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OPINION	:	No. 86-601
	:	
of	:	<u>DECEMBER 31, 1986</u>
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THE HONORABLE CHARLES R. MACK, County Counsel, County of Yolo, has requested an opinion on the following question:

May a member of a county board of education serve as a substitute teacher for a district which falls within the board's jurisdiction and may he or she do so for one which does not?

CONCLUSION

A member of a county board of education may not serve as a substitute teacher in a district which falls within the board's jurisdiction but may do so in one which does not.

ANALYSIS

Article IX, section 7 of the California Constitution calls for the Legislature to "provide for the appointment or election of . . . a board of education in each county or for the election of a joint county board of education for two or more counties."¹ This has been done in chapter 1 (§ 1000 et seq.) of part 2 to division 1 of title 1 of the Education Code². Section 1000 provides for the establishment of a county board of education of five or seven members, with each member being "an elector of the trustee area which he represents and ... elected by the electors of the trustee area." Elections are held on the date and in the manner prescribed for the election of members of governing boards of school districts if the latter are held throughout the county on the same date; otherwise the election is consolidated with the direct primary election. (§ 1007.)³

Section 1006 sets forth the qualifications for membership on a county board of education:

"Any registered voter is eligible to be a member of the county board of education except the county superintendent of schools, any member of his staff, *or any employee of a school district.*" (Emphasis added.)

We are asked whether a member of the county board of education may serve as a substitute teacher. We find the section dispositive of the question and conclude that under it a member of a county board of education may not serve as a substitute teacher in a school district which falls within the jurisdiction of the board but may do so in one which does not.

On its face, section 1006 does not answer our question directly. The question is whether a member of a county board of education may serve as a substitute teacher whereas section 1006 states its prohibition from the other direction, making any employee of a school district ineligible to serve on the county board of education. Nevertheless, as we proceed to show, the section serves to answer the question, and assuming for the

¹ Charter counties may provide by charter for election of the members of their boards of education. (Cal. Const. art. IX, § 3.3.) Two or more chartered counties may establish one joint county board of education by special election but it is governed by general law and not county charter. (*Id.*, § 3.2.)

² Elections of school district boards are usually held biennially in each succeeding odd-number year (§ 5000; cf. 34 Ops.Cal.Atty.Gen. 264 (1959); but see §§ 5008, 5093) and are governed by the provisions of the Elections Code (§ 5300). The county clerk (or registrar of voters) performs the duties incident to the preparation for, and holding of, all district elections. (§ 5303.)

³ Section references herein are to the current Education Code.

moment that a substitute teacher is an employee of a school district, prohibits the substitute from serving on the county board.

The wording of section 1006 is stated in terms of eligibility *to be*, as opposed *to becoming*, a member of the county board of education. This suggests a legislative direction that the same person not simultaneously be a board member and a school district employee *at any point in time*. Essentially what the section does then is "extend the common law rule against holding incompatible offices to situations where it would not otherwise apply: [to those] where . . . one position is a public office [the member of the county board of education (31 Ops.Cal.Atty.Gen. 170, 171 (1958))] and the other is public employment [the substitute teacher (*Main v. Claremont Unified School Dist.* (1958) 161 Cal.App.2d 189, 197, *Leymel v. Johnson* (1930) 105 Cal.App. 694, 702; 9 Ops.Cal.Atty.Gen. 64, 66 (1947))]." (68 Ops.Cal.Atty.Gen. 240, 244 (1985); cf. 68 Ops.Cal.Atty.Gen. 337, 339-340 (1985).)

Logically speaking the prohibition stated in section 1006 and the one contemplated by the question are thus but two sides of the same coin of mutual exclusion that the Legislature has set between being a member of the county board of education and being a substitute teacher.⁴ While nothing in it prohibits a member of the county board from accepting appointment as a substitute teacher, it would prohibit a holding of both positions simultaneously. A substitute teacher could not qualify to be a member of the county board, and a member of the county board who became a substitute teacher would vacate the office for the teaching position as if the doctrine of incompatible offices applied to cause that result. (Cf. 68 Ops.Cal.Atty.Gen. 240, 243-244, *supra*.)⁵

The foregoing discussion of course has assumed that a substitute teacher is an "employee of a school district" within section 1006's prohibition. Returning to section 1006 to test it, we see "*any employee* of a school district" as being ineligible to be a member of the county board of education. There can be no serious question that substitute teachers are included. The word "any" indicates a broad coverage (64 Ops.Cal.Atty.Gen., 192, 202 (1981)), one "indiscriminately of whatever kind". (20 Ops.Cal.Atty.Gen. 31, 33 (1952))

⁴ "An implication [e.g., if X is any employee of a school district, then X may not be a member of the county board of education] and its contrapositive [e.g., if X is a member of the county board of education, then X may not be any employee of a school district] are simultaneously true or false; i.e., they are equivalent." (Allendoerfer & Oakley, *Principles of Mathematics* (New York: McGraw-Hill Co., Inc., 1955) Ch. 1 (Logic), 10, Theorem 4, at p. 26.)

