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OPINION	:	No. 02-702
	:	
of	:	October 2, 2002
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THE HONORABLE ED CHAVEZ, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a member of the City Council of the City of El Monte serve simultaneously on the Board of Directors of the Upper San Gabriel Valley Municipal Water District?

CONCLUSION

A member of the City Council of the City of El Monte may not serve simultaneously on the Board of Directors of the Upper San Gabriel Valley Municipal Water District.

ANALYSIS

We are asked to determine whether a member of the City Council of the City of El Monte (“City”) may serve concurrently on the Board of Directors of the Upper San Gabriel Valley Municipal Water District (“District”). We conclude that these two offices may not be held by a person at the same time due to the common law prohibition against holding incompatible public offices.

Formed in 1959 under the Municipal Water District Law of 1911 (Wat. Code, §§ 71000-73001), the District buys water from the Metropolitan Water District of Southern California and places it so that the water becomes part of the underground water basin of San Gabriel Valley. The District is paid for the water by the Main San Gabriel Watermaster (“Watermaster”), an entity that was created by court order and is responsible for managing the groundwater resources within the basin.¹

The water is pumped out of the ground by private entities and public agencies, including the City, for their own uses and for sale. The amount of groundwater that may be pumped by any particular entity is determined by the Watermaster. If a private or public entity pumps more than its allotted share during a given year, it will be assessed a charge by the Watermaster to cover the cost of procuring replacement water from the District. The City lies completely within the boundaries of the District, and the District’s main office is located in the City.

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 any significant clash of duties or loyalties in the exercise of official duties. Only one potential significant clash of duties or loyalties is necessary to make offices incompatible. 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. 91 (2001); 84 Ops.Cal.Atty.Gen. 34, 38 (2001); 83 Ops.Cal.Atty.Gen. 153, 154 (2000); 83 Ops.Cal.Atty.Gen. 53, 54 (2000); 83 Ops.Cal.Atty.Gen. 50, 51 (2000).)

¹The District also sells treated water to several customers but is primarily engaged in replenishing the San Gabriel Valley groundwater.

A member of a city council holds a public office for purposes of the incompatible offices doctrine. (82 Ops.Cal.Atty.Gen. 74, 76 (1999); 75 Ops.Cal.Atty.Gen. 10, 13 (1992); 73 Ops.Cal.Atty.Gen. 354, 356 (1990).) A member of the board of directors of a municipal water district also holds a public office for purposes of the doctrine. (85 Ops.Cal.Atty.Gen., *supra*, at p. 61; 80 Ops.Cal.Atty.Gen. 242, 244 (1997).) Since both offices in question are subject to the common law rule, we turn to the issue of whether the offices would be incompatible if held by someone at the same time.

The District has statutory authority to acquire, control, distribute, store, spread, treat, and recycle water (Wat. Code, § 71610), sell water (Wat. Code, §§ 71611, 71614), acquire, construct and operate sewage and storm water facilities (Wat. Code, § 71670), enter contracts with other public entities for the purpose of carrying out any of its powers (Wat. Code, § 71722), impose taxes (Wat. Code, §§ 72090-72102) and exercise the right of eminent domain (Wat. Code, §§ 71693, 71694), among other powers and duties (see Wat. Code, § 71590; *Carlton Santee Corp. v. Padre Dam Mun. Water Dist.* (1981) 120 Cal.App.3d 14, 24). The District may also undertake a water conservation program (Wat. Code, § 71610.5) and restrict the use of District water during any emergency caused by a water shortage (Wat. Code, § 71640).

The City has the statutory authority to acquire water supplies and facilities for use by the City and its inhabitants (Gov. Code, §§ 38730, 38742, subd. (b)) and to do so by contract (Gov. Code, § 38742, subd. (a)), condemnation (Gov. Code, §§ 38730, 39792) or other means (Gov. Code, § 38730). The City may collect water service standby charges whether its water service is actually used or not. (Gov. Code, § 38743.) The City may sell, lease, or otherwise transfer the control or management of its waterworks system to any municipal water district that is engaged in supplying water to the inhabitants of the City if the City lies wholly within the boundaries of such district. (Gov. Code, § 38750.)

In 85 Ops.Cal.Atty.Gen. 60, *supra*, we concluded that a school district trustee could not serve simultaneously as a director of a municipal water district. Even though the school district obtained most of its irrigation water from its own wells, we found that significant clashes of duties and loyalties could arise for someone holding both offices. (*Id.* at p. 62.) We noted that conflicts could arise, for example, when the water district set the wholesale water rate that could be passed on to the school district by the retail water agencies involved and when the water district determined the need for restrictions on water use during times of a water shortage. (*Ibid*; see also 75 Ops.Cal.Atty.Gen.10, *supra* [city council member and water district director incompatible]; 73 Ops.Cal.Atty.Gen. 268 (1990) [school district trustee and county water district director incompatible]; 73 Ops.Cal.Atty.Gen. 183 (1990) [school district trustee and community services water district director incompatible]; Cal.Atty.Gen., Indexed Letter, No. IL 74-183 (Oct. 22, 1974) [city council member and municipal water district director incompatible].)

Here, the District's role as the supplier of groundwater and the City's role in pumping the groundwater for sale to its inhabitants could generate significant clashes of duties and loyalties for a person holding the two offices in question. Although it does not sell water directly to the City, the District sets rates for the sale of its water to the Watermaster. The District's rates are in turn reflected in water charges the Watermaster may assess the City. A rate increase by the District could indirectly affect the City. A District program to encourage water conservation could also affect the City. These are but two examples of instances in which "a person who is both a director of the district and a councilman of the city may find a conflict between the action which is in the best interests of the district and the action which is in the best interests of the city.'" (37 Ops.Cal.Atty.Gen. 21, 22-23 (1961).)

Other conflicts could arise from the exercise of the power of eminent domain by either the City or the District and in the exercise of the authority of the two entities to contract with one another. (75 Ops.Cal.Atty.Gen., *supra*, at p.13; see *Central Basin Municipal Water District v. Fosette* (1965) 235 Cal.App.2d 689, 743.) There is also a potential for conflict in the District's responsibility in monitoring the City's wells for contaminants. The City's water use practices and land use regulatory activities may affect the supply and quality of the groundwater that the District is charged with supplying and conserving. (See *Azusa Land Reclamation Co. v. Main San Gabriel Watermaster* (1997) 52 Cal.App.4th 1165, 1178-1179.) Again, what might be in the best interests of the City may not be in the best interests of the District.

We conclude that the offices of director of the District and council member of the City are incompatible. Accordingly, a member of the City Council of the City may not serve simultaneously on the Board of Directors of the District.
