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OPINION	:	No. 80-801
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of	:	<u>September 30, 1980</u>
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SUBJECT: LOCAL AGENCY FORMATION COMMISSION IN REGARD TO ANNEXATION PROPOSALS—Government Code section 54784.1 does authorize the commission to adopt a rule which will override the disqualification provisions of section 54784 of that code regarding the nonparticipation of a city member in annexation proposals involving that member’s city.

The Honorable Stephen W. Hackett, County Counsel, Napa County, has requested an opinion on a question which we have rephrased as follows:

Does Government Code section 54784.1, which permits a Local Agency Formation Commission to “adopt rules and regulations with respect to disqualification of members from participating in the review of a proposal,” authorize the commission to adopt a rule which will override the disqualification provisions of section 57484, which prohibits a city member of the commission in counties with more than two cities from participating in the commission’s proceedings with respect to a proposal for the annexation of territory to that member’s city?

CONCLUSION

Government Code section 54784.1, which permits a Local Agency Formation Commission to “adopt rules and regulations with respect to disqualification of members from participating in the review of a proposal” does authorize the commission to adopt a rule which will override the disqualification provisions of section 54784 of that code regarding the nonparticipation of a city member in annexation proposals involving that member’s city.

ANALYSIS

Local Agency Formation Commissions (hereinafter LAFCO) are established in each county pursuant to the Knox-Nisbet Act, Government Code section ‘54773 *et seq.*¹ The composition of LAFCOs varies depending upon the number of cities in the county and other factors. In counties with more than one city, LAFCO will consist of two county supervisors, two city officers and one public member. A third supervisor and a third city officer will serve as alternate members. (§ 54780.) In counties with only one city, LAFCO will consist of two county supervisors, one city officer and two public members. A third supervisor and t second city officer will serve as alternate members. (§ 54782.) In counties with no city, LAFCO will consist of three county supervisors and two public members. A fourth supervisor will serve as an alternate member. (§ 54781.) In any county, .an alternate public member may also be appointed. (§ 54785.) Finally, under certain circumstances, LAFCO may be increased from five regular members to seven regular members. The additional members will be officers of special districts in the county appointed to represent such districts. Alternates will also be appointed for the additional two members. (§ 54782.6.)

Under the Knox-Nisbet Act, the basic duties of LAFCOs are essentially to review and approve or disapprove proposals for the incorporation, disincorporation or consolidation of cities, the exclusion of territory therefrom, the formation of special districts, the development of certain redevelopment project areas, and the annexation of territory to certain local agencies, including cities. (§ 54790.)

Additionally, under the District Reorganization Act of 1965 (Gov. Code, § 56000 *et seq.*) LAFCOs are assigned similar duties with respect to changes of organization and reorganization of special districts.

From the composition of LAFCO and its duties, it is patent that the local public officers who serve thereon will routinely be called upon to consider and pass upon matters

¹ All section references are to the Government Code unless otherwise indicated.

which vitally affect their respective public agencies. Under the common law, the office of member of LAFCO and that of county, city or district officer would, accordingly, be incompatible and could not be held concurrently. (See generally, *People ex rel. Chapman v. Rapsey* (1940) 16 Cal. 2d 636; 63 Ops. Cal. Atty. Gen. 624 (1980), Opinion No. 80–516.) The Legislature may, however, and often does abrogate the common law doctrine when it considers it necessary or convenient to permit officers to hold incompatible offices. (See *McClain v. County of Alameda* (1962) 209 Cal. App. 2d 73, 79; 61 Ops. Cal. Atty. Gen. 396, 398 (1978).) With respect to LAFCOs it has done just that by requiring county, city and district officers to serve upon LAFCOs. See also § 54785 expressly abrogating the rule as to city and county officers:) Accordingly, unless otherwise restricted by statute, officers holding incompatible offices under legislative authorization may fully perform the duties of both offices despite conflicts of loyalties which may arise. As stated in the *McClain* case, *supra*, “[t]here is nothing to prevent the Legislature, however, from allowing, and even demanding, that an officer act in a dual capacity.”

The Knox-Nisbet Act contains only two prohibitions as to LAFCO members acting in such a “dual capacity.” These are section 54784 regarding proposals to annex territory to cities in counties containing more than two cities, and section 54782.6 regarding any proposal affecting the district from which a district officer has been appointed to serve as a LAFCO member. Pertinent to our inquiry herein is section 54784, which provides:

“In each county containing two or more cities, regular and alternate city members to the commission shall be appointed by the city selection committee organized in the county pursuant to and in the manner provided in Article 11 (commencing with Section 50270) of Chapter 1 of Part I of Division 1 of Title 5. Regular members of the commission shall be appointed by such city selection committee pursuant to Section 54780.

“The city selection committee shall appoint one alternate member to the commission in the same manner as it appoints a regular member. If one of the regular city members is absent from a commission meeting, or disqualifies himself from participating in a meeting, or is automatically disqualified from participating therein pursuant to this section, the alternate member is authorized to serve and vote in his place for that meeting. *Except in the case of counties with not more than two cities, when the commission is considering a proposal for the annexation of territory to a city of which one of the members of the commission is an officer, the member is disqualified from participating in the proceedings of the commission with respect to the proposal and the alternate member shall serve and vote in his place for such purpose.*

“In the event the office of a regular city member becomes vacant the alternate member is authorized to serve and vote in his place until the appointment and qualification of a regular city member to fill the vacancy.” (Emphasis added.)

