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OPINION	:	No. 81-117
	:	
of	:	<u>MAY 22, 1981</u>
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The Honorable Stan Statham, Member of the California Assembly, has requested an opinion on the following question:

Under what circumstances may a district attorney provide counsel to special districts?

CONCLUSION

Unless the county charter provides otherwise, a district attorney may provide legal services, including legal counsel, to special districts within the county if the county has no county counsel, but where the county has a county counsel the district attorney has only the authority to provide those legal services to special districts which are derived from his duties as public prosecutor.

ANALYSIS

We are asked under what circumstances a district attorney may provide counsel to special districts in view of the passage of chapter 842, Statutes 1980. We assume for purposes of this opinion that the special districts referred to in the question are located in the county in which the district attorney serves.

Section 26520¹ provides:

“The district attorney shall render legal services to the county without fee, shall render legal opinions to school districts on matters as required by law, and may render legal services to local public entitles as requested. Unless required by law to provide legal services to local public entitles without fee, the district attorney may charge a local public entity a fee, not to exceed the total cost to the county, for such legal services.”

Section 26529 provides in part:

“In counties which have a county counsel, the county counsel shall discharge all the duties vested in the district attorney by sections 26520, 26522, 26523, 26524 and 26526. . . .”

Similarly section 27642 provides:

“Whenever the board of supervisors appoints a county counsel pursuant to this chapter, he shall discharge all the duties vested by law in the district attorney other than those of a public prosecutor.”

If there is no county counsel, section 26520 provides the answer to the question. The section states that “[t]he district attorney . . . may render legal services to local public entitles as requested.” Providing legal counsel is clearly the rendering of a legal service. Special districts formed in a county pursuant to state law for public purposes would appear to be included in the phrase “local public entitles.” This phrase was introduced by a 1976 amendment to section 26520. Prior to the 1976 amendment section 26520 provided:

“When required and without fee, the district attorney shall give his opinion in writing to county and district officers on matters relating to the duties of their respective offices.”

¹ Section references are to the Government Code unless otherwise indicated.

This language has been interpreted to authorize advice to such local districts as fire protection districts (*Orinda County Fire Protection Dist. v. Frederickson and Watson Co.* (1959) 174 Cal. App. 2d 589, 592) and municipal water districts. (30 Ops. Cal. Atty. Gen. 86, 87, (1957).) The 1976 amendment to section 26520 resulted from the enactment of Senate Bill No. 1635. (Stats. 1976, ch. 800.) The Legislative Counsel's Digest of Senate Bill No. 1635 described the purposes of the bill as follows:

“Various provisions of existing law require county counsels and district attorneys to give written legal opinions without fee to county and district officers on matters relating to their respective offices.

“This bill would require the county counsel and district attorney to perform legal services for the county without fee, would require them to render legal opinions to school districts on matters as required by law, and would allow them to charge a local public entity a fee, not to exceed the cost to the county, for rendering legal services to such public entity unless the district attorney or county counsel is required by law to render such legal services without fee.”

It would appear that the purpose of Senate Bill No. 1635 in respect to the services to public entitles other than counties and school districts was to expand the types of legal services to be provided, to include all local public entitles instead of just district offices as recipients and to authorize the county to charge a fee for such services. We conclude that special districts formed in a county pursuant to state law for public purposes are local public entitles within the meaning of section 26520 and that district attorneys in counties not having a county counsel are authorized by that section to provide legal counsel to such districts.

In counties which have a county counsel we must determine the effect of sections 26529 and 27642 upon the authority of a district attorney to provide legal services pursuant to section 26520. Both those sections provide that the county counsel “shall discharge all the duties” vested by section 26520 in the district attorney. The statutes do not speak directly to their effect upon the authority or duty of the district attorney to perform the same duties. Do the words “shall discharge all the duties” in sections 26529 and 27642 mean that the county counsel is to discharge such duties instead of the district attorney or that both must discharge those duties?

This question is answered in *Safer v. Superior Court* (1975) 15 Cal. 3d 230, 236–237. In *Safer* the court observed:

“In counties which employ a county counsel, the statutes provide that

his very presence deprives the district attorney of the power to perform certain duties. 10”

Footnote 10 in *Safer* reads:

“Government Code section 26529 specifically provides that in counties which employ county counsel a district attorney may not render an opinion to county officers (Gov. Code, § 26520), test the validity of laws providing for the payment of county funds (Gov. Code, § 26523), render school bond assistance (Gov. Code, § 26522), or represent a judge or court in its official capacity as a defendant (Gov. Code, § 26524). More generally, Government Code section 26529 provides that ‘*county counsel shall defend or prosecute all civil actions in which the county . . . is concerned*’ (Italics added.) In construing this statute we start with the obvious proposition that county legal officers may become involved in litigation only if the county or public interest is involved; the quoted statute divides the litigative authority between the two county officers responsible for it, specifying that county counsel shall handle all civil matters. Thus even if one conceded the propriety of any public participation in this case, the statutes of this state provide that the county counsel shall bring this civil action. As we shall show, however, the defects in this action run deeper than the mere need for the substitution of county counsel.”

We conclude that in general law counties which have a county counsel, the district attorney has no authority to perform those duties which the law directs the county counsel to discharge.

The district attorney remains the public prosecutor in all counties, including those having a county counsel. His duties as public prosecutor may well involve special districts and contact with its officers and employees. Any “counsel” the district attorney might provide in such contacts in furtherance of his duties as public prosecutor is authorized by section 26500 which declares “The district attorney is the public prosecutor.”

In *Board of Supervisors v. Simpsons* (1951) 36 Cal. 2d 671 the issue was whether the district attorney or the county counsel was to institute proceedings to abate a public nuisance under the Red Light Abatement Act. The court held that since Los Angeles County was a charter county the Government Code provisions relating to county counsels were not applicable and the duty belonged to the district attorney. The opinion added that if those Government Code sections were applicable, properly construed they would place the duty on the district attorney rather than the county counsel because Red Light Abatement action, though considered civil in nature, is in aid of and auxiliary to the

enforcement of the criminal law. The Court then stated (p. 675) “we think that section 27642 of the Government Code reserving to district attorneys the duties of public prosecutor should embrace the abatement of such nuisances.” It is therefore clear that the district attorney’s duties as public prosecutor embrace more functions than the prosecution of criminal actions. (*Cf.* 63 Ops. Cal. Atty. Gen. 457 (1980).)
