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OPINION	:	No. 10-1103
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THE HONORABLE ROCKY CHAVEZ, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. May a director of a County Water Authority who represents a member agency of the Authority vote on a contract between the member agency and the Authority?

2. If a director of a County Water Authority who represents a member agency of the Authority may not vote on a contract between the member agency and the Authority, is the director also restricted in other activities related to the contract?

3. May a director of a County Water Authority who represents a member agency of the Authority vote on an action coming before the board of the Authority in which the member agency has a financial interest, if the action is not a vote on a contract between the member agency and the Authority?

CONCLUSIONS

1. If a director of a County Water Authority is an officer of the member agency that he or she represents, then the director may not vote on a contract between the member agency and the Authority. If a director of an Authority is not an officer of the member agency, then the director generally may vote on a contract between the member agency and the Authority.

2. A director of a County Water Authority who represents a member agency of the Authority may participate in actions related to a contract between the member agency and the Authority, other than voting on the contract.

3. A director of a County Water Authority who represents a member agency of the Authority may vote on an action coming before the board of the Authority in which the member agency has a financial interest, if the action is not a vote on a contract between the member agency and the Authority.

ANALYSIS

The County Water Authority Act (Act)[1] authorizes two or more public agencies[2] to establish a County Water Authority (Authority) to provide water for its member agencies. An Authority is empowered to acquire water and water rights, enter into contracts, construct and maintain works and facilities, and incur debt and impose taxes to finance its projects.[3] The powers of an Authority are generally exercised by its board of directors.[4] Each member agency appoints at least one representative to an Authority's board of directors.[5] Each member agency may also appoint one additional representative for each "full 5 percent of the assessed value of property taxable for Authority purposes which is within the public agency."[6] Each director's voting shares are proportional to the

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[1] 1943 Stat. ch. 545. The Act is uncodified. Unspecified section references in the body of this opinion are to sections of the Act, which may be found in its current form in West's Water Code–Appendix, chapter 45.

[2] Water Code App. ch. 45, § 2. This section provides that, for purposes of the Act, the term "public agencies" includes any municipal corporation, district, or other public corporation or agency with power to acquire and distribute water.

[3] Water Code App. ch. 45, § 5(6)-(9), (11).

[4] Water Code App. ch. 45, § 6(a).

[5] Water Code App. ch. 45, § 6(b).

[6] Water Code App. ch. 45, § 6(d).

total financial contribution to the Authority that is attributable to that director's member agency.[7]

The San Diego County Water Authority (SDCWA) is currently the only Authority organized under the Act. SDCWA consists of twenty-four member agencies, including cities, county water districts, irrigation districts, municipal water districts, and the Camp Pendleton Military Reservation. SDCWA provides wholesale water supply service to its member agencies, and those agencies in turn retail the water to residents and businesses in San Diego County.[8]

We are informed that a private company is developing a seawater desalination plant in the City of Carlsbad. In the course of the development process, nine member agencies of SDCWA committed to purchase water from the plant once it is operational. However, in order to make the project financially feasible during its early years of operation, the plant operator and the nine subscribing member agencies requested financial incentives—essentially subsidies—from SDCWA. The nine agencies planned to ask the SDCWA board[9] to approve contracts with each of them for the incentive payments. It was these proposed contracts that led to the original request for this opinion. In the meantime, the Authority has provisionally adopted an alternative scheme that does not entail incentive contracts with the nine member agencies.[10] However, we are told, other situations are likely to arise in which SDCWA is required to act on proposed contracts with individual member agencies.

We are therefore asked (1) whether a County Water Authority board member may vote on a contract between the Authority and the member agency that the board member represents; (2) whether an Authority board member is restricted in activities other than voting with respect to a potential contract between the Authority and the member agency that the board member represents; and (3) whether an Authority board member may vote

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[7] Water Code App. ch. 45, § 6(e).

[8] *See* http://www.sdcwa.org/who-we-are.

[9] Currently, there are thirty-six directors on the board. *See* http://www.sdcwa.org/board. With respect to SDCWA or an Authority in general, we use the terms "board member" and "director" interchangeably herein.

[10] There is extensive history regarding the development of the desalination project and proposed agreements between the plant operator and various public entities. We refer to this history only insofar as it is germane to the legal questions at issue. As of the date of this opinion, the desalination project is unfinished; financing and other aspects of the project may be expected to undergo further changes as the project progresses.

on actions, other than a contract between the Authority and the member agency that the board member represents, that involve the financial interests of the member agency.

