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OFFICE OF THE ATTORNEY GENERAL  
State of California

JOHN K. VAN DE KAMP  
Attorney General

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OPINION	:	No. 84-602
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of	:	<u>OCTOBER 10, 1984</u>
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Attorney General	:	
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THE HONORABLE CLARE BERRYHILL, DIRECTOR OF THE DEPARTMENT OF FOOD AND AGRICULTURE, has requested an opinion on the following question:

Does the appointment of the incumbent agricultural commissioner to the consolidated office of agricultural commissioner-sealer of weights and measures after the incumbent sealer's term expires but before the commissioner's term expires give him a four year term in the consolidated office commencing with such appointment?

CONCLUSION

The appointment of the incumbent agricultural commissioner to the consolidated office of agricultural commissioner-sealer of weights and measures after the sealer's term expires but before the commissioner's term expires gives him a four year term in the consolidated office commencing with such appointment.

## ANALYSIS

The director of the Department of Food and Agriculture (director) certifies the qualifications of the county agricultural commissioner (commissioner) and the county sealer of weights and measures (sealer). (Food and Agricultural Code (F&A) section 2123; Business and Professions Code (B&P) section 12201.) The director also performs the duties of those county offices when they are vacant. (F&A § 2125; B&P § 12201.) Commissioners must report annually to the director on the agricultural interests in the county and what is being done to eradicate or control pests. (F&A § 2272.) The director's department must prevent the introduction and spread of injurious insects or animal pests, plant diseases, and noxious weeds. (F&A § 403.) Much of this responsibility is performed by abatement procedures carried out by commissioners. (F&A § 5403.) Thus the director has a direct statutory interest in the county offices of commissioner and sealer and in properly identifying the persons who lawfully hold those offices. The director seeks our opinion to determine which of two contending appointees lawfully holds the consolidated offices of commissioner and sealer in Santa Barbara County.<sup>1</sup>

We are advised that the Board of Supervisors of Santa Barbara County (the board) adopted an ordinance on April 23, 1983, which provided that "the duties and offices of county agricultural commissioner and county sealer of weights and measures are hereby consolidated." Following the expiration of the four year "term" of the sealer the board appointed Graydon Hall "to the position of Agricultural Commissioner/Sealer of Weights and Measures, effective June 6, 1983." Graydon Hall was the commissioner whose term was due to expire March 14, 1984. On April 24, 1984, the board appointed Ronald Gilman "to serve as Agricultural Commissioner/Sealer of Weights and Measures." Both Hall and Gilman claim they have four year terms in the consolidated offices dating from their respective appointments.

F&A §§ 2001 and 2002 provide that there is in each county government a department of agriculture which is under the control of the county agricultural commissioner. F&A § 2121 provides:

"The commissioner shall be appointed by the board of supervisors of the county. Any chartered county may, however, prescribe a different method of appointment."

Santa Barbara County does not have a charter. F&A § 2122 provides:

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<sup>1</sup> No one has sought leave to file an action in quo warranto in this matter and no such request is contemplated. See 67 Ops.Cal.Atty.Gen. 151 (1984) regarding the Attorney General's quo warranto practices.

"The term of office of the commissioner shall be four years from and after his appointment and until his successor is appointed. He may, however, be removed pursuant to this chapter."

No removal proceedings were taken pursuant to the chapter.

B&P § 1220 provides in part:

"There is in each county the office of county sealer of weights and measures. The county sealer shall be appointed by the board of supervisors, except in chartered counties where a different method of appointment is prescribed. The term of office of such sealer is four years from and after his appointment and until his successor is appointed but he may be removed as hereinafter provided. . . ."

Government Code section 24304 provides in part:

"Notwithstanding the provisions of section 24300, in counties of the 13th to 57th classes, inclusive, the board of supervisors by ordinance may consolidate the duties of certain of the county offices in one or more of these combinations. . . ."

"(p) County agricultural commissioner and county sealer of weights and measures. . . ." (Santa Barbara is a county of the 16th class; Gov. Code § 28037.)

Enactment of the consolidation ordinance created the new consolidated office of commissioner-sealer in Santa Barbara County. The offices which are consolidated remain separate and distinct by virtue of the statutes which created them but the consolidation ordinance contemplates that the duties of both offices will be performed by one officer. (See *Brooks v. Stewart* (1950) 97 Cal.App.2d 385, 388.) Any appointment made after the effective date of the consolidation ordinance would have to be consistent with that ordinance. Any attempt to fill a vacancy in either office alone after that date would be void as a violation of the consolidation ordinance. The only valid appointment which may lawfully be made while the consolidation ordinance remains in effect is to the new consolidated office of commissioner-sealer. We need not consider the question whether such an appointment to the new consolidated office may be made effective during the statutory terms of the incumbents in the separate offices<sup>2</sup> because, as we will point out,

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<sup>2</sup> See *People v. Gunn* (1916) 30 Cal.App. 114 and *Kelly v. Kane* (1939) 34 Cal.App.2d 588 which point to opposite answers to this question.

the tenure of both incumbents in the separate offices in Santa Barbara County had terminated before or at the same time the first appointment to the new consolidated office became effective.

We are advised that the four year statutory term of the sealer had expired before the board appointed Mr. Hall to the new consolidated office effective June 6, 1983. However, Mr. Hall's four year term as commissioner was not due to expire until March 14, 1984. Nevertheless, Mr. Hall accepted the June 6, 1983, appointment. What was the legal effect of that acceptance upon his tenure in the office of commissioner? Clearly Mr. Hall could have resigned his office as commissioner and then accepted the appointment to the consolidated office. By accepting the consolidated office he undertook to perform the duties of both the sealer and the commissioner and could not longer claim to act as commissioner only under his prior unexpired appointment. We believe that one of the legal effects of Mr. Hall's acceptance of the consolidated office was an abandonment of the remainder of his unexpired term as commissioner. (See *Walter v. Adams* (1952) 110 Cal.App.2d 484, 489-491.)

There remains the question of the duration of the appointment to the consolidated office of commissioner-sealer. Since the terms of both the commissioner and sealer are fixed by statute at "four years from and after his appointment" we believe the Legislature intended that the term of these offices when consolidated would be the same. Thus by accepting the June 6, 1983, appointment Mr. Hall became the commissioner-sealer for a four year term from and after that date. This means that there was no vacancy in the consolidated offices on April 24, 1984, for the board to fill so its attempt to appoint Mr. Gilman to the consolidated office on that date was ineffective. (*People v. Gunn, supra*, 30 Cal.App. at 118.) We conclude that Mr. Hall is the duly appointed commissioner-sealer for Santa Barbara County.

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