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OPINION	:	No. 83-1008
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THE HONORABLE DENNIS A. BARLOW, COUNTY COUNSEL, YUBA COUNTY, has requested an opinion on the following questions:

1. May a county supervisor, who serves ex-officio as a director of the Yuba County Water Agency, and who owns land within a California water district, a component unit of the water agency, lawfully participate in agency matters which directly affect the water district?

2. May a director of the Yuba County Water Agency, who serves on the agency board as an elected representative of the agency's advisory council, and who derives his position on the council from his position as a director of a California water district and a landowner therein, lawfully participate in agency matters which directly affect that water district?

CONCLUSION

1. Whether the described County supervisor-director may lawfully participate in agency matters which will directly affect the water district in which he owns land will depend upon a proper application of sections 87100-87103 of the Political Reform Act of 1974, as implemented by regulations of the Fair Political Practices Commission. Also, the agency's conflict of interest code should be consulted.

As to agency matters involving contracts, whether the agency board may even act at all will depend upon a proper application of section 1090 et seq. of the Government Code. An initial application of those sections to the facts may be determinative with respect to contractual matters and preclude any need for further analysis under the Political Reform Act of 1974.

The common law doctrine concerning conflicts of interest may also be relevant.

2. Insofar as the common law doctrine against holding incompatible offices is concerned, it has been abrogated with respect to the offices involved, and the described agency director may act in agency matters which directly affect his water district. The described agency director should, however, follow the same basic analysis with respect to personal conflicts of interest as the supervisor-director.

ANALYSIS

The questions presented for resolution herein raise the issue as to whether directors of the Yuba County Water Agency (agency), who are also landowners and water users in component districts of the agency, may lawfully participate in agency matters which affect their land or their district. The questions are general in that no specific agency matters are presented for determination. Our response will, therefore, also be general.[1]

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[1] With respect to the "types of matters" contemplated by the question, the requester has stated:

> "Pursuant to the authority of § 5.1(c) and (d) of the Agency Act (see Water Code—Appendix § 84-5.1 (c) and (d)), the Water Agency sells water to the member districts. In addition the Agency has the power to construct water storage, flood control and power generation facilities and has done so in the construction of the New Bullards Bar Dam. In addition the Agency has over the past several years planned for the construction of a canal taking water from the Yuba River to the southern part of the County for sale to the three water districts organized in that area. Although recently two of the three districts have apparently withdrawn from

The first question involves a county supervisor who also serves ex-officio as an agency director. Such officer does not hold an additional office as a director of a component agency. Accordingly, whether he may lawfully participate in agency matters requires an analysis of those laws which might make such participation unlawful. Collectively, they are usually referred to as "conflict of interest laws." Specifically, they include:

1. The conflict of interest provisions of the Political Reform Act of 1974 (Government Code, §§ 87100-87103), as implemented by the regulations of the Fair Political Practices Commission (FPPC) found in title 2, sections 18700-18705 of the California Administrative Code;

2. The agency's conflict of interest code adopted pursuant to and as required by section 87300 et seq. of the Government Code, a part of the Political Reform Act of 1974;

3. Section 1090 et seq. of the Government Code, prohibiting conflicts of interest in contractual matters;

4. Section 1126 of the Government Code, relating to acts which are in conflict with or inimical to a local agency officer's or employee's duties or those of his agency; and

5. The common law rule prohibiting conflicts of interest.[2]

We will examine in a general fashion how each of these laws may apply to agency directors' participation in agency matters by virtue of ownership of land in a component district of the agency.

The second question involves an agency director who not only owns land in a component district, but who is *also* a director of that district. This question primarily requires a discussion of the common law doctrine prohibiting the holding of incompatible

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the joint project, Wheatland Water District is still interested and all three are interested in entering into water contracts with the Agency.

"The above are the types of 'matters which directly affect' the Water District to which . . . the request for opinion refers."

[2] A special provision of the agency act relating to contractual conflicts of interest of agency directors (§ 7.1 thereof) was repealed in 1971. (See Stats. 1971, ch. 189.)

