

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

JOHN K. VAN DE KAMP  
Attorney General

---

OPINION	:	No. 84-604
	:	
of	:	<u>OCTOBER 25, 1984</u>
	:	
JOHN K. VAN DE KAMP	:	
Attorney General	:	
	:	
RODNEY O. LILYQUIST	:	
Deputy Attorney General	:	
	:	

---

THE HONORABLE PAUL B. CARPENTER, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Are the provisions of section 19050.6 of title 2 of the California Administrative Code in conflict with Elections Code sections 500 and 503?
2. If and to the extent a conflict exists, are the provisions of the administrative regulation void?

CONCLUSIONS

1. Certain provisions of section 19050.6 of title 2 of the California Administrative Code are in conflict with Elections Code sections 500 and 503.

2. To the extent a conflict exists, the provisions of the administrative regulation are void.

#### ANALYSIS

Section 19050.6 of title 2 of the California Administrative Code (hereafter "Regulation 19050.6") provides:

"In the event that the county clerk receives an affidavit of registration that does not include portions of the information for which space is provided, the county clerk or registrar of voters shall apply the following rebuttable presumptions:

"(a) If no middle name or initial is shown, it shall be assumed that none exists.

"(b) If no occupation is shown, it shall be presumed that the person is unemployed or has no occupation.

"(c) If no party affiliation is shown, it shall be assumed that the registrant has 'declined to state' a party affiliation.

"(d) If the year of birth is omitted, it shall be presumed that the year of birth was eighteen years or more prior to the date of the next succeeding election, in accordance with the voter's statement under penalty of perjury that he or she will be eighteen years of age at the time of the next election.

"(e) If no prior registration is shown, it shall be presumed that the person is not registered to vote in California.

"An elector's affidavit of registration as a voter shall be valid notwithstanding the failure to complete the information to which the above presumptions apply, absent evidence rebutting the presumption.

"(f) If the date of execution is omitted but:

"(1) the affidavit is received in the office of the county clerk, on or before the 29th day prior to the election; or

"(2) the registration affidavit is postmarked on or before the 29th day prior to the election and arrives in the office of the county clerk not later than

four days after the 29th day, it shall be presumed that the affidavit was executed on or before the 29th day prior to the election."

The two questions presented for resolution are whether Regulation 19050.6 is in conflict with Elections Code sections 500 and 503<sup>1</sup> and whether it is void to the extent a conflict exists. We conclude that a conflict is present and that the regulation is in part void.

Section 500 states:

"The affidavit of registration shall show:

"(a) The facts necessary to establish the affiant as an elector.

"(b) Affiant's name at length, including his or her given name, and a middle name or initial, or if the initial of such given name is customarily used, then the initial and middle name. The affiant's given name may be preceded, at affiant's option, by the designation of Miss, Ms., Mrs. or Mr. No person shall be denied the right to register because of his or her failure to mark a prefix to such given name and shall be so advised on the voter registration card. This subdivision shall not be construed as requiring the printing of prefixes on an affidavit of registration.

"(c) Affiant's place of residence, and residence telephone number, if furnished. No person shall be denied the right to register because of his or her failure to furnish a telephone number, and shall be advised on the voter registration card.

"(d) Affiant's mailing address, if different from the place of residence.

"(e) Affiant's date of birth.

"(f) The state or country of affiant's birth.

"(g) Affiant's occupation.

"(h) Affiant's political party affiliation.

---

<sup>1</sup> All section references hereafter to the Elections Code are by section number only.

"(i) That the affiant is currently not imprisoned or on parole for the conviction of a felony.

"(j) A prior registration portion indicating whether the affiant has been registered at another address, under another name, or as intending to affiliate with another party. If the affiant has been so registered, he or she shall give such additional statement giving that address, name, or party.

"The affiant shall certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of his or her name and if affiant is unable to write he or she shall sign with a mark or cross.

"The affiant shall date the affidavit immediately following the affiant's signature. If any person, including a deputy registrar, assists the affiant in completing the affidavit, that person shall sign and date the affidavit below the signature of the affiant."

Section 503 provides:

"(a) Except as provided in subdivision (c), the affidavit of registration shall show all the facts required to be stated.

"(b) If the affidavit does not contain all of the information required, but the telephone number of the affiant is legible, the county clerk shall telephone the affiant and attempt to collect the missing information.

"(c) If the affidavit does not contain all of the information required, and the county clerk is not able to collect the missing information by telephone, but the mailing address of the affiant is legible, the county clerk shall inform the affiant of the reason for rejection and shall send to the affiant a new voter registration card.

"(d) If the affidavit fails to state the affiant's occupation as prescribed in subdivision (g) of Section 500, it shall be presumed that the affiant is unemployed or has no occupation, and such missing information shall not affect the validity of the affidavit."

Sections 500 and 503 were enacted in part to carry out the Legislature's constitutional duty to prescribe the method by which electors are registered to vote. The Constitution provides: "A United States citizen 18 years of age and resident in this state may vote" (art. II, § 2); "The Legislature shall define residence and provide for registration

and free elections" (art. II, § 3); and "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned for the conviction of a felony" (art. II, § 4).

Section 500 specifies what is to be contained in an elector's affidavit of registration. Section 503 sets forth what is to occur if the affidavit is not completed in full by the affiant. Without a proper affidavit of registration, "[n]o person shall be registered as a voter." (§ 301.)

