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OPINION	:	No. 82-106
	:	
of	:	<u>MARCH 2, 1982</u>
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THE HONORABLE FLOYD R. B. VIAU, COUNTY COUNSEL,
COUNTY OF FRESNO, requests an opinion on the following question:

Is a member of the governing board of a new unified school district, who qualified for membership on the board without appearing on the ballot, one of the "majority of board members receiving the highest number of votes" within the meaning of Education Code section 35105 so as to qualify for a four year term of office rather than a two year term.

CONCLUSION

A member of the governing board of a new unified school district, if he qualified for membership on the board without appearing on the ballot, is not one of the "majority of board members receiving the highest number of votes" within the meaning of

Education Code section 35105. Such person therefore does not qualify for a four year term of office.

ANALYSIS

A special school district unification election was held on December 22, 1981, in Fresno County at which the electors decided to form a unified school district. The measure adopted at that election also provided for the election of board members in the event that sufficient votes were cast to form the unified district.

The unified school district thus established is governed by a seven member board of trustees, each member residing in a separate trustee area. However, each such governing board member is elected by vote of the electorate of the entire school district. In that 1981 election only one person was nominated for trustee as to one of the trustee areas, each remaining trustee area having at least two nominees.

Education Code section¹ 35105 provides in essence that, as to elections of board members of newly formed unified school districts, the majority of members receiving the highest number of votes shall have a four year term of office and the remaining members shall have a two year term of office.

We are advised that a person who was the sole nominee as to one trustee area did not appear on the ballot as a candidate at the election creating the new unified school district on the basis that sections 5326, 5327 and 5328 obviated the need for an election *as to that position* under the conditions prevailing at that election. Since this individual's name did not appear on the ballot, he received no actual votes at the 1981 election. We are asked whether he qualified, pursuant to section 35105, for a four year term or for a two year term.

The problem is one of statutory construction. The pertinent rules have been summarized in *Mel v. Franchise Tax Board* (1981) 119 Cal.App.3d 898, 905 as follows:

"In construing the relevant statutes we are mindful that the goal of statutory construction is the ascertainment of legislative intent so that the purpose of the law may be effectuated. (*People v. Shirokow* (1980) 26 Cal.3d 301, 306-307.) A cardinal rule is that statutes should be given a reasonable interpretation which comports with the apparent purpose and intent of the Legislature. (*In re Ruben M.* (1979) 96 Cal.App.3d 690, 697; *Gerkin v. Santa Clara Valley Water Dist.* (1979) 95 Cal.App.3d 1022, 1025; *Cory v. Golden State Bank* (1979) 95 Cal.App.3d 360, 367.) Statutory language must be read

¹ All unidentified section references are to the Reorganized Education Code.

in context, keeping in mind the nature and purpose of the enactment, and must be given such interpretation as will promote rather than defeat the objective of the law. (*Pennisi v. Department of Fish & Game* (1979) 97 Cal.App.3d 268, 272; *Steilberg v. Lackner* (1977) 69 Cal.App.3d 780, 785.)

"Moreover, we should construe the governing statute as a whole, in harmony with other statutes relating to the same general subject. (*People v. Shirokow, supra*, 26 Cal.3d 301, 307; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596.) 'Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.' (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.)"

Section 35105, *supra*, relating to fixing the terms of members of a newly formed unified school district, provides as follows:

"Subject to the procedures prescribed by Section 5010 and 5007 with respect to newly formed unified school districts, the majority of members of the first elected board of any newly formed school district, the members of which majority received the highest number of votes, shall serve until the last Friday in November of the second succeeding odd-numbered year. The other members' terms shall expire on the last Friday in November on the first succeeding odd-numbered year. All such members shall continue in office until their successors are elected and qualified."

The reference to sections 5007 and 5010 incorporate certain changes pertaining to when an election may be held and are not otherwise pertinent.

Since the newly formed unified school district is governed by a seven-member board of trustees, a majority of the board would consist of four members. Thus, those four newly elected board members receiving the highest number of votes serve until November of the second succeeding odd-numbered year. The remaining three board members serve until November of the first succeeding odd-numbered year.