An additional conflict of interest law of general applicability, section 8920 et seq. of the Government Code, is not germane herein, as that law applies only to *state*, not local, officers.

offices and how the doctrine has been affected by the agency act. However, because of the ownership of land by the director involved, the law concerning "conflicts of interest" must still be consulted by the director.

The Yuba County Water Agency ("agency") was established by Statutes of 1959, chapter 788, which is an uncodified act.[3] It has broad powers with respect to making water available for lands or its inhabitants for any beneficial use and other purposes such as the development and sale of hydroelectric power, flood control, water storage, conservation and reclamation, and the acquisition and operation of necessary works and property. (See App. §§ 84-4 - 84-4.9.)

The agency includes all the County of Yuba and such other contiguous territory outside of the county as may be included within a member unit. (Appen. § 84-1.) "Member units" are any districts (as defined therein) which contract with the agency or anyone else for the construction of water facilities for the agency, the underwriting thereof, or for a water supply to be provided by the agency or the United States. (Appen. § 84-2, subds. (f), (g).) The member units are presently twenty in number, including irrigation districts, reclamation districts, California water districts, county water districts, levee districts, resource conservation districts, public utility districts, mutual water companies and two municipalities. Thus, with respect to contracts with member units, the agency's act provides:

> "Sec. 5.1 The agency may enter into contracts with any member unit or with any district which becomes a member unit of the agency for any of the following purposes:
>
> "(a) The lease, purchase, or other acquisition by the agency of any of the works of such member unit or district.
>
> "(b) The construction of works by the agency for the conservation, regulation or transmission of water for the benefit of such member unit or district; or for the furnishing or sale by the agency or the State of California or the United States to such member unit or by such member unit to the agency of water or a water supply for any purpose.

[3] Wests California Water Code sets forth the act in section 84 of its Water Code Appendix, and appendix references are to that appendix. Thus, Water Code, App. § 84-1 is the citation to section 1 of the act itself. See also Deerings, Water Code, Uncodified Act 9407

"(c) The sale, lease, or other disposition of water, water rights, and water storage facilities or interests therein, by the agency or by such member unit.

"(d) The operation of works and the delivery of water by the agency or by such member unit. . . ." (App. § 84-5.1.)

When first enacted, the agency act provided that the board of supervisors shall be ex-officio the board of directors of the agency. Also when first enacted the agency act provided for an "advisory council" to advise the board of directors consisting of one member appointed by each member unit, one member by each district in the county which was not a member unit, and three members appointed by the municipalities of Marysville and Wheatland. (App. § 84-7.) In 1979, section 7 of the agency act was amended to limit membership of the advisory council to member units, and also to provide for an additional two members on the agency board itself. Accordingly, subdivision (b) of section 7 now provides:

"(b) There shall be created an advisory council to advise the board of directors. The council shall consist of one member to be appointed by each district within the County of Yuba, to serve at the pleasure of such district. The advisory council shall meet each January, prior to the first January meeting of the agency, and elect two members of the board of directors of the agency, one of whom shall represent the districts situated to the north, and one district [sic] situated to the south, of the Yuba River. The members so elected shall serve for two-year terms with one elected each year. Two members shall initially be elected with one, chosen by lot, to serve an initial one-year term." (App. § 84-7.)

With respect to the composition of the "advisory council," neither the law as originally enacted, nor as presently constituted, required or requires that the advisory council members be officers or directors or even officially affiliated with a member unit. We are advised, however, that in 1979, when the law was amended, advisory council members were generally appointed *from the board of directors of the member units*. Since 1979, the by-laws of the advisory council *require* that advisory board members be chosen from the board of directors of member units. Consequently, the two advisory members selected to serve on the agency board with the five county supervisors usually were and now are *directors of member units*.

