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OPINION	:	No. 11-704
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THE HONORABLE MARTY BLOCK, MEMBER OF THE STATE SENATE,
has requested an opinion on the following question:

When a county treasurer serves as the treasurer of a public cemetery district, must the governing board of the cemetery district obtain the county treasurer’s approval before it may invest its endowment care fund and surplus endowment income funds outside of the county treasury?

CONCLUSION

When a county treasurer is serving as the treasurer of a public cemetery district, the governing board of the cemetery district may invest its endowment care fund and any “surplus” or “idle” endowment income funds in the manner prescribed by statute without the county treasurer’s approval.

ANALYSIS

This question concerns a public cemetery district's investment authority with respect to two kinds of monetary deposits for which it is responsible—the district's "endowment care fund" and its "surplus endowment income funds." We are asked whether the governing board of a district wishing to invest those funds outside the county treasury may do so without first obtaining the county treasurer's consent, when the county treasurer is also acting as the district's treasurer. The question arises because, we are told, some county treasurers are reluctant to carry out cemetery districts' instructions to invest their surplus funds outside of the counties' own investment pools.

In a December 2009 opinion, we addressed a similar question involving the investment authority of a fire protection district when the county treasurer also serves as the district's treasurer. We concluded that a fire protection district in that situation "may invest its surplus funds outside of the county treasury without the county treasurer's approval."¹ However, we emphasized that our conclusion was based on the specific statutes governing fire protection districts, noting that the investment powers of *other* kinds of special districts, as well as the particular roles, if any, played by the county treasurer and district treasurer with respect to such investments, could not be ascertained without an analysis of the specific statutory framework that defines each district's mission and authority. We said:

In the case of other special districts, the need for county treasurer approval of such investments depends on whether the governing statutes for those districts specifically require approval either by the county treasurer acting *ex officio* or by the district treasurer when one has been appointed by the district board.²

Here, we consider the statutes governing public cemetery districts.

¹ 92 Ops.Cal.Atty.Gen. 83 (2009).

² *Id.*

Public Cemetery Districts

Public cemetery districts are independent special districts³ formed pursuant to the Public Cemetery District Law (“District Law”)⁴ for the purpose of owning and operating public cemeteries to provide respectful and affordable interments.⁵ Each public cemetery district is governed by a board of trustees consisting of three or five registered voters in the district who are appointed by the county board of supervisors and who serve staggered four-year terms.⁶ In addition to owning, maintaining, managing, and improving cemeteries within their boundaries, districts may sue and be sued; purchase and sell real and personal property; adopt ordinances, rules, and regulations; enter and perform contracts; borrow money; hire employees; train trustees; engage professional services; provide insurance; enter joint-powers agreements; appoint advisory committees; and take any actions necessary for or incidental to the exercise of these powers.⁷

In matters of finance, a public cemetery district receives a share of its county’s annual property tax revenue;⁸ it may accept grants, goods, money, property, revenue, or services from specified sources for permitted purposes;⁹ and it is authorized to levy

³ Health & Safety Code § 9007(c) (district is independent special district *unless* county board of supervisors appoints itself as district board of trustees); *see also* Govt. Code § 56044.

⁴ Health & Safety Code §§ 9000-9093. The District Law came into being in 2003, 2003 Stat. ch. 57 (Sen. 341), as the product of a comprehensive review, consolidation, and revision of laws relating to public cemetery districts conducted by a working group appointed by the Senate Local Government Committee. That group, called the Working Group on Revising the Public Cemetery District Law, *id.* at § 6, was a broadly based 21-member body that included “district trustees and managers, experts in cemetery operations, and representatives of groups that might be affected by the statutory changes,” and was assisted by nearly 30 advisors. Sen. Local Govt. Comm. Analysis of Sen. 341 at 5 March 27, 2003).

⁵ Health & Safety Code § 9001.

⁶ Health & Safety Code at §§ 9020-9024; *but see* Health & Safety Code § 9026 (board of supervisors may appoint itself board of trustees); Health & Safety Code §§ 9025, 9027 (permitting changes in number of trustees).

⁷ Health & Safety Code §§ 9040, 9041.

⁸ Health & Safety Code § 9073.