We turn to the provisions permitting a candidate to obtain membership on a school board without standing for election. Section 5326 provides that:

"(a) At least 70 days, and not more than 110 days, before the school district or community college district election, the county clerk shall, by a general press release, set forth the following:

"(1) The elective offices of the district to be filled at the ensuing district election; and

"(2) A telephone number which voters of the district may utilize in order to obtain information regarding filing for the elective district office.

"(b) In addition to the publication requirements set forth in Part 3 (commencing with Section 23500) of Division 14 of the Elections Code, no more than 78 days nor less than 71 days prior to the school district or community college district election, the county clerk shall publish a notice once in a newspaper of general circulation published in the district, or, if no such newspaper is published in the district, in a newspaper having general circulation in the district which is published in any affected county in the district. *The provisions of this section shall only apply if any of the following conditions exist at the time when the notice is submitted to such newspaper for publication:*

"(1) Only one person has been nominated for any elective office to be filled at the school district election.

"(2) No person has been nominated for such office.

"(3) In the case of members to be elected from the district at large the number of nominees for member at large does not exceed the number of offices to be filled at that election.

"(4) *In the case of members to be nominated by division and elected at large the number of nominees for member at large from a division does not exceed the number required to be elected from that division.*

"The provisions of this section and Sections 5327 and 5328 shall apply to elections for membership on the county board of education." (Emphases added.)

Section 5327 provides that:

"The notice required in Section 5326 shall state the following:

"(a) That the condition or conditions set forth in Section 5326 existed at the time the notice was submitted to the newspaper for publication;

"(b) The elective offices for which there were no nominees or an insufficient number of nominees at the time the notice was submitted to the newspaper for publication; and

"(c) That if such condition or conditions relating to such elective offices exist on the 63rd day prior to the day fixed for the school district election and a petition signed by 10 percent of the voters or 100 voters, whichever is the smaller number, in the district or division, if elected by division, requesting that a school district election be held for such offices has not been presented to the officer conducting the election, *appointment will be made as prescribed by Section 5328.*" (Emphases added.)

Section 5328 provides that:

"If pursuant to Section 5326 a district election is not held, the qualified person or persons nominated shall be seated at the organizational meeting of the board, or if no person has been nominated or if an insufficient number is nominated, the governing board shall appoint a qualified person or persons, as the case may be, at a meeting prior to the day fixed for the election, and such appointee or appointees shall be seated at the organizational meeting of the board as if elected at a district election."

Note that section 5328 provides in part that "*[i]f pursuant to Section 5326 a district election is not held*, the qualified person or persons nominated shall be seated at the organizational meeting of the board, . . ." (Emphasis added.) Unfortunately, section 5326 does not now provide that a district election shall not be held in any of the instances specified therein. It merely provides that a notice shall be published and a press release shall be issued under the circumstances specified therein. Note further that in the instance presented to us for consideration a school district election actually was held thus raising an issue concerning whether the individual who was not opposed at that election nevertheless should have had his name appear on the ballot. If that had been the practice intended by the Legislature, for instance, there would be no issue to be resolved concerning the number of votes, if any, received by that person for purposes of applying section 35105.

Sections 5326 and 5327, but not 5328, were revised in 1979. (Stats. 1979, ch. 334.) In its prior version, section 5326 expressly provides that no election would be held if no person had been nominated or if only one person² had been nominated for *each*

² Prior section 5326 also provided for appointment where "there is more than one such position to be filled from a list of candidates for all such positions collectively and the number of candidates does not exceed the number of positions to be filled . . ." (Stats. 1968, ch. 1267.) Note that in

position to be filled at that election and section 5328 provided that in the latter case each person nominated would be appointed. In 1978, section 5328 was amended to eliminate the act of "appointment." Such persons automatically took office.