In 61 Ops. Cal. Atty. Gen. 396, *supra*, this office concluded that this section precluded a city member of LAFCO from addressing LAFCO in his city capacity with respect to an annexation proposal after he had disqualified himself as required by this section. In so concluding we pointed out that “the Legislature in enacting the . . . disqualification provisions of section 54784 appears to have intended to restore some vestige of the doctrine of incompatibility of office with respect to conflict of duties and loyalties which arise in annexation proposals.” (*Id.*, at p. 398.) In that opinion, however, we were not required to consider how section 54784.1 may affect section 54784 with respect to the disqualification provisions of the latter section.

Section 54784.1 states:

“Each local agency formation commission may adopt rules and regulations with respect to disqualification of members from participating in the review of a proposal. In the absence, however, of any such rule or regulation, the provisions of Section 54784 shall apply.”

The issue presented for resolution is whether in counties with more than two cities,² LAFCOs may override the disqualification provisions of section 54784 through the adoption of a rule or regulation which will permit an otherwise disqualified city officer-member of LAFCO) to participate and vote upon an annexation proposal which involves the member’s own city. Stated otherwise, in enacting section 54784.1³ did the Legislature intend to authorize LAFCOs to adopt rules which could nullify the disqualification provision of section 54784, or did the Legislature merely intend to authorize LAFCOs to provide *additional* disqualifications by rule or regulation?

“In construing a statute to determine the intent of the legislature the court turns first to the words themselves for the answer’” (*Tracy v. Municipal Court* (1978) 22 Cal. 3d 760, 764.) Section 54784.1 states that LAFCOs may adopt rules and regulations “with

² We presume that the Legislature made the distinction between counties with more than two cities and counties with two or fewer than two cities because in the first group of counties there will always be a disinterested city alternate member on the commission who can replace the disqualified member.

³ We note parenthetically that section 54784.1 was added to the Knox-Nisbet Act by Statutes of 1967, ch. 920, § 61, p. 2388.

respect to” the disqualification of its members. The prepositional phrase “with respect to” is the equivalent of such words or phrases as “with regard to,” “regarding,” or “concerning.”⁴ Certainly a LAFCO rule which stated that a city-member in a county with more than two cities could participate in an annexation proposal involving the member’s city notwithstanding the provisions of section 54784 would be with regard to, regarding or concerning that member’s disqualification. It would constitute a nullification thereof. Thus, the wording of the first sentence of section 54784.1 is broad enough to permit the questioned rule.

Turning to the second sentence of section 54784.1 we see that it states that “[i]n the absence, however, of any such rule or regulation, the provisions of Section 54784 shall apply.” This sentence does not militate against the authority of LAFCO to affirmatively adopt a rule which would nullify the section 54784 disqualification because it directs us to that *section in the absence of such a rule*.⁵

Accordingly, we conclude that an analysis of the wording of section 54784.1 demonstrates a legislative intent to permit LAFCOs either (1) to adopt their own rules with respect to the disqualification of their members regarding participation in proposals which affect their parent agencies or (2) to accept the legislatively declared disqualifications, at their option. This legislative intent would sanction a rule or regulation which would permit a city officer-LAFCO member in a county with more than two cities to participate in proceedings which involved an annexation proposal with respect to that member’s city.

In so concluding, we are aware of the fact that it could be argued that it would be “better policy” to reach a contrary conclusion. (See, *e.g.*, *Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 283, wherein the court opined that in certain

⁴ For example, the word “respecting,” which is the participial form of “with respect to,” is defined as “. . . 2: with regard or relation to: REGARDING, CONCERNING [his conduct there is but one opinion]” (Webster’s New Internat. Dict. (3d ed. 1961) p. 1934.)

⁵ The second sentence of section 54784.1 thus performs a dual role. Its first role is as explained above. It states that section 54784 controls with respect to a city-member’s disqualification in annexation matters unless a rule is adopted to the contrary. Secondly, it essentially declares that (at least in counties where there are no special district members on LAFCO) section 54784 constitutes the sole disqualification with respect to a member’s participation in proposals affecting his parent agency.

In counties where LAFCO has been expanded to seven members to include two special district officers, the act would require further detailed construction as to district officer-members in that section 54784.1 does not refer to section 54782.6, which provides an automatic disqualification “[w]hen the commission is considering any proposal affecting the district for which the regular member is a special district officer.”

circumstances “the officials of a municipality . . . may find it difficult, if not impossible, to put regional . . . considerations above the narrow selfish interests of their city.”) In response to such argument we note that in counties with less than three cities, the Legislature itself permits participation by the city-members of LAFCO despite a conflict of loyalties.⁶ Furthermore, as noted at the outset, the whole concept of LAFCOs, and their duties and functions, is replete with conflicts of duties and loyalties which the Legislature has sanctioned. Accordingly, we conclude that the Legislature intended to permit LAFCOs to nullify the disqualification provisions of section 54764 if they believed it appropriate to do so. Finally, we return to the wording of section 54764.1 itself. The section states that LAFCOs may adopt rules and regulations “with respect to” the disqualification of their members. It does not state that LAFCOs may only provide for disqualifications *additional* to those found in the Knox-Nisbet Act.

⁶ Interestingly, where there are two cities in a county, there would be a fifty-fifty chance that the alternate member appointed to represent cities would be from the non-affected city, and hence not directly interested in the annexation proposal. The Legislature, however, did not feel it necessary to provide for disqualification of the interested city-member where a disinterested alternate was readily available.