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OPINION	:	No. 02-704
	:	
of	:	November 26, 2002
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THE HONORABLE VIRGINIA STROM-MARTIN, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a person serve concurrently as a director of the Round Valley County Water District and director of the Covelo Community Services District?

CONCLUSION

A person may not serve concurrently as a director of the Round Valley County Water District and director of the Covelo Community Services District.

ANALYSIS

We are asked to determine whether a person may serve concurrently on the board of directors of the Round Valley County Water District (“Water District”) and the board of directors of the Covelo Community Services District (“Services District”). We conclude that a person may not do so due to the common law prohibition against holding incompatible public offices.

The Water District is a public corporation organized in 1953 under the County Water District Law (Wat. Code, §§ 30000-33901) for the primary purpose of mitigating stream erosion and stream flooding within Round Valley in the County of Mendocino. Approximately 15 miles of stream banks are maintained by the Water District, and its budget is about \$10,000 annually. The Water District is not responsible for the maintenance of storm water ditches or storm water drains, is not involved in the distribution or supply of water and does not perform sewage collection, treatment or disposal services for its inhabitants.

Organized in 1957 under the Community Services District Law (Gov. Code, §§ 61000-61850), the Services District is a public corporation encompassing approximately 150 acres. Its primary function is to provide sewage collection, treatment and disposal services to the unincorporated town of Covelo. The Services District lies entirely within the boundaries of the Water District.

One of the streams for which the Water District maintains erosion control lies within the boundaries of the Services District. Known as Town Creek, this stream has caused erosion affecting the adjacent property on which the Services District’s sewage treatment ponds are situated. Two sewer lines belonging to the Services District are located under the creek and have occasioned some interaction between the two districts in the past. The sewage treatment plant operated by the Services District discharges treated and disinfected effluent into Grist Creek below its confluence with Town Creek within the boundaries of the Water District.

With this factual background in mind, we turn to the common law prohibition against holding incompatible public offices applicable in California. (See Civ. Code, § 22.2; *Mott v. Horstmann* (1950) 36 Cal.2d 388, 391-392; *People ex rel. Chapman v. Rapsey* (1940) 16 Cal.2d 636, 640-644; *Eldridge v. Sierra View Local Hospital Dist.* (1990) 224 Cal.App.3d 311, 319.) Offices are incompatible if one of the offices has supervisory, auditory or removal power over the other or if there would be a significant clash of loyalties in the performance of the duties of either office. Only one significant clash of duties or loyalties is necessary to make offices incompatible. Abstention when a conflict arises is not

available to cure the incompatibility. If the performance of the duties of either office could have an adverse effect on the other, the doctrine precludes acceptance of the second office. If the second office is accepted, such acceptance constitutes an automatic resignation from the first office. (*People ex rel. Chapman v. Rapsey, supra*, 16 Cal.2d at pp. 641-644; 85 Ops.Cal.Atty.Gen. 60, 61 (2002); 84 Ops.Cal.Atty.Gen. 34, 38 (2001); 83 Ops.Cal.Atty.Gen. 153, 154 (2000); 83 Ops.Cal.Atty.Gen. 50, 51 (2000).)

A member of the governing board of a county water district holds a public office for purposes of the common law prohibition (82 Ops.Cal.Atty.Gen. 68, 69 (1999); 73 Ops.Cal.Atty.Gen. 268, 270 (1990); 37 Ops.Cal.Atty.Gen. 21, 22, fn. 1 (1961); 32 Ops.Cal.Atty.Gen. 250, 252 (1958)), as does a member of the governing board of a community services district (80 Ops.Cal.Atty.Gen. 53, 54 (2000); 73 Ops.Cal.Atty.Gen. 183, 185 (1990); 68 Ops.Cal.Atty.Gen. 337, 344 (1985)). Are these two offices incompatible for purposes of the prohibition?

We have previously concluded that holding the office of county water district director is incompatible with concurrently holding the office of city council member (82 Ops.Cal.Atty.Gen. 74 (1999); 41 Ops.Cal.Atty.Gen. 98 (1963); 37 Ops.Cal.Atty.Gen. 21, *supra*), city planning commissioner (82 Ops.Cal.Atty.Gen. 68, *supra*), county planning commissioner (64 Ops.Cal.Atty.Gen. 288 (1981)), and school district trustee (73 Ops.Cal.Atty.Gen. 268, *supra*) under the facts therein presented. We have previously concluded that holding the office of community services district director is incompatible with concurrently holding the office hospital district administrator (68 Ops.Cal.Atty.Gen. 337, *supra*), school district trustee (75 Ops.Cal.Atty.Gen. 112 (1992)) and school district superintendent (68 Ops.Cal.Atty.Gen. 337, *supra*) under the facts therein presented.

Here, we are given that the Services District's sewage treatment plant discharges treated and disinfected effluent into Grist Creek within the boundaries of the Water District. The Water District's creek restoration work may affect water flow in this creek. This in turn may impact the ability of the Services District to discharge effluent into the creek. Decisions by the Water District regarding the timing, location and extent of its restoration work may create a clash of duties and loyalties for a person who serves concurrently as a director of the Services District. Conversely, the choices made by the Services District with regard to the volume and timing of its sewage discharges may not be in the best interests of the Water District concerning the latter's restoration responsibilities.

Mitigating the erosion of the banks of Town Creek along the boundaries of the Services District's property may also present different priorities for the Water District and the Services District. Where would the loyalties of the dual officeholder lie in addressing the Water District's scheduling of restoration work with respect to Town Creek? Similarly,

a relocation or repair of the Services District's pipelines might necessitate contractual arrangements with the Water District that would, in effect, put the dual officeholder on both sides of the negotiating table.

These existing interactions between the two districts, as well as anticipated ones, give rise to a conflict of duties and loyalties "in the regular operation of the statutory plan." (71 Ops.Cal.Atty.Gen. 112, 116 (1988).) What would be in the best interests of the Water District in performing its stabilization and restoration work may differ from what would be in the best interests of the Services District in carrying out its sewage treatment and discharge responsibilities. These two offices are incompatible for purposes of the common law prohibition.

However, we note that the Legislature may abrogate the incompatible offices prohibition when it so chooses. (*American Canyon Fire Protection Dist. v. County of Napa* (1983) 141 Cal.App.3d 100, 104; 78 Ops.Cal.Atty.Gen. 352, 353 (1995); 66 Ops.Cal.Atty.Gen. 293, 301 (1983).) Government Code section 61231 provides:

"Any person who is a director of an irrigation district may hold office as a director of a community services district and the holding of two such positions by such person at the same time shall not be incompatible."

While the Legislature has specified that a county water district is to be considered an irrigation district for some purposes (Wat. Code, § 31014.5), it has not abrogated the common law rule with respect to the two offices in question. It is for the Legislature to determine whether a county water district should be treated similarly to an irrigation district for purposes of the incompatible offices prohibition.

We conclude that a person may not serve concurrently as a director of the Water District and director of the Services District.