To answer these questions, we look closely at relevant provisions of the Act. Section 6(b) provides, in full:

> The board of directors shall consist of at least one representative from each public agency, the area of which is within the authority. The representatives shall be designated and appointed by the chief executive officers of those public agencies, respectively, with the consent and approval of the legislative bodies of the public agencies, respectively. Any member of the governing body of a member agency may be appointed by that member agency to the board of the authority to serve as the agency's representative. A majority of the members of the governing body of an agency may not be appointed by the agency to serve as representatives on the board of the authority, and, for a member agency that is not a water district, only one of the representatives of that agency may be a member of the governing body of the agency. Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the authority's board. As used in this subdivision, "water district" has the same meaning as in subdivision (a) of Section 10.[11]

Section 6(e) provides, in relevant part:

> Each member of the board of directors shall be entitled to vote on all actions coming before the board and shall be entitled to cast one vote for each five million dollars ($5,000,000), or major fractional part thereof, of the total financial contribution paid to the authority that is attributable to the public agency of which the member is a representative provided that no public agency shall have votes that exceed the number of the total votes of all the other public agencies.[12]

[11] Water Code App. ch. 45, § 6(b).

[12] Water Code App. ch. 45, 6(e). The rest of this subdivision sets forth certain voting rules and specifies how many affirmative votes, depending on the circumstances, are required to carry an action coming before the board.

In construing section 6, as with any statute, our primary purpose is "to ascertain the intent of the Legislature so as to effectuate the purpose of the law."[13] In determining the Legislature's intent, we look first to the words of the statute, giving the language its usual, ordinary import.[14] The statute must be construed "in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible."[15] When necessary or helpful, the legislative history of the statute and the circumstances of its enactment may be considered.[16]

1. Voting on Contracts between Member Agency and Authority

As a preliminary matter, but one necessary to our discussion, we briefly review the doctrine of incompatible offices. Under this doctrine, as codified in Government Code section 1099, public offices are deemed incompatible when (1) either office may exercise a supervisory, auditing, or removal power over the other; (2) there is a possibility of a significant clash of duties or loyalties between the offices; or (3) public policy considerations make it improper for one person to hold both offices.[17] The doctrine of incompatible offices applies only when both positions are "public offices" as opposed to positions of employment.[18] We have previously determined that a director of a County Water Authority holds a public office for purposes of the doctrine,[19] as do members of

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[13] *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386 (1987).

[14] *Id.* at 1386-1387.

[15] *Id.* at 1387.

[16] *Id.*

[17] Govt. Code § 1099(a)(1)-(3). Government Code section 1099 was enacted by 2005 Stat. ch. 254, § 1 (Sen. 274). In an uncodified section of the legislation, the Legislature declared that the enactment of section 1099 did not "expand or contract the common law rule prohibiting an individual from holding incompatible public offices," and that the interpretation of the statute "shall be guided by judicial and administrative precedent concerning incompatible public offices developed under the common law." 2005 Stat. ch. 254, § 2.

[18] Govt. Code § 1099(a), (c); *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 639-640 (1940). Whether a particular position is an office or one of employment depends not upon its formal designation, but rather upon its powers, duties, and functions. *See Rapsey*, 16 Cal. 2d at 639-640; 76 Ops.Cal.Atty.Gen. 244, 246, 247 (1993); 68 Ops.Cal.Atty.Gen. 337, 340 (1985).

[19] 90 Ops.Cal.Atty.Gen. 24, 26 (2007).

the governing bodies of a variety of public agencies that are authorized to organize and join an Authority.[20] The consequence of holding incompatible offices is that the person is deemed to have forfeited the first office upon acceding to the second.[21]

One of the main purposes of an Authority is to provide its member agencies with adequate supplies of water.[22] Ordinarily, when one public entity furnishes a commodity or service to another, having the same public officer represent the interests of both seller and buyer presents precisely the type of inherent conflict of interest that the doctrine of incompatible offices is designed to prevent.[23]

However, it has long been recognized that the Legislature may abrogate or modify the prohibition against holding incompatible offices whenever it chooses.[24] Pursuant to Government Code section 1099(a), the proscription does not apply where the "simultaneous holding of the particular offices is compelled or expressly authorized by law."[25] In section 6(b) of the Act, the Legislature has expressly authorized a member

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[20] *See e.g.* 85 Ops.Cal.Atty.Gen. 60, 61 (2002) (municipal water district); 82 Ops.Cal.Atty.Gen. 68, 69 (1999) (county water district); 76 Ops.Cal.Atty.Gen. 81, 83 (1993) (special act water district, irrigation district); 75 Ops.Cal.Atty.Gen. 10, 13 (1992) (California water district); 73 Ops.Cal.Atty.Gen. 183, 185 (1990) (community services district water agency).