⁵ If vacating the office of member of the county board of education did not follow, section 1006's purpose of prohibiting a school district employee from being, as opposed to becoming, a member of the county board could easily be evaded. An employee need only resign the teaching position, become a member of the board, and then take the teaching position anew.

citing Webster's *New Intn'l. Dict.*) Therefore in using it, it is apparent that the Legislature intended all school district employees to be included. Although distinctions exist between substitutes and other classifications of school district employment (cf. *Wood v. Los Angeles City School Dist.* (1935) 6 Cal.App.2d 400, 402-403), substitute teachers nonetheless are "employees of a school district". (*Id.* at p. 402.) They are classified as "substitute employees" (44917; cf. Cal. Const., art. IX, § 6) "at the time of *employment*" (44916); they are "*employed* in positions requiring certification qualifications to fill positions of regularly employed persons absent from service" (§ 44917); and their position is created and fixed, unless statutory mandate compels otherwise, by a "contract of employment". (*Rutley v. Belmont Elementary Sch. Dist.* (1973) 31 Cal.App.3d 702, 705; *Matthews v. Board of Education* (1962) 198 Cal.App.2d 748, 752-753; *Woods v. Los Angeles City School Dist.*, *supra*, 6 Cal.App.2d 400, 402.) As an "employee of a school district", a substitute teacher would be ineligible to be a member of the county board of education, and by parity of the demand of mutual exclusion the Legislature has set, a member of a county board of education could not serve as a substitute teacher and retain his or her office.

The sixty-four dollar question to be resolved, however is whether that mutual exclusion extends across jurisdictional lines—i.e., whether it prohibits a member of a county board of education from substitute teaching in a district that is outside the county board's jurisdiction. Facially section 1006 indicates that it does.

Once again, the section provides that:

"Any registered voter is eligible to be a member of *the* county board of education except ... *any* employee of *a* school district." (Emphasis added.)

The emphasized words are important. In contrast to using the definite article "the" to describe and particularize "*the* county board of education" and "*the* county superintendent of schools" (cf. 67 Ops.Cal.Atty.Gen. 452, 454 (1984); cf. *People v. Enlow* (Colo. 1957) 310 P.2d 539, 546; Kittridge and Farley, *Advanced English Grammar* (Boston: Ginn & Co., 1913) at p. 77, § 173(1)), the Legislature has used the word "any" to modify "employee" and the indefinite article "a" to modify "school district". Like the word "any", the last modifier indicates an indiscriminate and broad coverage designating an object as merely one of a general class or kind (Kittridge and Farley, *Advanced English Grammar*, *supra*, at p. 77, § 173(2) as opposed to one that is distinct from others of the same kind. (*Id.*, at § 173(1).) The Legislature therefore has not chosen to limit the type of school district in which a substitute might teach and so be ineligible for membership on the board, but has indiscriminately applied the section's prohibition to all of them to create that ineligibility. As we have seen, that is merely the other side of the coin of saying that a member of a county board of education may not be employed as a substitute teacher in any school district.

Nevertheless, is that broad prohibition still somehow circumscribed by the board's jurisdiction? In other words, was it meant to mean "any school district over which the county board has jurisdiction"? Inasmuch as elections to county boards of education are geared to county organization (see fn. 3, *ante*, & accompanying text) and inasmuch as the members represent particular trustee areas within that jurisdiction, it has been suggested that the "circumscription" is implicit in the section's framework.