⁹ Health & Safety Code § 9074.

special taxes,¹⁰ incur bonded indebtedness,¹¹ sell interment rights,¹² and charge fees for district services.¹³ It is required to adopt an annual budget;¹⁴ it may establish one or more restricted reserve funds;¹⁵ and it is required to create an “endowment care fund,”¹⁶ the principal of which may not be spent¹⁷ but is to be invested and reinvested in prescribed securities, obligations, certificates, and accounts.¹⁸ A district must provide regular audits of its accounts, its records, and its endowment care fund, and must provide annual financial reports to the State Controller.¹⁹

As a general rule, a district is required to deposit its regular income—that is, the moneys “received or collected” each month—into a separate account in the county treasury,²⁰ and the “county treasurer of the principal county acts as the district treasurer,” receiving no compensation “for the receipt and disbursement” of the district’s money.²¹

¹⁰ Health & Safety Code § 9081.

¹¹ Health & Safety Code § 9082.

¹² Health & Safety Code §§ 9049, 9068.

¹³ Health & Safety Code § 9083.

¹⁴ Health & Safety Code § 9070.

¹⁵ Health & Safety Code § 9071.

¹⁶ Health & Safety Code § 9065.

¹⁷ Health & Safety Code § 9065(e).

¹⁸ Health & Safety Code § 9066.

¹⁹ Health & Safety Code § 9079; *see also* Govt. Code §§ 26909, 53890-53897.

²⁰ *See* Health & Safety Code § 9074(b):

Except as provided by Section 9077, all moneys received or collected by a district shall be paid into a separate fund in the county treasury on or before the 10th day of the month following the month in which the district received or collected the money.

²¹ Health & Safety Code § 9028(c):

Except as provided in Section 9077, the county treasurer of the principal county shall act as the district treasurer. The county treasurer shall receive no compensation for the receipt and disbursement of money of the district.

“Principal county,” in turn, is defined as the county “having all or the greater portion of the entire assessed value . . . of all taxable property within a district.” Health & Safety Code § 9002(i).

Under certain circumstances, a district may deviate from these general rules, withdrawing its funds from the county treasurer's control and appointing its own district treasurer to manage the funds. Health and Safety Code section 9077(a) provides:

Notwithstanding Section 9076, a district that has total annual revenues greater than five hundred thousand dollars (\$500,000) may withdraw its funds from the control of the county treasurer pursuant to this section.

Health and Safety Code section 9077(b) requires that the board of trustees of a district wishing to exercise this option must take a series of steps, including adopting a resolution that “[a]dopts a procedure for the appointment of a district treasurer”²² and “fixes the amount of the bond for the district treasurer and other district employees who will be responsible for handling the district’s finances.”²³

We note that a public cemetery district and a fire protection district are on significantly different footing in this respect. As we observed in our 2009 opinion, a fire protection district is authorized to appoint a district treasurer at any time, and to define the treasurer’s duties and compensation; a county treasurer serves as treasurer for a fire protection district only if the fire district refrains from appointing one for itself.²⁴ For a public cemetery district, in contrast, the county treasurer serves as the district’s treasurer as a matter of course, and a cemetery district is not authorized to appoint its own treasurer *except* under the conditions specified in section 9077. Further, under those conditions, the cemetery district not only may, but must, appoint a district treasurer.²⁵

Endowment Care Fund

The District Law includes various provisions addressing a district’s “endowment care fund,” which is a sum invested for the purpose of generating annual income sufficient to finance the maintenance of the district’s cemeteries in perpetuity.²⁶ The board of trustees of a public cemetery district “*shall*” establish and maintain an endowment care fund, and must preserve the fund’s principal, spending only the income

²² Health & Safety Code § 9077(b)(2).

²³ Health & Safety Code § 9077(b)(3).

²⁴ 92 Ops.Cal.Atty.Gen. at 84; *see also* Health & Safety Code § 13854.

²⁵ Health & Safety Code § 9077; *see also* Health & Safety Code § 9028(c).

²⁶ *See e.g.* 78 Ops.Cal.Atty.Gen. 189, 191-192 (1995); 65 Ops.Cal.Atty.Gen. 393, 394 (1982).

generated by that fund, and only for the care of the district's cemeteries.²⁷ The district's board of trustees is required to "invest and reinvest" the principal of the endowment care fund into any of a prescribed selection of securities, obligations, and accounts.²⁸

²⁷ Health & Safety Code § 9065:

- (a) The board of trustees shall create an endowment care fund.
- (b) The board of trustees shall require a payment into the endowment care fund for each interment right sold. The amount of the payment shall be not less than the minimum amounts set by Section 8738.
- (c) The board of trustees may require a payment into the endowment care fund for each interment where no payment has previously been made. The amount of the payment shall be not less than the minimum amounts set by Section 8738.
- (d) The board of trustees may pay into the endowment care fund any money from the district's general fund and from any other sources which is necessary or expedient to provide for the endowment care of the cemeteries owned by the district.
- (e) The board of trustees shall not spend the principal of the endowment care fund.
- (f) The board of trustees shall cause the income from the endowment care fund to be deposited in an endowment income fund and spent solely for the care of the cemeteries owned by the district.

