

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 84-408
	:	
of	:	<u>May 30, 1984</u>
	:	
JOHN K. VAN DE KAMP	:	
Attorney General	:	
	:	
ANTHONY S. DA VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE GEORGE DEUKMEJIAN, GOVERNOR, has requested an opinion on the following questions:

1. On what date does the term of each of the present members of the Board of Governors of the California Community Colleges expire?
2. On what date may the Governor appoint the first voting tenured faculty member of the Board of Governors of the California Community Colleges?

CONCLUSIONS

1. The term of each of the present members of the Board of Governors of the California Community Colleges expires on the fifteenth day of January of the fourth year following the expiration of the preceding term.

2. The Governor may appoint the first voting tenured faculty member of the Board of Governors of the California Community Colleges on January 15, 1984.

ANALYSIS

The following provisions of the Education Code were added by the Statutes of 1976, chapter 1010, section 2:

Section 71000:

"There is in the state government a Board of Governors of the California Community Colleges, consisting of 15 members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate."

Section 71001:

"The terms of office of the members of the board shall commence on January 15, 1968, and the members shall enter upon their duties on that date and shall classify their terms of office by lot so that four of the terms of such appointive members shall expire on January 15, 1969, four of the terms of such appointive members shall expire on January 15, 1970, four of the terms of such appointive members shall expire on January 15, 1971, and three of the terms of such appointive members shall expire on January 15, 1972. Thereafter, the terms of office of the members of the board shall be four years.

"At the first meeting of the board, and annually thereafter, the members shall select two of their members to serve as chairman, and vice chairman, respectively."

Section 71003:

"Any vacancy on the board shall be filled by appointment by the Governor, subject to confirmation by two-thirds of the Senate. The appointee to fill a vacancy shall hold office only for the balance of the unexpired term."

These provisions are derived from the Education Code of 1959, sections 185, 186, and 188, respectively, originally enacted by the Statutes of 1967, chapter 1549, section 1.

The same provisions were amended by the Statutes of 1977, chapter 1184, sections 3, 4, and 6, respectively, to provide as follows:

Section 71000:

"There is in the state government a Board of Governors of the California Community Colleges, consisting of: 14 members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate; and one voting student who is either a full-time or part-time student in good standing enrolled in a community college at the time of the appointment. The student member shall be appointed by the Governor for a one-year term commencing on October 15. The first voting student member appointed to the board shall occupy the seat on the board that is made available after the next full-term vacancy that occurs after January 1, 1978. Thereafter, such seat shall be designated as the voting student member seat and shall in the future be filled by community college students pursuant to this section and Section 71003."

Section 71001:

"Except for the student member appointed by the Governor, the terms of office of the members of the board shall be four years.

"The board shall annually select two of their members to serve as chairman, and vice chairman, respectively."

Section 71003:

"Except for the student member appointed by the Governor, any vacancy on the board shall be filled by appointment by the Governor, subject to confirmation by two-thirds of the Senate. A vacancy in the office of the student member shall be filled by appointment by the Governor. The appointee to fill a vacancy shall hold office only for the balance of the unexpired term."

As finally amended by the Statutes of 1983, chapter 843, sections 1, 2, and 3, respectively, these provisions now appear as follows:

Section 71000:

"There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

"(a)(1) Until such time as paragraph (2) becomes operative, 14 members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate.

"(2) Beginning with the date of the first appointment made pursuant to subdivision (c) and thereafter, 13 members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate.

"(b) One voting student who is either a full-time or part-time student in good standing enrolled in a community college at the time of the appointment. The student member shall be appointed by the Governor for a one-year term commencing on October 15. The first voting student member appointed to the board shall occupy the seat on the board that is made available after the next full-term vacancy that occurs after January 1, 1978. Thereafter, such seat shall be designated as the voting student member seat and shall in the future be filled by community college students pursuant to this section and Section 71003.

"(c) One voting tenured faculty member from a community college, who shall be appointed by the Governor for a two-year term. The Governor shall appoint the faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. Thereafter, that seat shall be designated as the voting tenured faculty member seat and shall in the future be filled by a tenured faculty member from a community college pursuant to this section and Section 71003.

