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OPINION	:	No. 82-1003
of	:	<u>DECEMBER 30, 1982</u>
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	:	

THE HONORABLE DON ROGERS, MEMBER OF THE ASSEMBLY, has requested an opinion on the following question:

What is the effective date of Proposition 6, approved by the voters at the June 8, 1982, primary election?

CONCLUSION

The effective date of Proposition 6, approved by the voters at the June 8, 1982, primary election, is June 8, 1982, at 8:00 p.m., by virtue of section 4 of the proposition itself.

ANALYSIS

At the June 8, 1982, direct primary election, the voters approved Proposition 6. The proposition repealed certain provisions of the Revenue and Taxation Code and added other provisions to that code. The basic purpose of this initiative measure was to repeal California's gift and inheritance taxes. The issue presented is what is the effective date of the proposition.

With respect to statewide initiative and referendum measures, the California Constitution provides in article II, section 10(a):

"Sec. 10.(a). An initiative statute or referendum approved by a majority of votes takes effect the day after the election *unless the measure provides otherwise. . . .*" (Emphasis added.)¹

However, section 4 of Proposition 6 provided:

"Section 4. *This act shall become operative as of the date of passage hereof*, and shall apply to estates of those persons dying *on or after such date*, to transfers occurring by reason of a death occurring *on or after such date*, and to gifts made or completed *on or after such date*" (Emphases added.)

¹ Prior to 1966, the initiative and referendum was provided for in article IV, section 1 of the California Constitution. At such time the Constitution provided that such measures "shall take effect five days after the date of the official declaration of the vote by the Secretary of State." Accordingly, if the *operation* of an initiative measure was to be delayed, such delayed operative date would have to be specified therein. See, e.g., example in 14 Ops.Cal.Atty.Gen. 262, 269 (1950). Accordingly, an initiative measure could have *both* an effective date (the date upon which it became a law) and a later operative date (the date its provisions actually became efficacious or began to operate).

After the November 8, 1966, constitutional revision of article IV, section 24 thereof provided that "[a]n initiative or referendum measure . . . takes effect 5 days after the date of the official declaration of the vote by the Secretary of State *unless the measure provides otherwise. . . .*" (Emphasis added.) This amendment appears to have been to avoid the necessity of distinguishing between the effective date of a measure and its operative date. See also, Proposed Revision of the Constitution, Cal. Const. Rev. Com., Feb. 1966, p. 47:

"Comment: The proposed provision permits an initiative or referendum measure to provide the date it shall go into effect, because the effective date may be of paramount importance to the measure. . . ."

The constitutional provision was amended on November 3, 1970, to read as it presently reads, and was renumbered on June 8, 1976.

We are asked if Proposition 6 was effective on June 9, 1982, the day after the election, by virtue of article II, section 10(a), *supra*, or on June 8, 1982, the day of the election, by virtue of section 4 of the measure set forth above.

The applicable rule of interpretation is set forth by the California Supreme Court in *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd.* (1982) 31 Cal.3d 715, 726 as follows:

"We have said that 'It is a settled principle in California law that "When statutory language is . . . 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 . . .)' (*In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 348 [158 Cal.Rptr. 350, 599 P.2d 656].) Thus '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. [Citations.]' (*People v. Belleci* (1979) 24 Cal.3d 879, 884 [157 Cal.Rptr. 503, 598 P.2d 473].)"

The plain meaning of section 4 of Proposition 6, *supra*, is that the proposition shall be operative (that is efficacious or effective) as of June 8, 1982, the day of the election. Furthermore, if the intent were that it should not be operative or effective until June 9, 1982, there would have been no need for the language in section 4 regarding the operative date. Such language would have been surplusage. However, as stated by the court in *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54:

"In construing the words of a statute . . . an interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning. . . ."

Nor do we see that making Proposition 6 operative, that is, effective immediately is either absurd or frustrates the intent of the voters. Statutes are often made effective immediately. (See Cal. Const., art. IV, § 8, subd. (c)(2).) "Immediately" is, of course, the date of the election (or "the date of the passage"), and not the following day. As noted by the court in *People v. Clark* (1851) 1 Cal. 406, 407 in a situation where both the *time of day* as well as the date a statute was enacted was significant:

"To hold that a law operates all that part of the day of its passage prior thereto, is as absurd and as much of a fiction as the old doctrine that, by relation, it should commence running on the first day of the parliament. *And if a statute shall go into effect from and after its passage*, that is, from and after the point of time when it received the approval of the executive and

became thus law, *it would be equally as irrational and as much a fiction to imagine that it did not really become a law until the next day.*"

In *People v. Clark* the question presented was whether a particular judicial office was an appointive office to be filled by the Governor or an elective office to be filled by the People. This question arose because on the very day the electorate was to fill the office, the Legislature passed a bill changing the nature of the office from elective to appointive. The bill was signed by the Governor on the same day. The bill was approved to take effect *from and after its passage*. The California Supreme Court remanded the matter to the trial court to ascertain the precise time of the day the Governor signed the bill, that is, whether it was before or after the electorate had finished voting to determine whether the new law or the vote of the People predominated.