²⁸ Health & Safety Code § 9066:

The board of trustees shall cause the principal of the endowment care fund to be invested and reinvested in any of the following:

- (a) Securities and obligations designated by Section 53601 of the Government Code.
- (b) Obligations of the United States or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest. These shall not be limited to maturity dates of one year or less.
- (c) Obligations issued under authority of law by any county, municipality, or school district in this state for which are pledged the faith and credit of that county, municipality, or school district for the payment of principal and interest, if within 10 years immediately preceding the investment that county, municipality, or school district was not in default for more than 90 days in the payment of principal or interest upon any legally authorized obligations issued by it.
- (d) Obligations of the State of California or those for which the faith

The county treasurer is nowhere mentioned in the provisions governing a district's endowment care fund, and we find no indication in the statutes that a district's endowment care fund investment decisions are contingent upon a county treasurer's approval. To the contrary, the statutes expressly place investment discretion in the hands of the district's board of trustees, thus restricting the county treasurer's role to a ministerial duty to transfer, invest, and reinvest funds as the board of trustees directs.²⁹

Our reading is confirmed by the District Law's legislative history and, in particular, by explanatory comments about section 9066 in a comprehensive August 2004 report by the Senate Committee on Local Government, entitled "*For Years To Come: A Legislative History of SB 341 and the 'Public Cemetery District Law'*":

Note that this language clearly assigns the responsibility for investing the principal of the endowment care fund with the district's board of trustees. Contra Costa County has reportedly taken the position that the county treasurer must invest these funds because [former] § 9002 says the "trustee may invest" the money. This language places that duty with the board of trustees. The trustees may ask the county treasurer to invest the money, direct its own district treasurer to invest the money (*see* § 9077), or assign the investment duty to another party. This language reverses the

and credit of the State of California are pledged for the payment of principal and interest.

(e) Interest-bearing obligations issued by a corporation organized under the laws of any state, or of the United States, provided that they bear a Standard and Poor's financial rating of AAA at the time of the investment.

(f) Certificates of deposit or other interest-bearing accounts in any state or federally chartered bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation.

²⁹ See Health & Safety Code § 9065 (the "*board of trustees* shall create an endowment care fund") (emphasis added); Health & Safety Code § 9066 (the "*board of trustees* shall cause the principal of the endowment care fund to be invested and reinvested . . .") (emphasis added); *cf.* Health & Safety Code § 9028(c) (county treasurer who serves as district treasurer is responsible for "the receipt and disbursement of money of the district"). It is likewise the board of trustees, not the county treasurer, to whom authority is given to augment the endowment care fund from time to time, "from the district's general fund or any other sources," as circumstances may require. Health & Safety Code § 9065(d).

1949 Attorney General’s opinion that said that the county treasurer was the repository for the endowment care funds (14 Ops.Cal.Atty.Gen. 99).³⁰

This same understanding was reflected in various reports issued during the Legislature’s consideration of the District Law in the 2003 legislative session.³¹

Thus, with respect to investment of funds, public cemetery districts are similarly situated to fire protection districts, in that investment discretion is placed exclusively in the hands of the district’s governing board, with no requirement for approval from the county treasurer.³²

Surplus Funds

The second part of the question before us asks whether the county treasurer’s approval is required before a cemetery district may withdraw its “surplus endowment income funds” from the county treasury.

Health and Safety Code section 9067 governs the handling of any moneys in the district’s *endowment income fund*³³ that are not necessary to meet current expenses, giving the board of trustees discretion to invest in a prescribed array of securities rather than retaining such surplus funds in the endowment income fund:

The board of trustees may cause the funds deposited in the endowment income fund pursuant to subdivision (f) of Section 9065 that

³⁰ Rpt. of Sen. Comm. on Local Govt., *For Years To Come: A Legislative History of SB 341 and the “Public Cemetery District Law”* (Aug. 2004) at 70.