Additionally, it is to be noted that as to many of the "member units" of the agency, the organic acts under which *they* are organized require that to serve on *their* board, they must be landowners within that unit. (See, e.g., Water Code, § 50014, 50601

(reclamation districts); Water Code, § 34700 (California water districts); Water Code, § 21100 (irrigation districts).) Thus, the questions relating to possible conflicts of interest and incompatibility of offices of agency directors who are also landowners are presented in the context of a water agency which apparently has involved from its inception "interlocking directorships" and laws which *require* ownership of land as a qualification for office in many agency districts.

1. Conflict of Interest Laws

A. The Political Reform Act

The conflict of interest provisions of the Political Reform Act of 1974 (PRA) are found in sections 87100-87103 of the Government Code. Section 87100 contains the basic prohibition of the act. It states:

> "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

"Financial interest" is defined in section 87103.[4] It provides an official has such an interest if 1) it is reasonably foreseeable that the decision 2) will have a material

[4] Section 87103 of the Government Code reads:

> "An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:
>
> "(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars ($1,000).
>
> "(b) Any real property in which the public official has a direct or indirect interest worth more than one thousand dollars ($1,000).
>
> "(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.
>
> "(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
>
> "For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the

financial effect 3) upon any of four specified pecuniary interests which 4) is distinguishable from its effect on the public generally.

Section 87101 provides an exception when the official's "participation is legally required for the action or decision to be made." Section 87102 provides that the requirements of section 87100 are in addition to any provisions of any "Conflict of Interest Code" adopted under the act.

The Fair Political Practices Commission (FPPC), which administers the PRA, has adopted implementing regulations which are found in sections 18700-18705 of title 2 of the California Administrative Code. Section 18700 contains certain basic definitions and construction of terms such as what constitutes the making of, or participation in making of, a governmental decision, or the use of official influence. Section 18701 defines "legally required participation." Section 18702 sets forth the rules and guidelines to determine whether there has been a "material financial effect" on a financial interest. Section 18703 sets forth rules to determine whether a financial interest "is distinguishable from its effect on the public generally." Section 18704 sets forth special rules for "former employers" as "sources of income" as set forth in section 87103 of the Government Code. And finally, section 18705 of the regulations sets forth rules relating to "academic decisions."

In addition to sections 87100-87103 of the Government Code, section 87300 requires each public agency to promulgate a conflict of interest code. When considering a possible conflict of interest under the PRA, this agency code should also be consulted.

Finally, as to the PRA, under the provisions of section 83114 of the Government Code any person may request an opinion of, or seek the advice of, the FPPC concerning his duties under the PRA. Such an opinion or advice may be relied upon so long as the FPPC was provided with all the material facts and will constitute a complete defense to civil or criminal penalties under the PRA.[5]

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official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

[5] Section 83114 of the Government Code provides in full:

"(a) Any person may request the commission to issue an opinion with respect to his duties under this title. The commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on an opinion issued to him by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published.

Thus specific questions on particular transactions involving the application of the PRA to an officer (such as the agency directors herein) should be addressed to the FPPC.

B. Contractual Conflicts of Interest - Government Code Section 1090 *et seq*.

The Political Reform Act of 1974 is by its terms applicable to all governmental decisions made by govern- mental officials, whether contractual or noncontractual in nature. However, state or local laws may impose additional requirements if "such requirements do not prevent the person from complying with the provisions of" the PRA. In case of conflict, the PRA "shall prevail." (Gov. Code, § 81013.)

Section 1090 et seq. of the Government Code is such a law imposing "additional requirements." Consequently, as a practical matter, where a proposed contract is involved, analysis should begin with reference to section 1090 et seq. instead of the PRA. This is so since under the latter act all that is needed to avoid the proscription of section 87100 of the Government Code is nonparticipation or abstention with respect to official actions. However, in contractual matters, if a conflict of interest exists, not only may the official not act, but the whole board or body on which he serves may not act either. In short, the whole transaction is prohibited even should the affected official abstain. (See, e.g., City of *Imperial Beach* v. *Bailey* (1980) 103 Cal.App.3d 191, 195.)[6]

"(b) Any person may request the commission to provide written advice with respect to the person's duties under this title. Such advice shall be provided within 21 working days of the request, provided that the time may be extended for good cause. It shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding, if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time."