Cases such as *People v. Clark, supra*, 1 Cal.406² point out the only possible "ambiguity" we discern in the language of Proposition 6, that is, what time of day on the date of its passage was it to be operative.³ By analogy to cases such as *People v. Clark*, we believe the answer should be at 8:00 p.m. on that date, the time the polls closed and the electorate had done all that they could to approve or pass the measure. Such a construction gives effect to the intent of the voters that the measure should be effective at the first possible instant while also avoiding any argument of constitutional infirmity which would inhere were Proposition 6 to be construed as being operative the entire day of June 8, 1982.

² See also, e.g., *Davis v. Whidden* (1897) 117 Cal. 618, 623-624: "'We look to the final act of approval by the executive to find when the statute took effect, and when necessary, inquire as to the hour of the day when that approval was, in fact, given.'"; *Louisville v. Savings Bank* (1881) 104 U.S. 469; *United States v. Casson* (D.C. Cir. 1970) 434 F.2d 415, 418-419.

³ In concluding that section 4 of Proposition 6 is clear and unambiguous as to the *date* it should be operative, we are not unmindful of the statement in the Ballot Pamphlet for the June 8, 1982, primary election in the "Analysis by the Legislative Analyst" that the measure "would be effective only in the case of deaths occurring or gifts made on or after its effective date (*the day after the election*)" (Ballot Pamphlet, p. 25, emphasis added). However, we also note the language in the "Argument in Favor of Proposition 6" that the measure "will take effect *immediately*." (Emphasis added; Ballot Pamphlet, p. 26.) Although analysis and arguments to the voters may aid in interpreting initiative measures, we need not concern ourselves with them herein since courts only resort to such matters "as a construction aid to determine the 'probable meaning of *uncertain language*.'" (*Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 866.) Also, "[w]hether the voters accepted the Legislative Analyst's statement . . . [or the proponent's statement] of the effect of this measure we cannot know. . . ." (*City and County of San Francisco v. Farrell, supra*, 32 Cal.3d at p. 55.)

(*Braxton v. Municipal Court* (1973) 10 Cal.3d 138, 145, statutes should be construed in manner consistent with constitutional requirements.)⁴

Accordingly, we conclude that Proposition 6 was effective on June 8, 1982, the date of the election, at 8:00 p.m., and that in making it effective immediately, the drafters and the People were exercising their option provided in article II, section 10(a) to provide a date other than the date after the election as the effective date.⁵

⁴ The argument is that the liability to pay inheritance tax vests immediately at the moment of death of the decedent. Accordingly, to apply Proposition 6 to estates where death occurred prior to 8:00 p.m. on June 8, 1982, would give it "retroactive" effect. This would constitute an unconstitutional gift of public funds in contravention of article XVI, section 6 of the California Constitution. (See generally, *Estate of Cooke* (1976) 57 Cal.App.3d 595, 602-605.) This issue is at this writing before the appellate courts with respect to Proposition 5 at the June 8, 1982 Primary Election. That Proposition, which was also approved by the voters, also repeals the gift and inheritance taxes, and is effective by its terms on January 1, 1981. (See *Estate of Gibson*, 1 Civ. No. AO19492.)

⁵ In the context of Proposition 6 we see no necessity to distinguish between the language or concepts of "operative" and "effective" dates. Where a statute goes into *effect* immediately (such as an emergency statute) or on a particular date pursuant to constitutional mandate (see Cal. Const., art. IV, § 8) a distinction may be necessary with respect to these terms. (See, e.g., *Estate of Nicoletti* (1982) 129 Cal.App.3d 475, 479-480.) However, as noted in footnote 1, *supra*, no such distinction is necessary with respect to initiative statutes. Furthermore, an initiative statute such as Proposition 6 clearly could not be "operative" before it was "effective." Accordingly, on June 8, 1982, it was both. (Cf. Cal. Const., art. IV, § 8, sub. (c)(2): "Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.")