³¹ See e.g. Sen. Local Govt. Comm. Analysis of Sen. 341 at 3 (March 27, 2003) (bill allows districts to manage their own finances); Sen. Rules Comm. Third Reading of Sen. 341 at 3, ¶ 13 (Apr. 8, 2003) (same); Assembly Comm. on Local Govt. Analysis of Sen. 341 at 2, ¶ 15 (June 17, 2003) (same).

³² Cf. 92 Ops.Cal.Atty.Gen. 83.

³³ See Health & Safety Code section 9065(f), which requires the board of trustees to “cause the income from the *endowment care fund* to be deposited in an *endowment income fund* and spent solely for the care of the cemeteries owned by the district.” (Emphases added.)

are not required for the immediate care of the cemeteries owned by the district to be invested in the securities and obligations designated by Section 53601 of the Government Code.³⁴

Again, as is the case for investment of the principal of the endowment care fund, the governing statute makes no mention of the county treasurer in relation to this option to invest surplus income. From this, we conclude that all questions of investment of surplus income are entrusted to the discretion of the board of trustees. And, again, our reading is confirmed by the District Law’s legislative history.³⁵ Therefore we conclude that a public cemetery district may invest its “surplus” or “idle” funds (as defined in Health and Safety Code section 9067) outside the county treasury without approval from the county treasurer, regardless of whether the county treasurer serves as the district’s treasurer.

Withdrawals from the County Treasury Pursuant to Section 9077

Health and Safety Code section 9077 expressly authorizes some districts to withdraw funds from “the control of the county treasurer,” but only when certain requirements are met—including, notably, that such a district must have more than half a million dollars in total annual revenues to qualify, and must appoint a bonded district

³⁴ Government Code section 53601 lists a variety of approved securities and obligations in which local agencies may invest moneys “not required for the immediate needs of the local agency.”

³⁵ In its August 2004 report on the purpose and intent underlying the District Law, the Senate Committee on Local Government explained why section 9067, an entirely new provision, was added by the Committee-appointed “Working Group” that had reviewed, revised, and consolidated the laws relating to public cemetery districts:

At its December 13, 2002 meeting at the request of Dewey Ausmus and Anna Herrera, the Working Group agreed on a new section that clearly allows districts to invest their temporarily idle money in the Endowment Income Fund in short- and medium-term securities, just like the temporarily idle funds of other local agencies. A district could use this section to invest on its own or place its idle money in a county treasurer’s pool. This language reverses the 1949 Attorney General’s opinion that said that the county treasurer was the repository for the endowment care funds (14 Ops.Cal.Atty.Gen. 99).

Rpt. of Sen. Comm. on Local Govt., *For Years To Come: A Legislative History of SB 341 and the “Public Cemetery District Law”* (Aug. 2004) at 71.

treasurer to handle the district's finances.³⁶ Although section 9077 does not necessarily concern the kinds of investments at issue here, we add a brief comment for the sake of clarification. In our view, the requirement that a cemetery district must appoint a bonded district treasurer in order to withdraw the funds eliminates any role that a county treasurer might otherwise play in the management of such funds. Indeed, section 9077(a) expressly contemplates that, in such cases, a district shifts "responsib[ility] for handling the district's finances" to "the district treasurer and," if it chooses, to other designated and bonded "district employees," and the funds are expressly *withdrawn from* "the control of the county treasurer."³⁷ Thus, by definition, such withdrawals do not occur under the conditions specified in the question presented—namely, while a county treasurer is serving as treasurer for a public cemetery district.

For the foregoing reasons, we conclude that, when a county treasurer is serving as the treasurer of a public cemetery district, the cemetery district may invest its endowment care funds and any "surplus" or "idle" endowment income funds in the manner prescribed by statute without the county treasurer's approval.

³⁶ Health & Safety Code § 9077(a). The Senate Committee on Local Government described section 9077(a) as permitting "[d]istricts with revenues over \$500,000 [to] appoint their own treasurers and manage their own funds," and estimated that there were "23 [*sic*] cemetery districts that probably qualify." Rpt. of Sen. Comm. on Local Govt., *For Years To Come: A Legislative History of SB 341 and the "Public Cemetery District Law"* (Aug. 2004) at 84; *cf. id.* at 118, Table 4 (showing that, of 253 public cemetery districts in existence in Fiscal Year 1999-2000, 28 had revenues greater than \$500,000). The question whether the term "total annual revenues," as used in this provision, includes income from a district's endowment care fund is beyond the scope of this opinion.

³⁷ Health & Safety Code § 9077(a).