"The faculty member of the board appointed by the Governor pursuant to this subdivision shall not participate on any subcommittee of the board responsible for collective bargaining negotiations."

Section 71001:

"Except for the student member and the faculty member appointed by the Governor, the terms of office of the members of the board shall be four years.

"The board shall annually select two of its members to serve as president and vice president, respectively."

Section 71003:

"Except for the student member and the faculty member appointed by the Governor, any vacancy on the board shall be filled by appointment by the Governor, subject to confirmation by two-thirds of the Senate. A vacancy in the office of the student member or the office of the faculty member shall be filled by appointment by the Governor. The appointee to fill a vacancy shall hold office only for the balance of the unexpired term."

We are first asked on what date the term of each of the current members of the board (i.e., except for the student member and the faculty member) expires. The basic issue to be resolved is whether the terms run with the office or with the officer. If the terms run with the office, appointees fill vacancies for unexpired terms; if the terms run with the officer, appointees fill vacancies for new full terms. (66 Ops.Cal.Atty.Gen. 477, 478 (1983).) One of the provisions of the statutory scheme under consideration which has remained constant is the four year term. (§ 71001.) In 1977, however, the express reference in that section to the specific dates establishing staggered terms was deleted, and no such reference presently appears.

Ordinarily, where no particular date is established for the commencement or expiration of a term, each incumbent takes a term, running from the date of his appointment, equal in duration to the period of time fixed by the statute as the term of the office; this is the rule *in the absence of a statutory indication to the contrary*. (*People v. Nickel* (1909) 9 Cal.App. 783.) The leading case in California which represents an extension of the *Nickel* doctrine is *Boyd v. Huntington* (1932) 215 Cal. 473. The court said at pages 479-480:

"The law is well established that a term begins not necessarily from the date of the appointment, but from the time fixed by the lawmakers for it to begin. . . . Nor is it necessary that such a statutory provision expressly fix a date for the beginning or ending of a term. *It is sufficient if the statute shows by its provisions that the term shall run with the office. Such a result may properly be inferred from the construction of the statute as a whole* . . . The statute here in question does fix the date of the commencement of the terms as August 8, 1915, the effective date of th[e] act, and the rotation in office or classification provided for therein in our opinion definitely fixes and establishes the end thereof.

"The classification or provision for rotation in office in the statutory declaration that not more than the terms of two members shall expire in any one year has for its purpose the fixing of the term and it cannot be given effect except by a holding that the beginning and expiration dates of the terms are so fixed and that all terms run with the office. A contrary holding would result in a destruction of any effect of the provision." (Emphasis added.)

Another feature of the statutory scheme under consideration which has remained constant, and which provides a positive and unequivocal indication of legislative intent, is that persons appointed "to fill a vacancy shall hold office only for the balance of the unexpired term." (§ 71003.) While the original specification of dates establishing staggered terms was deleted in 1977, all of the terms then existing had been established under preexisting law. The feature requiring the filling of a vacancy for the balance of the unexpired term may only operate upon the previously established four year staggered terms. Hence, although the present version of the statute contains no reference to specific dates for the commencement or expiration of terms, its provisions clearly show that such terms shall run with the office.

To hold that the terms run with the officer would have the additional effect of rendering meaningless the language of section 71003 providing that vacancies will be filled *only for the balance of the unexpired term*. Where the term runs with the officer, any occurrence such as death, resignation, or disqualification of an incumbent would vacate the office and would necessarily result in the commencement of a new term upon appointment of a successor. Under no circumstances would there remain an unexpired portion of a preceding term of office and the language mentioned would be inoperative. (27 Ops.Cal.Atty.Gen. 310, 313 (1956).)

It is concluded that the term of each of the present members of the board expires on the fifteenth day of January of the fourth year following the expiration of the preceding term.

We are next asked on what date the Governor may appoint the first voting tenured faculty member of the board. Section 71000, subdivision (c), provides that the first faculty member "shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984." The first full-term vacancy following January 1, 1984, will occur on January 15, 1984. (This will be one of the three offices to which an original appointment was made for a full four year term expiring on January 15, 1972.) It is concluded that the Governor may appoint the first faculty member of the board on January 15, 1984.
