a declaration of intention to become a candidate under the provisions of Elections Code sections 6489–6510¹ and submitted the appropriate filing fee pursuant to sections 6553 and 6554. Effective March 7, 1980, the judge, whose office is the subject matter herein, resigned thereby creating a vacancy as of that date. (Gov. Code, § 75025.) The Secretary of State delivered to the county clerk a certified list of the candidates who were eligible to receive votes (§§ 6580–6584) by certificate dated March 27, 1980. On April 11, 1980, the Secretary of State amended the certification of eligible candidates deleting therefrom the judicial office with which we are here concerned. Subsequently, the county clerk removed the judicial office from the ballot.

The Secretary of State's decertification of the candidates was proper under article VI, section 16(c), of the California Constitution which provides:

“(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.”

In a recent opinion of this office, we concluded that any election for such an office, under circumstances here identical, held on June 3, 1980, would have been a nullity. The first election for this office could not be held until June 1982. (63 Ops. Cal. Atty. Gen. 456 (1980).)

The question presented by this opinion request inquires whether a candidate for the cancelled election is entitled to a refund of the filing fee. There is no suggestion that the filing fee requirement is either unlawful or unconstitutional. Similarly, there are no facts showing that the payment was erroneously paid under protest.²

Section 6554, which is pertinent here, provides:

“The filing fees for all candidates required to file declarations of Intention to become a candidate shall be paid at the time such declarations

¹ All unidentified statutory references are to the Elections Code.

² In this regard, *cf. Reynolds v. City and County of San Francisco* (1975) 53 Cal. App. 3d 99, 101-103.

are filed with the county clerk. The filing fees for all other candidates shall be paid at the time the candidates obtain their nomination forms from the county clerk . . . The county clerk shall transmit the appropriate fees to the Secretary of State at the time he or she delivers the declarations of candidacy for filing. *All filing fees received by the Secretary of State and county clerks are nonrefundable.*” (Emphasis added.)

We believe the last sentence of section 6554 resolves the issue before us. We see this language as clear and unambiguous. “When statutory language is thus clear and unambiguous there is no need for construction, and courts should not indulge in it.” (*Solberg v. Superior Court* (1977) 19 Cal. 3d 182, 198; *People v. Boyd* (1979) 24 Cal. 3d 285, 294; *In re Waters of Long Valley Creek* (1979) 25 Cal. 3d 339, 348.) Section 6554 clearly and directly states that the “filing fees . . . are nonrefundable.” There have been no facts presented to cause us to go behind the plain language of the statute.

Accordingly, we conclude, under the circumstances presented here, the candidate is not entitled to the refund sought.