[6] We note parenthetically that this office concluded in 59 Ops.Cal.Atty.Gen. 604, 617 (1976) that the Political Reform Act of 1974 did not impliedly repeal or preempt section 1090 et seq. of the Government Code. Since such time, the courts have also considered section 1090 as still viable, e.g., *City of Imperial Beach* v. *Bailey*, *supra*, as a recent example.

Sections 87100-87103 may still be applicable to contractual matters in limited circumstances. The primary one is where there exists a financial interest in the contract, but the law defines such interest to be a "noninterest" under section 1091.5. See discussion in 61 Ops.Cal.Atty.Gen. 243, 255 (1978). See also discussion, post, re the "doctrine of necessity."

1. The Basic Prohibition - Section 1090

Section 1090 of the Government Code is the law of general applicability to state and local officers. It provides:

> "Members of the Legislature, state, county, *district*, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
>
> "*As used in this article*, '*district*' *means any agency of the state formed pursuant to general law or special act*, *for the local performance of governmental or proprietary functions within limited boundaries*." (Emphasis added.)

Thus, section 1090 of the Government Code prohibits a public officer or employee from being financially interested in a contract made by him in his official capacity, or by a board or body of which he is a member. Section 1091 then sets forth certain "remote interests," and section 1091.5 sets forth what may be denominated as "noninterests." These permit an officer to avoid the proscription of section 1090. Contracts made in violation of section 1090, though described as voidable in section 1092, are in fact void. (See *Stigall* v. *City of Taft* (1962) 58 Cal.2d 565, 568-570, and cases cited; see however, limited exception in § 1092.5.) A violation of section 1090 is both a felony and works a disqualification from forever holding public office in this state. (Gov. Code, § 1097.)

In a recent opinion of this office we had occasion to summarize the general principles with respect to section 1090, and reference is made to that opinion for a discussion of those principles. (See 66 Ops.Cal.Atty.Gen. 156 (1983).) In the context of the Yuba County Water Agency, and possible contracts that agency may enter into, we believe the first key issue is to determine whether, as to a given contract, there is a "financial interest" on the part of the agency director.

Excluding initially the possibility of a remote interest or noninterest as contemplated by sections 1091 and 1091.5, whether a proscribed financial interest exists in a public contract is primarily a question of fact. (See, e.g., *People* v. *Vallerga* (1977) 67 Cal.App.3d 847, 864-866; *People* v. *Watson* (1971) 15 Cal.App.3d 28, 35; *People* v. *Darby* (1952) 114 Cal.App.2d 412, 431-432.) Also, the prohibited interest need not be direct, but can be an indirect interest. As stated by the court in the oft quoted language in *People* v.

Deysher (1934) 2 Cal.2d 141, 146: "'[h]owever devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and connection made, the contract is void.'" Or as stated by our Supreme Court many years later in *Stigall* v. *City of Taft*, *supra*, 58 Cal.2d at p. 569:

> "The instant statutes [1090 et seq.] are concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interest of the . . . [public entity] . . . Conceding that no fraud or dishonesty is apparent . . ., the object of the enactments is to remove or limit the *possibility* of any personal influence, either directly or indirectly which might bear on an official's decision, as well as to void contracts which are actually obtained through fraud or dishonest conduct. . . ."

Likewise, the interest need not be a *present* interest, but may consist of a potential benefit which can arise after the execution of the contract. (*People* v. *Darby*, *supra*, 114 Cal.App.2d at p. 431.) And further, the indirect interest need not consist of an actual financial link with the subject matter of the contract itself, such as that of a remote supplier of goods for the contract. All that is needed is that there be a financial or pecuniary *benefit* to the officer which could sway his judgment. (See, e.g., *Fraser-Yamor Agency, Inc.* v. *County of Del Norte* (1977) 68 Cal.App.3d 201, 212-215, noting the lack of any judicial definition of "financial interest," and concluding, despite Fraser's attempt to completely insulate himself from certain commissions on insurance contracts with a county.)

