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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-701
of	:	AUGUST 28, 1981
GEORGE DEUKMEJIAN Attorney General	:	
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THE HONORABLE WILLIAM J. FILANTE, M.D., ASSEMBLYMAN, NINTH DISTRICT, has requested an opinion on a question which we have phrased as follows:

Where a Speaker of the Assembly has appointed a licensed physician and surgeon to the California Health Facilities Authority as his appointee to be representative of the general public, may a succeeding Speaker of the Assembly remove and replace such appointee prior to the expiration of the appointee's term of office?

CONCLUSION

Where a Speaker of the Assembly has appointed a licensed physician and surgeon to the California Health Facilities Authority as his appointee to be representative of the general public, a succeeding Speaker of the Assembly may not remove and replace such appointee prior to the expiration of the appointee's term of office.

ANALYSIS

The California Health Facilities Authority Act, which was enacted in 1979 (Cal, Stats. 1979, ch. 1033), is contained in sections 15430–15461 of the Government Code,[1] The act established the California Health Facilities Authority (hereinafter "Authority"). The Authority is charged with the administration of the act. The basic purpose of the act is to permit health facilities to take advantage of the lower interest rates which can become available through the use of governmentally issued tax exempt bonds, (§§ 15432, 15437–15438.5.) The Authority is intended as only a financing agency, with authority to participate in the operation of hospitals only in the limited case of actual or anticipated default on loans. (§ 15438.5.)

The Authority consists of nine members appointed pursuant to section 15433, which, as amended in 1980, provides:

> "The authority shall consist of nine members, including the State Treasurer, who shall serve as chairman, the State Controller, the Director of Finance, two members appointed by the Senate Rules Committee, two members appointed by the Speaker of the Assembly, and two members appointed by the Governor subject to confirmation by a majority vote of the Senate. *Of the members appointed by the Senate Rules Committee, one member shall be a licensed physician and surgeon, and one shall serve in an executive capacity to a health facility. Of the members appointed by the Speaker of the Assembly, one member shall be a person qualified by training and experience in the field of investment or finance, and one member shall be representative of the general public. The members appointed by the Governor shall be representative of the general public*. The terms of appointed members shall be four years, expiring on March 31. *Each member shall hold office for the term of his or her appointment and shall continue to serve until a successor shall have been appointed and qualified*. Any vacancy among the members shall. be filled by appointment for the unexpired term only. A member of the authority shall be eligible for reappointment.
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> "Members of the authority shall serve without compensation, but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties." (Emphases added.)[2]

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

[2]The Authority originally consisted of seven members, constituted as follows:

The prior Speaker of the Assembly appointed a licensed physician and surgeon as his appointee who "shall be representative of the general public." The present Speaker, however, purported to remove such member in the middle of his term, and purported to replace him with a new appointee. To our knowledge, no vacancy arose in the office by the happening of any of the events enumerated in section 1770 or under any common law principle.[3] It is our understanding that the present Speaker replaced the initial appointee on the grounds that as a licensed physician and surgeon he was not qualified to be appointed as the member who "shall be representative of the general public."[4]

Accordingly, the issue presented by this request is whether a licensed physician and surgeon is qualified to hold the position of member of the Authority where he is appointed to one of the positions which is to be representative of the public. We conclude for a number of reasons that a licensed physician and surgeon is qualified to be

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§ 15433. "The authority shall consist of seven members, including the State Treasurer, who shall serve as chairman, the State Controller, the Director of Finance, two members appointed by the Senate Rules Committee subject to confirmation by a majority vote of the Senate. and two members appointed by the Speaker of the Assembly subject to confirmation by a majority vote of the Assembly. *Of the members appointed by the Senate Rules Committee, one member shall be a licensed physician and surgeon, and one member shall serve in an executive capacity to a health facility. Of the members appointed by the Speaker of the Assembly, one member shall be a person qualified by training and experience in the field of investment or finance and one member shall be representative of the general public*. The terms of appointed members shall be four years, expiring on March 31. However, of the members initially appointed by the Senate Rules Committee, one member shall serve until March 31, 1981, and one member shall serve until March 31, 1984; of the members initially appointed by the Speaker of the Assembly, one member shall serve until March 31, 1982, and one member shall serve until March 31, 1983. *The terms of initially appointed members shall be designated by the appointing authority at the time of appointment. Each member shall hold office for the term of has, or her appointment and shall continue to serve until a successor shall have been appointed and qualified*. Any vacancy among the members shall be filled by appointment for the unexpired term only. A member of the authority shall be eligible for reappointment.

