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OPINION	:	No. 80-708
	:	
of	:	<u>JANUARY 8, 1981</u>
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The Honorable Edmund G. Brown, Jr., Governor of the State of California, has requested an opinion on a question which we have phrased as follows:

If a county supervisor, whose four-year term commenced in January 1979, filed his written resignation on June 9, 1980, which by its terms was effective August 5, 1980, and the Governor filled the vacancy by appointment, how long would the appointee hold office under that appointment?

CONCLUSION

If a county supervisor, whose four-year term commenced in January 1979, filed his written resignation on June 9, 1980, which by its terms was effective, August 5, 1980, and the Governor filled the vacancy by appointment, the appointee would hold office until the election and qualification of his successor. A successor could have been elected at the November 4, 1980 general election if the laws for independent nominations were

followed. If no successor was so elected and qualified, the appointee would hold office for the remainder of the four-year term.

On June 9, 1980, a supervisor in a general law county submitted his written resignation to the Clerk of the Board of Supervisors, which resignation by its terms was to be effective August 5, 1980. The resignation was filed by the Clerk and accepted by the Board the same day it was submitted. The resignation occurred in the middle of the supervisor's term of office, which was not to expire until January 1983.

A written resignation takes effect upon the date mentioned therein (*Meeker v. Reed* (1924) 70 Cal. App. 119, 123; § 1770)¹ and only may be withdrawn if done so “(1) before its effective date, (2) before it has been accepted, an (3) before the appointing power acts in reliance on the resignation.” (*Armistead v. State Personnel Board* (1978) 22 Cal. 3d 198, 206.) Since in the factual situation before us, no withdrawal of the resignation was attempted, we conclude that a vacancy was created on August 5, 1980, when the resignation became effective according to its terms.

In a general law county, the resolution as to how and when this vacancy is to be filled is determined by relevant provisions of the Government Code. Section 25060 provides that the Governor may fill the vacancy by appointment:

“Whenever a vacancy occurs in any board of supervisors, the Governor shall fill the vacancy. The appointee shall hold office until the election and qualification of his successor.

Section 25061 provides when the successor to the appointee is to be elected:

“The election of a supervisor to fill the vacancy *for the unexpired term* shall be held *at the next general election*, unless the term expires on the first Monday after January 1st succeeding the election.” (Emphases added.)

Where the language of statutes is clear, their plain meaning should be followed. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155; *Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal. 3d 434, 438.) As was stated by the Supreme Court in *People v. Belleci* (1979) 24 Cal. 3d 879, 884:

“It is settled that “We are required to give effect to statutes ‘according to the usual, ordinary import of the language employed in framing them.’ (Citations.)” (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula*

¹ All unidentified statutory references are to the Government Code.

Unified Sch. Dist. (1978) 21 Cal. 3d 650, 658.) Stated otherwise, ‘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; accord, *People v. Boyd* (1979) 24 Cal. 3d 285, 294; *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155.)

We have declined to follow the plain meaning of a statute only when it would inevitably have frustrated the manifest purposes of the legislation as a whole or led to absurd results. (See, e.g., *Younger v. Superior Court (Mack)* (1978) 21 Cal. 3d 102, 113–114; *Silver v. Brown* (1966) 63 Cal. 2d 841, 845.) . . .”

We believe the language of sections 25060 and 25061 is clear. Since a vacancy occurred on August 5, 1980, the Governor could, under section 25060, appoint on or after that date a person to fill such vacancy. The appointee would “hold office until the election and qualification of his successor.” Under section 25061, the “successor” is to be elected at the “next general election.”

It is noted that under section 24203 the “term of office” of the office of county supervisor is four years. It should be pointed out that the phrase “term of office” relates to the office itself and not to the incumbent. The term always remains the same. (*Holbrook v. Board of Directors, etc.* (1937) 8 Cal. 2d 158, 161. Thus, since four-year terms commence in January and general elections are held in November of even-numbered years, a general election may only be held at one of two times during a supervisorial “term of office”: (1) at mid-term in November of the second year of the term or (2) at the end of the term in November of the fourth year of the term. In the factual situation presented, a plain reading of section 25061 compels the conclusion that the “next general election” is the one immediately following the vacancy or November 4, 1980, in the second year of the term of office.²

Since the resignation was submitted subsequent to the primary election in June, no primary election was available as a means of nominating or, perhaps, electing a person for the position. (See Elec. Code, § 6611.) Thus, the only manner by which there could have been an election on November 4, 1980, would be through the independent nomination process, which procedure offers a method for candidates to be nominated by

² This interpretation is consistent with prior opinions of this office regarding similar issues. (See 28 Ops. Cal. Atty. Gen. 17, 18 (1956), 11 Ops. Cal. Atty. Gen. 136 (1948); unpublished opn. I.L. 76–96 (May 11, 1976).)

petition without resort to the June primary and thus may be used in lieu of a primary election. (Elec. Code, § 6800; *Hedlund v. Davis* (1956) 47 Cal. 2d 75.)

In order for the independent nomination procedure to be utilized, however, there must be sufficient time during which the proper nomination procedures could be completed. Under the facts as presented, since there was sufficient time to complete this process (see, e.g., Elec. Code, §§ 6554, 6555, 6833, 23302.5; see also 28 Ops. Cal. Atty. Gen. 17, 19(1956); 11 Ops. Cal. Atty. Gen. 136 (1948)), the election for the unexpired term could have been held November 4, 1980. (See *Hedlund V. Davis, supra*, 47 Cal. 2d at p. 80.) The tenure of the gubernatorial appointee would then cease upon the election and qualification of the person “elected” at this election. (28 Ops. Cal. Atty. Gen. 17 (1956); *DeWoody v. Belding* (1930) 210 Cal. 461.)

By its express terms, section 25061 is not applicable where the term of office expires on the first Monday of January succeeding the next general election following the vacancy. The applicable statute in such cases is section 24202 which provides: “Supervisors shall be elected at the general election prior to expiration of the term of the incumbents.” Under section 24200 a supervisor elected pursuant to section 24202 (i.e., in the general election held in the fourth year of the term of office) takes office at noon on the first Monday after the January 1st succeeding their election.

Accordingly, it is our conclusion that a gubernatorial appointee to the vacancy on the Board of Supervisors would hold office until the election and qualification of the person elected at the November 4, 1980 general election. If no successor is elected and qualified at this election, the appointee would hold office for the remainder of the four-year term.