> ". . . Fraser [a member of the board of supervisors] has and has had an investment in the agency represented by his partnership and shareholder interests. His interest in the agency and in any contracts from which it derives a pecuniary benefit is clearly a financial one because the financial success of the agency *inures to his personal benefit*. Such success, in time, enhances the value of Fraser's interest in the agency. . . ." (Emphasis added.)

The "indirect" aspect of a "financial interest" is also evident from an examination of the "remote interests" provided in section 1091, which are still "financial interests."[7]

[7] It is to be noted that the type of financial interest described as within section 1090 in *Fraser-Yamor Agency, Inc.* has just, by urgency measure, been made a "remote interest" by the Legislature. (Stats. 1984, ch. 113.)

Thus, with respect to attempting to define or characterize what is a prohibited interest under section 1090 of the Government Code, the following observation by the court in *People* v. *Darby*, *supra*, 114 Cal.App.2d at p. 432, is instructive:

> ". . . Precedent is of little value except as an analogue: Whether an officer or board member was interested at the time he or his board made the contract is a question for determination in each controversy. . . ."

With regard to the supervisor-director involved herein, we see two possible types of potential financial interests which could arise from contracts entered into by the agency board predicated upon his ownership of farmland in the Wheatland Water District. The first is the benefit he might receive as a water user, that is, a possible reduction in his water rates and accordingly his rice-growing expenses. The savings in water costs where the land is used for irrigated crops could be appreciable. The second is the benefit he might receive through land value appreciation because of better availability of water or from other matters such as flood control. Such potential benefits must be assessed on a contract by contract basis, and as a factual matter in each case, under the law as outlined above, to decide if a "financial interest" exists.

2. Remote Interests - Section 1091

Section 1091 of the Government Code provides ten situations of "remote interests." When any is applicable, and the required procedure followed by the financially interested board member, the board may enter into the contract despite the members financial interest.[8]

A perusal of these indicates that none is particularly germane to our general inquiry as to the supervisor-director-landowner. However, in all public contracts where a potential financial interest exists, these should be scrutinized for possible relevance.

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[8] It is to be noted that section 1091 of the Government Code speaks in terms of a board authorizing, approving or ratifying a contract "in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest."

This office has characterized the requirements of section 1091 as meaning that the member must not only disclose his interest in the proposed contract and refrain from attempting to influence other members, but that the member should completely abstain from any participation in the matter. (See 65 Ops.Cal.Atty.Gen. 305, 307 (1982).)

Such complete abstention would also appear to be required to insure compliance with the PRA if the remote interest also falls within the purview of the act as a financial interest. (See Gov. Code, § 87100; FPPC Reg. § 18702.)

3. Noninterests - Section 1091.5

Section 1091.5 of the Government Code provides nine situations where a financial interest may still be deemed not to be a prohibited interest within the meaning of section 1090 of the Government Code. An examination of these in the context of possible water agency contracts discloses that, as to the supervisor-director, only one of these "noninterests" appears potentially germane. That is subdivision (a)(3) providing an exception where the interest is "that of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board." Since the agency itself, however, does not directly provide the director with "public services" (e.g., water) in the usual sense, this "noninterest" exception would not appear to apply to agency contracts even with the director's component district. It would appear to be restricted to the direct providing of water or other services to the director by his own component district.

4. The Doctrine of Necessity

If an analysis of a particular contractual situation discloses that the supervisor-director has a "financial interest" in a contract proposed to be entered into by the agency which neither qualifies as a "remote interest" nor a "noninterest," such fact does not mean that the agency board is always powerless to enter into contracts which are necessary or proper to carry out its statutory duties and powers. Engrafted upon the section 1090 proscription is the "doctrine of necessity." This doctrine was explained in detail and applied by this office in a relatively recent opinion, 65 Ops.Cal.Atty.Gen. 305 (1982). Reference is made to that opinion for such detailed analysis. The doctrine permits governmental officers or agencies to carry out *essential* duties despite conflicts of interest where only they may act.

