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OPINION	:	No. 81-125
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of	:	<u>APRIL 9, 1981</u>
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The Honorable Dennis A. Barlow, County Counsel, Yuba County has requested an opinion on the following question:

May the same individual serve simultaneously as a member of the Yuba County Planning Commission and as a director of the Linda County Water District?

CONCLUSION

The same individual may not simultaneously hold the offices of county planning commissioner and county water district director.

ANALYSIS

The same person is presently an appointed member of the Yuba County Planning Commission and an elected director of the Linda County Water District organized under Water Code section 30000 *et seq.* Each of these political bodies functions in

common territory. Therefore, decisions and actions by one could affect the other. The question presented is whether the same person may simultaneously occupy these positions.

There is no express constitutional or statutory provision which prohibits the simultaneous holding of these two positions. Therefore, in order to answer the question presented, it is necessary to determine whether the common law doctrine of “incompatibility of office” is applicable. This doctrine encompasses the simultaneous holding of two public offices as opposed to employments. (58 Ops. Cal. Atty. Gen. 109 (1976).) There is no doubt that the position of a county planning commissioner is a public office. (See Government Code Sections 1001 and 65150; 56 Ops. Cal. Atty. Gen. 488, 489 (1973) and 58 Ops. Cal. Atty. Gen. 323, 324 (1975).) Likewise the position of director of a county water district is an office. (32 Ops. Cal. Atty. Gen. 250, 252 (1958).)

The incompatibility doctrine has been stated by our Supreme Court, as follows:

“Two offices are said to be incompatible when the holder cannot *in every instance* discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both . . .” *People ex rel. Chapman v. Rapsey*, 16 Cal.2d 636, 641–642 (1940). (Emphasis added.)

As stated in 17 Ops. Cal. Atty. Gen. 129, 130 (1951), “[t]he public is entitled to have the full *undivided* services of each public officer.” (Emphasis added; see also 21 Ops. Cal. Atty. Gen. 94, 97 (1953).) When these services in the form of duties clash, divided loyalty is the result.

The policy as stated in *Chapman* comprehends prospective as well as present clashes of loyalty. In the past this office had found incompatibility to exist with respect to potential conflicts of duty. (See 63 Ops. Cal. Atty. Gen. 623 (1980) and opinions cited therein.) “[O]nly one significant clash of duties and loyalties is required to make . . . offices incompatible . . . (37 Ops. Cal. Atty. Gen. 21, 22 (1961).) “The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflict nor provides assurance that they would be employed . . .” (38 Ops. Cal. Atty. Gen. 121, 125 (1961).) Once incompatibility of office is found to exist, acceptance of the second office creates an automatic vacancy in the first. (40 Ops. Cal. Atty. Gen. 238 (1962), 41 Ops. Cal. Atty. Gen. 98 (1963).)

To determine whether there are any inherent inconsistencies or interweaving of responsibilities in the functions of each office, it is necessary to examine the duties of each position.

A county planning commission by statute may be or be a component of the county planning agency (Gov. Code § 65100, subd. (a)). The county planning agency is responsible for the preparation of the county general plan, and may, or if directed by the Board of Supervisors, shall prepare “specific plans,” including detailed regulations, conditions, programs, and proposed legislation, for the implementation of the county general plan. (Gov. Code §§ 65300–65307; 65450–65453.)

“The general plan must include:

“.....

(d) A conservation element for the conservation, development, and utilization of natural resources *including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover:*

(1) The reclamation of land and waters.

(2) Flood Control.

(3) Prevention and control of the pollution of streams and other waters.

(4) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(5) Prevention, control, and correction of the erosion of soils, beaches and shores.

(6) Protection of watersheds.

(7) The location, quantity and quality of the rock, sand and gravel resources . . .” (Gov. Code § 65302; emphasis added.)

The powers and purposes of a county water district, which are exercised by the directors thereof (Wat. Code, § 30576), are enumerated under Water Code section 31020 *et seq.* The duties to be performed by the water district include the following:

§ 31021. “A district may store water for the benefit of the district, conserve water for future use, and appropriate, acquire, and conserve water and water rights for any useful purpose.”

§ 31022. “A district may operate water rights, works, property, rights, and privileges useful or necessary to convey, supply, store, or make use of water for any purpose authorized by this division.”

§ 31022.5. “The powers conferred by this part include power to generate and sell at wholesale hydroelectric power in connection with any water conservative project of the district.”

§ 31033. “A district may drain and reclaim lands within the district either by surface or underground works or both; and may acquire, by appropriation or other lawful means, and divert, store, conserve, transport or dispose of water resulting from such operations; and may acquire, by appropriation or other lawful means, and divert, store, conserve, transport or dispose of flood and storm water within the district, and flood and storm water of streams or water-courses outside of the district which flow into the district, for any beneficial purpose or use.”

It is evident that the duties of the planning commission and the duties of the water district directors, as expressed in these sections, when taken in the context of the *Chapman* rules, may come into conflict and result in clashes of loyalty. The same conclusion was reached by us in a similar situation where we concluded that a county planning commissioner could not also hold the office of director of a California Water District organized pursuant to Water Code, section 34000 *et seq.* (58 Ops. Cal. Atty. Gen. 323, *supra*. See also, e.g., 63 Ops. Cal. Atty. Gen. 607 (1980), county planning commissioner and city councilman; 56 Ops. Cal. Atty. Gen. 488, *supra*, county planning commissioner and school district trustee; Attorney General’s Unpub. Op. I.L. 74–223, city planning commissioner and state highway commissioner—all determined to be incompatible.) As stated in the just cited unpublished opinion of this office: “What is best for the state in highway location may differ significantly as to what . . . is best for the . . . city itself.” (*Id.*, at p. 6.) Likewise, what is best for the county in its planning activities may differ significantly from what is best for the county water district and the exercise of its independent powers. (*Cf.* 37 Ops. Cal. Atty. Gen. 21, 22–23, city councilman and county water district director.)

Accordingly, for the foregoing reasons, we conclude that the same individual may not simultaneously hold the office of county planning commissioner and member of the board of directors of the Linda County Water District.

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