"Members of the authority shall serve without compensation, but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties." (Emphases added.)

[3]Section 1770 sets forth the statutory grounds wherein "[a]n office becomes vacant . . . before the expiration of the term," including such events as the death or resignation of the incumbent, his conviction of a felony or his willful failure to discharge the duties of his office for three consecutive months.

These grounds are not exclusive. For example, acceptance of a second incompatible office will constitute a vacating of the first office under common law principles. (See, e.g., *People ex rel. Chapman* v. *Rapsey* (1940) 16 Cal. 2d 636.)

[4]See Ops. Cal. Legis. Counsel. No. 2810 (March 12, 1981) California Health Facilities Authority—Public Members.

appointed to such position and that, therefore, the initial appointee has not been legally removed from office.

Initially, we note that nowhere in section 15433 has the Legislature stated that a physician and surgeon may not be representative of the public. Such conclusion may only be made by inference from the fact that, with respect to the appointees of the Senate Rules Committee, one member must be a licensed physician and surgeon, or perhaps from the fact that physicians work in health facilities. However, when the Legislature desires to exclude a member of a particular class or profession from serving as a "public member" it appears to specifically so provide.[5] Thus, for example, a licensed physician and surgeon may not serve as a "public member" on the Board of Medical Quality Assurance, nor may a licensed barber serve in such capacity on the Barbers' Board.

Furthermore, we are not considering in section 15433 a licensing or regulatory board where it would be logical to exclude as "public members" the very persons who are being regulated. We are dealing merely with a board which will pass upon and make loans to health facilities. Merely because a physician may work in health facilities and be somewhat conversant with their mariner of operation does not mean that a physician may not represent the interests of the public at large. Physicians as a general proposition neither own nor administer health facilities. A layman may be an owner, and hospital administrators normally perform the latter function. If physicians are to be excluded from the Authority under consideration herein, where does the statute draw the line? Are nurses, hospital orderlies, hospital kitchen help and laboratory technicians also excluded because they work in hospitals? Since we are primarily dealing with a financing agency, does this also mean that anyone who knows anything about financial matters also should not be the member who is representative of the public? Are wives of physicians or other persons related to physicians or persons in the health care field to be excluded? In short, may the public member be only someone who knows nothing about the matters which are to come before the Authority?

We believe our research has disclosed the answer to the general question just posed. Several instances have been discovered in various statutes where the Legislature

[5]See Business and Professions Code, sections 1602 (Board of Dental Examiners); 2007 (Board of Medical Quality Assurance), 2702 (Board of Nurse Examiners); 2842 (Board of Vocational Nurse and Psychiatric Technicians Examiners); 2923 (Psychology Examining Committee. Board of Medical Quality Assurance); 3011 (Board of Optometry); 4001 (Board of Pharmacy); 4801 (Board of Examiners in Veterinary Medicine); 5514 (Board of Architectural Examiners); 5620 (Board of Landscape Architects); 6013.5 (State Bar); 6501 (Board of Barber Examiners); 6711 (Board of Registration for Professional Engineers); 7002 (Contractors State License Board); 7302 (Board of Cosmetology); 7602 (Board of Funeral Directors and Embalmers); 8521 (Structural Pest Control Board); 9626 (Cemetery Board).

has specifically specified that the "public member" should be someone conversant with the area or subject matter to be considered by the particular board. For example, with respect to the State Board of Examiners of Nursing Home Administrators, four of the nine board members must be actively engaged in the administration of nursing homes, and five members "shall represent the general public." (Bus. & Prof. Code, §§ 3910–3912.) Although no board member may be an owner or supervising employee or manager of a nursing home or hospital or have a financial interest therein, "[o]ne of the *public members* shall be actively engaged in the practice of medicine, with a demonstrated interest in convalescent and chronic care, and one shall be actively engaged as an educator in health care administration." (Bus. & Prof. Code, § 3912, emphasis added.) The analogy between this situation and the one being considered in this opinion is remarkable. Another example may be found with respect to the Hearing Aid Dispensers Examining Committee where the law *requires* that one of the *public* members "shall be a licensed physician and surgeon specializing in treatment of the diseases of the ear . . . and another public member shall be an audiologist." (Bus. & Prof. Code, § 3320.)