In 1979, the Legislature revised this scheme. (Stats. 1979, ch. 334.) Old sections 5326 and 5327 were repealed. New section 5326 provides for a press release and published notice. New section 5327 specifies what the contents of that published notice and the press release shall be. Neither it nor section 5326 states that no election will be held when certain conditions are satisfied but it appears that section 5327 was supposed to do so but for some error. (See generally, § 15 of ch. 334³ and the Leg. Counsel's Dig.⁴ of ch. 334.) Further, section 5328 was not amended as part of those 1979 changes, so that the reference in it to section 5326--where a district election is not held--makes no sense since section 5326 now merely provides for a published notice and a press release under the specified circumstances.

Thus, it is possible to read into section 5327 a requirement that no election be held where only one person is nominated for each office or, as specified, where there are fewer candidates than offices. Under this construction, section 5326, subdivision (b)(4) would refer to all divisions not to just one division. In such case, where a school district election was in fact held, the nominees who were unopposed would nevertheless have their names appear on the ballot because they did not fall within any of the circumstances set forth in the controlling statute. In such a case, the problem raised by the language of section 35105, concerning who received the most votes, would not occur.

However, sections 5326, 5327 and 5328 are intended to apply in all school district elections, not merely those of newly formed unified school districts to which section 35105 is applicable. Thus, sections 5326 through 5328 should not be viewed narrowly, in effect only as implementing section 35105. Further, the language of subdivision (b)(4) of section 5326 is susceptible to being read to support a contrary view.

none of the instances specified in section 5326 as it existed would the individual whose case we are considering be eligible to be appointed without appearing on the ballot.

³ Section 15 of chapter 334 amended section 19514 of the Education Code, in pertinent part, as follows: "If pursuant to *Section 5327* a district election is not held, the board of supervisors . . . shall . . . appoint" (Emphasis added.)

⁴ The Legislative Counsel's Digest reads in part as follows:

"This bill would repeal such provision, and would require that, if on the 63rd day prior to election there is an insufficient number of candidates, *no election shall be held and an appointment shall be made*. A notice indicating this requirement would be required to be made." (Emphasis added.)

As noted, however, the provision that "no election shall be held" does not appear in chapter 334.

That subdivision provides that "[i]n the case of members to be nominated by division and elected at large the number of nominees for member at large from *a division* does not exceed the number required to be elected *from that division*." (Emphasis added.) In our case, all members are to be elected at large but only one person is to be elected from each division (trustee area). Thus, in the case of members to be nominated by division and elected at large, only one nominee was running in that division. Thus, the number running *from that division* did not exceed the number required to be elected *from that division*.

Even if one inserts the words "no election shall be held" in section 5327 in the guise of interpretation, an ambiguity remains. In our case, an election *was* held in the school district. What is intended where a school district election is held but there is no nominee or only one nominee for a *division* of the board of trustees?

The requester has presented his question to us on the assumption that the individual representing that one trustee area is entitled to the office, based upon his interpretation of sections 5326 through 5328. In light of our conclusion to the question actually presented, we only note the ambiguity present in the statutes upon which the assumption rests without deciding the underlying issue. We complete our analysis upon the assumption that sections 5326-5328 are applicable.

It appears that the legislative purpose in enacting sections 5326-5328 is to save the taxpayers and candidates the costs of an election where none is necessary because there is no competition. However, nothing in these sections indicates that a person obtaining his position in this manner has been "elected." The effect of these provisions may more accurately be summarized as effecting his appointment by operation of law where he is the only person nominated. (See § 5327, § 5328.) Thus, a person selected in this manner may be analogized to a person appointed to office who holds office only until the next regularly scheduled election.

Returning to the provisions of section 35105, we see no rational basis for determining that a person who has obtained his membership on a governing board by virtue of sections 5326-5328 has received any votes. It would be arbitrary to assign him a particular number of votes so as to make him one of the "majority" receiving the highest number of votes.

Accordingly, it is concluded that a member of the governing board of a new unified school district, if he qualified for membership on the board without being on the ballot, is not a member of the "majority of board members receiving the highest number of votes" within the meaning of section 35105. Such person therefore does not qualify for a four year term of office.
