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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 03-409
	:	
of	:	June 20, 2003
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BILL LOCKYER	:	
Attorney General	:	
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GREGORY L. GONOT	:	
Deputy Attorney General	:	
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THE HONORABLE LEROY D. BACA, SHERIFF OF THE COUNTY OF LOS ANGELES, has requested this office to grant leave to sue in quo warranto upon the following question:

Does the Los Angeles County Charter violate the Constitution by placing term limits on the office of sheriff?

CONCLUSION

Whether the Los Angeles County Charter violates the Constitution by placing term limits on the office of sheriff presents a substantial question of law requiring judicial resolution; leave to file a quo warranto action is granted in the public interest.

## ANALYSIS

At the general election held on March 5, 2002, the voters of Los Angeles County adopted Measure A as an amendment to the county charter providing that beginning in December 2002, a person elected to the office of county supervisor, district attorney, assessor, or sheriff would be limited to three consecutive terms. Relator, Sheriff of the County of Los Angeles, was reelected to a new four-year term beginning in December 2002, and would therefore be limited to two additional terms under the charter amendment.

An action in quo warranto is a proper remedy by which to challenge the legality of a city or county charter. (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 595; *International Assn. of Firefighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 694; *Oakland Municipal Improvement League v. City of Oakland* (1972) 23 Cal.App.3d 165, 169; 86 Ops.Cal.Atty.Gen. 1, 2 (2003); 76 Ops.Cal.Atty.Gen. 169, 171 (1993).) A quo warranto action “is tailor-made for legal inquiries as to the validity of a county charter.” (*People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 920, fn. 3.)<sup>1</sup>

Determining whether to grant leave to sue requires a two-fold inquiry: has a substantial question of law or fact been presented requiring judicial resolution, and if so, would the overall public interest be served by allowing the action in quo warranto to be filed. (86 Ops.Cal.Atty.Gen., *supra*, at p. 2; 84 Ops.Cal.Atty.Gen. 135, 136 (2001); 83 Ops.Cal.Atty.Gen. 181, 182 (2000).)

### 1. Imposition of Term Limits on Office of Sheriff

Relying upon *Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, Relator contends that the charter amendment is invalid because it is not authorized by the Constitution. A charter county has only those powers and can enact within its charter only those provisions authorized by the Constitution. (*Id.* at p. 870.)

The officers of a county include a sheriff. (Gov. Code, § 24000, subd. (b).) With respect to the office of sheriff in a chartered county, article XI, section 4 of the Constitution states:

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<sup>1</sup> Relator challenged Measure A in court both before and after the election. The court declined to intervene prior to the election and afterwards ruled that a quo warranto action was Relator’s exclusive remedy.

“County charters shall provide for:

“ .....

“(c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.

“ .....

“(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attaches, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

“ .....

Is a county charter provision that imposes term limits on elected county officers authorized by the Constitution, specifically article XI, section 4, subdivision (c)?

In *Younger v. Board of Supervisors, supra*, 93 Cal.App.3d 864, the court struck down a voter-approved amendment to the San Diego County Charter imposing term limits on elected county officials. The court ruled that a charter term-limit provision was a “qualification” for office not authorized to be included in county charters under the terms of article XI, section 4, subdivision (c). The court observed:

“The Constitution differentiates between elected county officials and nonelected personnel. As to the latter, under article XI, section 4, subdivision (f), the county can fix and regulate ‘the powers, duties, *qualifications* and compensation of such persons, the time of which, and the terms for which they shall be appointed, and the manner of their appointment and removal.’ (Italics added.) Further, section 1, subdivision (b), of article XI directs the county governing body to ‘provide for the number, compensation, *tenure*, and appointment of employees.’ (Italics added.) The exclusion of the words ‘qualifications’ and ‘tenure’ from the grant of powers to charter counties regarding county officers and the specific inclusion of the power to set ‘qualifications’ and ‘tenure’ for nonelected employees discloses an intent by the framers of the Constitution to retain statewide control over the

qualifications of the former while releasing such control over the latter. This intent for statewide control over the qualifications of elected county officers is also indicated by the Legislature’s enactment of Government Code section 24001 et seq. relating to eligibility of county elected officers.” (*Id.* at pp. 871-872.)<sup>2</sup>

The court expressly rejected the suggestion that a term limits provision was authorized under subdivision (c) as part of the “terms” of the specified county offices:

“ . . . Since no uniform meaning has been assigned to the word ‘term’ as it is used in the Constitution and related statutes, it has become necessary to interpret the word on a case-by-case analysis so as to effectuate the intended statutory scheme pertaining to the offices under examination. [Citation.] In the context of the plural use of the word ‘terms,’ it reflects the singular meaning of the prescribed period for which an officer has been elected and may serve, not his incumbency. [Citations.] ‘It is, therefore, not to be confused with the tenure of office . . . .’ [Citation.]” (*Id.* at p. 872.)

Accordingly, the court concluded that the charter provision in question was “a qualification provision imposing a restriction upon the eligibility of elected county officials to seek reelection for the same office” and that it was “unconstitutional since it constitutes an act in excess of a charter county’s authority as conferred upon the governmental entity by both the Constitution and general state laws.” (*Id.* at p. 873.) It is now well established that charter counties “do not have the power to set qualifications, or tenure, i.e., term limits, for their elected officials.” (*Cawdrey v. Redondo Beach* (1993) 15 Cal.App.4th 1212, 1220; accord, *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1213-1214, *Polis v. City of LaPalma* (1992) 10 Cal.App.4th 25, 27; 84 Ops.Cal.Atty.Gen. 88, 89 (2001).)

Based upon the foregoing authorities, we find that Relator has presented a

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<sup>2</sup> The Legislature has exercised its authority to set the qualifications for county supervisors, in part, by allowing a county to adopt a term-limits provision for its supervisors. Government Code section 25000, subdivision (b), provides:

“Notwithstanding any other provision of law, the board of supervisors of any general law or charter county may adopt or the residents of the county may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the board of supervisors may serve on the board of supervisors. Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply prospectively only and shall not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.”

substantial question of law with respect to the constitutionality of the recent Los Angeles County Charter amendment imposing term limits on the office of sheriff.

## 2. The Public Interest

We have generally viewed the existence of a substantial question or fact or law as presenting a sufficient “public purpose” to warrant granting leave to sue in quo warranto. (82 Ops.Cal.Atty.Gen. 78, 81-82 (1999).) Hence, leave to sue will be denied only in the presence of other overriding considerations. (85 Ops.Cal.Atty.Gen. 90, 94 (2002).)

Here, it has been urged by the county that granting Relator leave to sue would not serve the public interest because there is no current usurpation of or infringement upon the office of sheriff and it will be nearly 12 years before the term-limits measure will directly affect Relator. Any number of events could occur prior to the end of Relator’s potential third consecutive term that would make the issue moot (e.g., failure to be reelected, resignation, further amendment of the charter).

The same type of argument was presented in *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, where the Supreme Court described when a controversy was “ripe” for judicial resolution:

“The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question. [Citations.]” (*Id.* at p. 170.)

Here, Relator is seeking court resolution of a specific legal dispute. Relator currently holds an elected county office. The charter amendment at issue is either legally valid at this time or it is not; all of the facts necessary for a judicial determination are known. A judicial

ruling will dispose of the controversy and prevent lingering uncertainty in the law not only for Relator, but for other county officers as well. The county's voters have a right to know whether a charter amendment they have adopted is constitutional. There is *currently* a substantial question as to the constitutionality of the amendment.

Accordingly, it is in the public interest to allow an action in quo warranto to be filed. Relator's application for leave to sue is GRANTED.

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