Accordingly, the foregoing examples demonstrate not only that it does not follow that a physician or surgeon may not represent the public on a board because he may have some connection with the subject matter the board administers, but they demonstrate that in fact a physician and surgeon may better represent the public because of such connection and the knowledge he can bring to the board.

At this point it should be abundantly clear that the question whether a physician and surgeon may represent the public on the Authority presents, *at its worst*, an ambiguity with respect to section 15433. This ambiguity is to be resolved in favor of the right of an individual to hold office. As stated in *Carter* v. *Com. on Qualifications, etc.* (1939) 14 Cal. 2d 179, 183:

> "At the outset it should be noted that the right to hold public office, either by election or appointment is one of the valuable rights of citizenship. Mr. Mecham in his work on Public Officers, section 67, refers to the right to hold a public office under our political system as an 'implied attribute of citizenship.' The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. (*People* v. *Dorsey*, 32 Cal. 296.) The petitioner relies on these well-established rules in support of his position."

See also, *Helena Rubenstein Internat.* v. *Younger* (1977) 71 Cal. App. 3d 406, 418–419; compare *City of Berkeley* v. *Jensen* (1947) 77 Cal. App. 2d 921, 926; 28 Ops. Cal. Atty. Gen. 127, 131 (1956).

Finally, evidence of the intent of the Legislature that a physician and surgeon is qualified to represent the public on the Authority is to be found in the floor debate on the Assembly floor with respect to the 1980 amendment to section 15433, which added the two gubernatorial appointees to be representatives of the general public. We are advised that the requester herein, Assemblyman Filante, fearful that the Governor would "water down" the membership of the Authority so that there would be insufficient physician membership on the Authority, was advised by the author of both the original hill and the 1980 amendment at the time the bill was debated on the Assembly floor "that there was already one physician appointed to this agency to serve in the public member slot designated for a physician that was to be filled by the Senate Rules Committee . . . [and that the author] assured Assemblyman Filante that this was, in fact, the case and stated that Assemblyman Filante should vote for this bill because there would, in fact, be two physicians represented on the entity [by virtue of the service of the physician already appointed by the former Speaker to be representative of the public]. It was on this basis that Assemblyman Filante cast his vote in favor of AB 1972."[6] Although the motives or understanding of individual legislators who voted in favor of a bill are normally immaterial to determine legislative intent, "[a] legislator's statement is entitled to consideration, however, when it is a reiteration of legislative discussion and events leading to the adoption of proposed amendments rather than merely an expression of personal opinion." (*California Teachers Assn.* v. *San Diego Community College District* (1981) 28 Cal. 3d 692, 700.) A statement by the requester concerning the foregoing exchange between him and the author of the act and AB 1972, which was part of the floor debate, would fall within the latter category. It would thus constitute evidence of the understanding of the Assembly collectively at the time it voted on AB 1972 that a physician and surgeon could represent the public on the Authority.

For the foregoing reasons, we conclude that a physician and surgeon is qualified to be representative of the general public within the meaning of section 15433. Accordingly, we are aware of no grounds which would have created a vacancy in that position filled by the prior Speaker of the Assembly which would have permitted the present Speaker to make his own appointment. Accordingly, we conclude that when the prior Speaker had appointed a licensed physician and surgeon to the California Health Facilities Authority as his appointee, the succeeding Speaker was not authorized to remove and replace such appointee prior to the expiration of the appointee's term of office.[7]

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[6]Letter from the California Medical Association, Division of Government Relations, to this office, dated July 31, 1981. This information has been verified by Assemblyman Filante's office.

[7]Because of our conclusion that the original appointment was valid, we need not discuss the issue whether, if the opposite were true, the only proper mode of removal would have been through a quo warrants action brought by the Attorney General pursuant to section 803 of the Code of Civil Procedure. (See, e.g., *Barendt* v. *McCarthy* (1911) 160 Cal. 680; compare, e.g., *Housing Authority* v. *City Council* (1962) 208

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Cal. App. 2d 599.)