

2012 CALAFCO ANNUAL CONFERENCE

COMMISSIONERS  
INDEPENDENT JUDGMENT

Presentation by  
Michael G. Walker  
Ventura LAFCo Legal Counsel  
October 4, 2012



# Government Code, § 1099, subd.

(a)

2

'A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible.~

# Government Code, § 1099, subd.

## (a)

3

- ' Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
- ' (1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
- ' (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
- ' (3) Public policy considerations make it improper for one person to hold both offices.~

4

“We need not examine the possible conflicts that would make these two offices incompatible. Such inquiry is irrelevant since the Legislature requires that a LAFCO commissioner, except for the member of the general public, hold another public office as the basis for selection as a LAFCO commissioner. . . . [T]herefore, . . . the incompatibility office doctrine has no application to such dual office holding.”

(84 Ops.Cal.Atty.Gen. 94, 97 (2001).)



“The Legislature has carefully crafted the membership of a LAFCO so that two commissioners represent the county, two represent the cities of the county, two represent the special districts of the county, and one member represents the general public. Representation is to be balanced, yet each commissioner representing a local government is not to represent ‘solely’ the interests of such local government, but the interests of the general public as well.”

(84 Ops.Cal.Atty.Gen. 94, 99



# Government Code, § 1099, subd. (c)

6

'This section does not apply to a position of employment, including a civil service position.~

# Government Code, áá 56332, subd. (d), & 56335

7

The *special district selection committee* or the *city selection committee* may, at the time it appoints a member or alternate [to LAFCo], provide that the member or alternate is disqualified from voting on proposals affecting the district or city which the member represents .

# Government Code, § 56325.1

8

'While serving on the commission, all commission members shall exercise their *independent judgment* on behalf of the interests of *residents, property owners, and the public as a whole* in *furthering the purposes of this division*. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and *not solely* the interests of the appointing authority. *This section does not require the abstention of any member on any matter*, nor does it create a right of action in any person ~

- Bonny Doon Volunteer Fire/Rescue, Inc. submits proposal to :
  - Form Bonny Doon Fire Protection District
  - Detach Bonny Doon area from County Service Area 48
- Consistent with staff recommendation, Santa Cruz LAFCo disapproves proposal, on 4-3 vote.

*Bonny Doon Volunteer Fire/Rescue, Inc. v. Santa Cruz County Local Agency Formation Commission* (July 9, 2012, H036492) (nonpub. opn.)

10

- **Bonny Doon Volunteer Fire/Rescue, Inc. sues Santa Cruz LAFCo, claiming:**
  - Commissioners did not exercise independent judgment
  - Commissioners 'improperly favored the interests of the County~
    - "Significant" potential net loss to County of at least \$360,000/year

*Bonny Doon Volunteer Fire/Rescue, Inc. v. Santa Cruz County Local Agency Formation Commission* (July 9, 2012, H036492) (nonpub. opn.)

11

Court of Appeal rejects claim:

- No private right to sue LAFCo for commissioners' alleged failure to exercise independent judgment

Government Code, § 56325.1

“While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority . . . .”

Government Code, § 56325.1

“While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. *This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.*”

## Court of Appeal rejects claim:

- No private right to sue LAFCo for commissioners' alleged failure to exercise independent judgment
- Commissioners were acting as quasi-legislators, not as quasi-judges
- No evidence to overcome presumption "that official duty has been regularly performed" (Cal. Evid. Code, § 664)
- "[V]ery structure" of LAFCo "contemplates that two . . . commissioners will be members of the county board of supervisors"

## LAFCo Hypothetical (or, This Could Happen to You)

The Simi Valley City Council, by a 3-2 vote, authorizes the city to seek annexation of certain territory.Ä The proposal comes before the Ventura LAFCo.Ä The Simi Valley mayor is a commissioner on LAFCo.Ä When she was appointed commissioner, the city selection committee did not disqualify her from voting on proposals affecting her city.Ä Discuss.



# Questions and Discussion