In language often quoted (see *Kagan v. Kearney* (1978) 85 Cal.App.3d 1010, 1019; *Allyn v. Allison* (1973) 34 Cal.App.3d 468, 451; *McMillan v. Siemon* (1940) 36 Cal.App.2d 721, 729), the Supreme Court stated in *Bergevin v. Curtz* (1899) 127 Cal. 86, 88:

"It is settled by the great weight of authority that the legislature has the power to enact reasonable provisions for the purpose of requiring persons who are electors and who desire to vote to show that they have the necessary qualifications, as by requiring registration, or requiring an affidavit or oath as to qualifications, as a condition precedent to the right of such electors to exercise the privilege of voting. Such provisions do not add to the qualifications required of electors, nor abridge the right of voting, but are only reasonable regulations for the purpose of ascertaining who are qualified electors, and to prevent persons who are not such electors from voting. These regulations must be reasonable and must not conflict with the requirements of the constitution."

By establishing the means under which electors may prove their qualifications to vote, the registration laws are concerned with the prevention of fraud and abuse of the electoral process. "The object of the registration law is to prevent illegal voting by providing, in advance of election, an authentic list of the qualified electors." (*Welch v. Williams* (1892) 96 Cal. 365, 367; accord, *Bergevin v. Curtz, supra*, 127 Cal. 86, 89.) In *Allyn v. Allison, supra*, 34 Cal.App.3d 448, 451-453, the Court of Appeal stated:

"Appellants concede the power of the Legislature to require registration as a condition of voting in order to prevent fraud. They also concede that as a part of the registration requirement the state may require the giving of certain information which is proper and necessary to further that purpose. . . .

". . . . .

"The number of times and ways in which the state may wish to ask questions aimed at producing the same information is not an issue on which the courts can invade the legislative sphere under the guise of constitutional consideration. A legislative scheme which is reasonably structured to accomplish a recognized and proper governmental objective is not rendered unreasonable or unconstitutional simply because the objective might have been achieved in some other or even more efficient manner. (*Dribin v. Superior Court*, 37 Cal.2d 345.)

".....

"Certainly the requirement of certainty of identification of prospective voters is a legitimate concern of the Legislature. . . ."

Our construction of sections 500 and 503 follow well-established rules of statutory interpretation. We are to "ascertain the legislative intent so as to effectuate the purpose of the law." (*Moore v. Panish* (1982) 32 Cal.3d 535, 541.) "To determine such intent, the court must turn first to the language of the statute itself." (*Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 609.) "[C]ourts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them." (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) "If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*People v. Knowles* (1950) 35 Cal.2d 175, 183.) "When different language is used in the same connection in different parts of a statute it is presumed the legislature intended a different meaning and effect." (*McCarthy v. Board of Fire Commrs.* (1918) 37 Cal.App. 495, 497.) "[W]here exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195.)

The Legislature has unmistakably spelled out what information must be furnished under sections 500 and 503. The necessary information goes not only to the qualifications to vote of an elector but also to the personal identity of the elector so as to prevent fraud and illegal voting. Importantly, the county clerks are given the mandatory duty under the statutes to obtain the missing information if possible. Also significant is the fact that the Legislature has provided specific, limited exceptions to the mandatory requirements.

Regulation 19050.6 differs from sections 500 and 503 in a number of important respects. It adds to the exceptions established by the Legislature. Under certain conditions, the county clerk and registrar of voters are required by the regulation to accept

an affidavit of registration even though it does not contain the following information: (1) middle name or initial, (2) party affiliation, (3) year of birth, (4) prior registration information, and (5) date of execution of the affidavit. The regulation does not require that an attempt be made to obtain the missing information.

Under sections 500 and 503, if the above information is not contained in the affidavit, the county clerk is directed to telephone (if the number is legible) the affiant to collect the missing information, and if unsuccessful, to send (if the mailing address is legible) a new voter registration card to the affiant with an explanation of why the affidavit was rejected. Omitting information is acceptable under the two statutes only if the information is the name prefix, telephone number, or occupation of the affiant. Even where the missing information happens to be nonexistent, the Legislature requires a telephone call to clarify such fact, while Regulation 19050.6 does not.

In answer to the first question, therefore, we conclude that Regulation 19050.6 conflicts with sections 500 and 503 with respect to the omission of the following information from a registration affidavit: middle name or initial, party affiliation, year of birth, prior registration information, and date of execution of the affidavit.

We next resolve whether Regulation 19050.6 is void to the extent that it conflicts with sections 500 and 503.

The Secretary of State is directed to "see that elections are efficiently conducted and that state election laws are enforced" and is authorized to "adopt regulations to assure the uniform application and administration of state election laws." (Gov. Code, § 12172.5.)

The focus of Regulation 19050.6 appears to be upon the establishing of the ability to vote by a properly *qualified* elector. It is not directed at preventing fraud by someone *unqualified* to vote. While it may be appropriate to make assumptions where one legislative purpose is served, the issue is whether another statutory purpose may be overridden by administrative act.

The Supreme Court has applied a uniform set of rules when reviewing the validity of administrative regulations. "'Where a statute empowers an administrative agency to adopt regulations, such regulations 'must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose.'"' (*Ontario Community Foundation, Inc. v. State Bd. of Equalization* (1984) 35 Cal.3d 811, 816.) "[T]here is no agency discretion to promulgate a regulation which is inconsistent with the governing statute." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679.) "Administrative regulations that violate acts of the Legislature are void and no protestations that they are

merely an exercise of administrative discretion can sanctify them." (*Morris v. Williams* (1967) 67 Cal.2d 733, 737.) ""Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations."" (*Ontario Community Foundation, Inc. v. State Bd. of Equalization, supra*, 35 Cal.3d 811, 816-817.) "It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419.) These rules are now codified in Government Code sections 11342.1 and 11342.2.

Regulation 19050.6 is in conflict with sections 500 and 503 because it enlarges the exceptions specified in the two statutes, and it is inconsistent with the purposes of the legislative enactments.

We thus conclude in answer to the second question that Regulation 19050.6 is void to the extent that it conflicts with the provisions of sections 500 and 503.

\*\*\*\*\*