A perusal of 65 Ops.Cal.Atty.Gen. 305, *supra*, will disclose two bases for the doctrine. One is that it has its origins in the common law. The other is one of the presumed intent of the Legislature. This latter basis appears particularly germane herein with respect to agency contracts. *It is to be* recalled that in 1979, when the Legislature amended section 7 of the Agency Act to require service of two local representatives on the agency board, it was fully aware that representatives might be chosen from districts where land ownership was required for election or appointment to office. Thus, the Legislature was fully aware that the agency, in carrying out its essential functions, would encounter situations where conflicts of interest might arise as to the two local representatives. The Legislature could not have intended that the agency should be powerless to act because of such conflicts.

Accordingly, the doctrine would permit the agency *board* to enter into contracts to carry out its essential functions despite the conflict of interest of one or more board members. The affected director(s) should, however, abstain either under common law concepts or under the appropriate PRA analysis as determined by the FPPC.[9]

5. Section 1126 of the Government Code

The inapplicability of section 1126 of the Government Code to the agency directors deserves at least brief mention.

Except as to nonelective public attorneys, who are permitted to hold other local incompatible offices (see Gov. Code, § 1128), section 1126 provides that,

> ". . . a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . ."

It further provides that:

> "Each *appointing power* may determine, subject to approval of the local agency . . . those activities which, for employees under *its jurisdiction* [are to be prohibited]. . . ." (Emphasis added.)

In 64 Ops.Cal.Atty.Gen. 795 (1981) this office concluded that section 1126 of the Government Code could not be applicable to elective officers since they have no "appointing power" other than the electorate. Thus as to the five agency directors who are county supervisors, that opinion is directly in point.

The rationale of that opinion would also be applicable to the two agency directors who are selected by the advisory council. The advisory council is their appointing power. That council, however, has no authority to prescribe incompatible activities for the agency director as contemplated by section 1126, since it has no further jurisdiction over them.

Accordingly, section 1126 is inapplicable to the directors of the agency.

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[9] We note finally as to section 1090 that even before the section was amended in 1963 to add the modifier "financially," this office concluded that a personal interest such as a family interest (brother) did not fall within the scope of the statutes. (See 28 Ops.Cal.Atty.Gen. 168 (1956).)

C. Incompatibility of Office-The Water Agency Director-District Director

The second question presented involves a director of a California water district which is a subunit of the water agency. That director has been chosen pursuant to the agency act as that district's representative on the "advisory council" to the agency. The agency council has in turn selected that director to be one of the two agency council members on the agency board as required by the 1979 amendment to the agency act, as discussed at the outset herein.

This district director-agency director is also a landowner in the subunit. The question presented is whether this director, *qua* agency director, may lawfully participate in agency matters which directly affect the California water district, on whose board he also serves.

Setting aside the question of the director's ownership of land in the district, the issue presented is whether such *offices* may be held simultaneously. As a general common law rule, offices which are incompatible may not be held by the same person at the same time. Given the interrelationships between the agency and its subunits, there is little question but that these offices are incompatible under common law principles. (See generally 66 Ops.Cal.Atty.Gen. 176, 177-178 (1983).) However, the Legislature may abrogate the common law rule at its pleasure, and both permit or require an officer to serve in dual capacities despite conflicts in duties or loyalties. (*American Canyon Fire Protection Dist.* v. *County of Napa* (1983) 141 Cal.App.3d 100, 104-106.)

Has the Legislature abrogated the common law doctrine with respect to the two offices of Yuba County Water Agency director and California water district director, a subunit? We conclude that it has.

Initially we note that the agency act in no way *requires* that the representatives selected from the subunits for appointment to the agency council must be directors, officers or even affiliated with the subunits. It merely declares in section 7, subdivision (b), that "[t]he council shall consist of one member to be appointed by each district" with no designation of qualifications. Accordingly, it could be urged that there is no indication in the statute that district directors appointed to the advisory council may be chosen to serve on the agency board.

