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OFFICE OF THE ATTORNEY GENERAL
State of California

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| OPINION | : | No. 83-1203 |
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| of | : | <u>APRIL 10, 1984</u> |
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THE HONORABLE H. L. RICHARDSON, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following question:

Does article VI, section 17, of the California Constitution prohibit a supreme court justice who resigns from that office before the expiration of his or her term from accepting a public teaching position before the expiration of such term?

CONCLUSION

Article VI, section 17, of the California Constitution does prohibit a supreme court justice who resigns from that office before the expiration of his or her term from accepting a public teaching position before the expiration of such term.

ANALYSIS

Article VI, section 17, of the California Constitution provides:

"A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

"A judicial officer may not receive fines or fees for personal use."

The question presented is whether this constitutional provision prohibits a supreme court justice who resigns before the expiration of the term for which he or she "was selected" from accepting a public teaching position before the expiration of such term.¹

In 66 Ops.Cal.Atty.Gen. 440 (1983) this office was presented with the same question, except that opinion involved a superior court judge instead of a supreme court justice. We concluded that the basic prohibition contained in the first sentence of article VI, section 17, is clear and unambiguous and should be applied according to its literal wording. Accordingly, we concluded that a superior court judge could not resign from office and accept a public teaching position during the term for which he had been elected.

It is to be noted that the basic prohibition of article VI, section 17, as to accepting other nonjudicial office or employment during the term for which selected applies to "[a] judge of a court of record." Article VI, section 1, of the California Constitution provides:

¹ The term of office for supreme court judges is provided for in article VI, section 16, of the California Constitution. The full term of office is twelve years. However, when a vacancy occurs the Governor fills the vacancy, subject to confirmation by the Commission on Judicial Appointments. The appointee then "holds office until the Monday after January 1 following the first general election at which an appointee has the right to become a candidate or until an elected judge qualifies." Such election fills the vacancy for the remainder of the unexpired term.

Accordingly, a supreme court justice, when appointed, is "selected" for (1) the period until an election can be held to fill the unexpired term and, if he or she runs for office at that election, (2) for the remainder of the unexpired term. Hence, he or she can be selected for two "terms" as contemplated by the wording of the Constitution until elected for a full twelve years. (See 66 Ops.Cal.Atty.Gen. 440, 442-443 (1983).)

"The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. *All except justice courts are courts of record.*" (Emphasis added.)

Thus both supreme court justices and superior court judges are judges of courts of record. Accordingly, our conclusion in 66 Ops.Cal.Atty.Gen. 440, *supra*, as to a superior court judge is as equally applicable to a supreme court justice. We so conclude. Reference is made to that opinion for a complete analysis of the question.

It has been suggested that our conclusion with respect to judges resigning and accepting public teaching positions has serious adverse consequences on public law schools and their students. In short, it is suggested that our conclusion is bad policy.

With respect to this suggestion, we believe that the policy decision has been made by the clear terms of article VI, section 17. Additionally, as discussed in 66 Ops.Cal.Atty.Gen. 440, *supra*, this constitutional provision was amended in 1966 as part of the work of the Constitutional Revision Commission. Accordingly, it cannot be urged that the provision is an anachronism attributable to the drafters of the original Constitution of 1879. If the people believe that an application of the Constitution according to its clear terms leads to bad policy in certain situations, the people are free to amend the Constitution to correct such situations either upon their own initiative or upon legislative proposal. (See Cal. Const., art. XVIII.)

In sum, it is concluded that article VI, section 17, of the California Constitution does prohibit a supreme court justice who resigns from that office during the term for which he or she was selected from accepting a public teaching position before the expiration of such term.²

² We note that recently in Opinion No. 84-108, 67 Ops.Cal.Atty.Gen. (1984), issued on February 2, 1984, we concluded that article IV, section 17, did *not* prohibit a justice of the Supreme Court or court of appeal from resigning during the term for which selected and seeking election to or becoming a United States Senator or Representative in Congress.

That conclusion is in no way inconsistent with the conclusion reached herein and was predicated upon the fact that article VI, section 17, has been held to be inapplicable to the assumption of a nonjudicial *federal* office or employment. It was further pointed out that article VI, section 17, could not, under the United States Constitution, bar an appellate court judge from running for or assuming the office of Senator or Congressman, as such would constitute an unconstitutional additional qualification for such office.