Ordinarily we would be wont to reject the suggestion, for to accept it would mean we would have to add words to a statute, a venture that may not be done under the guise of statutory construction (cf. *Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal.2d 313, 318; *Kirkwood v. Bank of America* (1954) 43 Cal.2d 333, 341) even to "supply legislative omissions from [a] statute in an attempt to make it conform to a presumed intention of the Legislature not expressed in the statutory language." (*Cemetery Board v. Telophase Society of America* (1978) 87 Cal.App.3d 847, 858.) Section 1006 on its face prohibits *any* employee of *a* school district from being a member of a county board of education and there is nothing contained therein limiting that to employees of school districts that are under a county board's jurisdiction. Nevertheless, statutes are to be interpreted to effect the purpose for their enactment (Cf. *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 645) and the legislative history of a statute is a legitimate aid in divining that purpose. (*Calif. Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844; *County of San Diego v. Milotz* (1953) 119 Cal.App.2d Supp. 871, 880.) Thus, "to ascertain [the legislative] object and purpose [we] may look into contemporaneous and prior legislation on the same subject and the external and historical facts and conditions which led to its enactment. [Citation.]" (*Grannis v. Superior Court* (1905) 146 Cal. 245, 247-248.)

The prohibition found in section 1006 derives verbatim from a 1955 addition to the Education Code. (Stats. 1955, ch. 744, § 3, p. 1246 adding § 304 to the [1943] Ed. Code.) Before then, indeed with little variation since 1875, the Code not only *required* that some of the members of a county board of education be credentialed teachers, but also that the county superintendent of schools be a member of the board as well. (See Stats. 1943, ch. 71, § 304, p. 318; [1943] Ed. Code, § 304: "experienced teachers holding not lower than elementary school certificates in full force and effect"; cf., Code Amdts. 1875-76, ch. LXXVI, § 31, p. 28, amending Pol. Code, § 1768: "Each County Board of Examination [sic] is composed of the County School Superintendent . . . and not less than three teachers, who follow the profession of teaching at the time they are chosen. . . ."; see also former Sch. Code, § 2.1260, 2.1236.) The reason for the sudden change in the long established composition of a County Board of Education is found in another salient change that was made to the Education Code at the same time. The two go hand-in-hand and by exploring the other we can understand our first.

At the time the aforementioned earlier provisions of the Education Code were operative and required a county board of Education to be composed in part of practicing teachers, county boards of education were *appointive* bodies. (See e.g., Stats. 1943, ch. 71, §§ 302, 303, [1943] Ed. Code, §§ 301, 302, 303 (2 of 4 members appointed annually by Board of Supervisors for a 2-year term (or by the County Superintendent of Schools, who was also appointed by the board); Code Amdts. 1875-1876, ch. LXXVI, 1 amending Pol. Code, § 1768 (not less than three teachers appointed by the County School Superintendent); cf. former Sch. Code, § 2.1260, 2.1262, 2.1263.) In 1955, however, that was changed and the county board was made an *elected* body of five or seven members, elected at large, with at least one member residing in each designated trustee area within the board's jurisdiction. (Stats. 1955, ch. 744, § 2, p. 1240 amending [1943] Ed. Code, § 304; compare, [1959] Ed. Code, § 601 (each member must be an elector of the trustee area which he represents and elected by the electors of the trustee area) and present Ed. Code, § 1000.)

We can thus see how drastic changes in the nature and composition of a county board of education were wrought by these two 1955 amendments to the Education Code: the board would now be elected and not appointed, and teachers, i.e., employees of a school district, were no longer eligible to serve on it. (Stats. 1955, ch. 744, §§ 2 and 3, respectively.) Again, we believe the two go hand-in-hand and that the prohibition on teachers serving on the board came as a corollary to the fact that the board was now to be an elected body. For some reason the Legislature felt it undesirable for persons serving on a county board of education to be teachers in trustee areas anywhere within the board's jurisdiction where members of the board would be elected at large. Perhaps the Legislature felt that membership on a county board might give an employee of a district within the jurisdiction an unfair advantage over other employees, especially where the district needed something from the board. Or perhaps it thought more generally that an employee's loyalty to his or her district would be inconsistent with an impartial treatment of all districts under the board's jurisdiction. Whatever the reason, incompatibility was set.

And there we find the answer to the question of circumscription. If the foregoing was the Legislature's purpose for enacting the precursor to section 1006, its rationale for imposing ineligibility would not extend to school trustee areas that were not to be represented on a county board and over which a county board of education did not have jurisdiction. In other words, the reason for prohibiting a teacher from serving on a county board of education which has jurisdiction over a district in which he or she teaches would not apply to his or her serving on a board of education which did not. Contrapositively, the want of such mutual exclusion would mean that a member of a county's board of education might be employed as a teacher in a district over which a county board did not have jurisdiction.

We therefore conclude accordingly that a member of a county board of education may not serve as a substitute teacher in a school district which falls within the board's jurisdiction but may serve as such in one which does not.