However, as noted at the outset of this opinion, when section 7 of the agency act was amended in 1979 to require that two of the then nineteen agency council members be appointed to the agency board, the general practice had been to appoint *directors* of subunits to the advisory council. Furthermore, an examination of the purpose for the agency's existence, as stated in section 26 of its act is to aid in the solution of county-wide

water problems on a coordinated basis which could not be accomplished by the districts *acting* alone. In short, it exists to aid the subunits. This being the case, the Legislature certainly must have intended that district directors could serve on the agency board.

As stated by the court in the *American Canyon Fire Protection Dist.* case, *supra*, in a different context, but where the court was required to *imply* an intent to abrogate the common law rule:

> "What emerges from the interplay of the statutes just examined is that the Legislature intended, and in fact mandated, that a county board of supervisors distribute augmentation funds among all special districts, including those created and to some extent governed by the board itself. *The Legislature could not have been blind to the potential conflicts of interest created statewide by imposing those dual functions*. In Napa County alone, the parties inform us, 10 out of the 23 eligible special districts were governed directly or indirectly by the board." (141 Cal.App.3d at pp. 105-106; emphasis added.)

By a parity of reasoning, the Legislature could not have been blind to the historical practice of generally appointing district board members to the council, and to the fact that the statutory scheme itself required two representatives from local districts to serve on the agency. Had it sought to exclude officers or directors of local districts, it could easily have said so.

Having concluded that the common law rule against holding incompatible offices does not prevent the dual office holding under discussion herein, we still face a further problem. As noted, the agency director-district director is a landowner in the California water district on whose board he serves. The fact that a public officer may legally act in two conflicting *official* capacities does not mean that he may do so where he also has a *personal* conflict of interest in the transaction as well. (See *People* v. *Vallerga*, *supra*, 67 Cal.App.3d 847, 869-870.)[10] Accordingly, the question of personal conflict of interest must also be dealt with, as discussed in Parts A and B above.

[10] We also note that the court in *People* v. *Vallerga*, in rejecting defendant's attempted reliance on 55 Ops.Cal. Atty.Gen. 36 (1972) did not point out that nowhere in that opinion did we purport to deal with the situation where there was not only conflict between two *official* positions, but with an official position and a personal interest as well.

D. The Common Law Rule Against Conflicts of Interest

To round out the discussion, we reiterate the following language from a prior comprehensive opinion on conflicts of interest found in 59 Ops.Cal.Atty.Gen. 604, 613-614 (1976):

"(3) *The Common Law Doctrine*

"In a recent letter opinion of this office it was stated as follows regarding the common law doctrine concerning conflicts of interests:

"'One further point requires discussion. Prior to the enactment of the Political Reform Act of 1974, this office predicated decisions on *non*contractual conflict of interest questions on the common law rule against conflicts. We have assumed the continuing viability of the rule as a cumulative test despite the 1974 initiative measure which covers both contractual and noncontractual matters. See 58 Ops.Cal.Atty.Gen. 345, 354-56 (1975). Such doctrine ". . . strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." 46 Ops.Cal.Atty.Gen. 74, 86 (1965) . . . . See generally 26 Ops.Cal.Atty.Gen. 5 (1955).

"'Though one might urge that the Political Reform Act of 1974 has now preempted the common law doctrine against conflict of interests, and therefore that which is not specifically prohibited is now permitted, we would caution against such a conclusion for the reasons (1) that the courts have traditionally predicated their decisions on the dual basis of the statutes and the common law rule, see 58 Ops.Cal.Atty.Gen. 345, 354-56, *supra*, and (2) were a violation of the common law rule found to exist, such could form the basis of an allegation of willful misconduct in office within the meaning of section 3060 et seq.' I.L. 76-69, at pp. 5-6.

"Thus, in addition to the PRA, we reiterate for the board member-employee of X Oil the foregoing exhortation concerning the common law doctrine. *This of course, would not be applicable in situations where the PRA and duly adopted regulations have affirmatively abrogated the common law doctrine such as with regard to the concept and extent of an exception for 'the public generally*.'" (Emphasis added.)

Also, it would not apply where the "doctrine of necessity" would be applicable, an exception which may very well be germane herein.

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