[21] Govt. Code § 1099(b); *Rapsey*, 16 Cal. 2d at 644.

[22] Water Code App. ch. 45, § 5(11); 90 Ops.Cal.Atty.Gen. at 24.

[23] *See e.g.* 87 Ops.Cal.Atty.Gen. 153, 155 (2004) (where water district furnishes water to school district, person sitting on governing boards of both districts has divided loyalties); 76 Ops.Cal.Atty.Gen. at 85 (where special act water agency and irrigation district are each empowered to sell water to third parties and to each other, one person may not simultaneously serve as director of both entities); 75 Ops.Cal.Atty.Gen. 112, 116 (1992) (where community services district sells water and sanitation services to school district, person who is both trustee of school district and director of community services district occupies two incompatible offices).

[24] *See McClain v. Co. of Alameda*, 209 Cal. App. 2d 73, 79 (1962) ("There is nothing to prevent the Legislature . . . from allowing, and even demanding, that an officer act in a dual capacity."); *Am. Canyon Fire Protec. Dist. v. Co. of Napa*, 141 Cal. App. 3d 100, 104 (1983) (same); 63 Ops.Cal.Atty.Gen. 748, 750 (1980) ("The Legislature may . . . and often does abrogate the common law doctrine when it considers it necessary or convenient to permit officers to hold incompatible offices.").

[25] "Compelled" dual office holding may be either express or implied in a statutory scheme. *See e.g. McClain*, 209 Cal. App. 2d at 79; *Am. Canyon*, 141 Cal. App. 3d at 104.

agency to appoint one of its officers "to the board of the authority to serve as the agency's representative."[26] As we have previously explained, in the context of a statutory scheme similar to that of the Act:

> The avoidance of 'divided loyalties,' the main purpose of the incompatible offices rule, simply has no application in the situation where one public agency is a member of another public agency and is required to appoint a 'representative' to assert its interests on the latter agency's board of directors. Application of the rule in these circumstances would remove the person from the first office, potentially losing his or her knowledge of the interests that are to be represented.[27]

And, as we stated specifically in reference to this Act, in a different opinion:

> As the representative of a constituent member agency, each Authority director may not only have a loyalty to his or her appointing agency but may even promote the interests of the appointing agency. The Legislature has weighed the advantages and disadvantages of having Authority directors with such conflicting loyalties and has determined that the public

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[26] Water Code App. ch. 45, § 6(b). As added to section 6(b) by amendment in 1973 (*see* 1973 Stat. ch. 754, § 1 (eff. Sept. 25, 1973)), the authorization of dual office holding originally provided that "[a]ny member of the governing body of a *water district* member agency may be appointed by the agency to the board of the authority to serve as the agency's representative. . . ." (Emphasis added.) A further amendment to section 6(b) in 2004 deleted the phrase "water district," and made other conforming changes to the section, thus making the Legislature's abrogation of the doctrine of incompatible offices applicable to any member agency of an Authority. 2004 Stat. ch. 60, § 1 (Assembly 2243). In response to concerns that larger member cities might come to dominate an Authority board, the 2004 legislation also limited the number of non-water district officers who could be appointed to an Authority board to one per member agency. *See* Assembly Comm. on Water, Park, and Wildlife, Analysis of Assembly 2243 (as amended Apr. 16, 2004), 2003-2004 Reg. Sess. 2-3 (Apr. 27, 2004); Sen. Loc. Govt. Comm., Analysis of Assembly 2243 (as amended Apr. 16, 2004), 2003-2004 Reg. Sess. 2-3 (June 2, 2004).

[27] 90 Ops.Cal.Atty.Gen. 12, 15 (2007); *see also* 90 Ops.Cal.Atty.Gen. at 28 ("Neither we nor the courts have applied the incompatible offices rule to situations where the directors of one public agency are authorized by the Legislature to be the representatives of constituent member public agencies. In such circumstances, it has been found that the Legislature has abrogated the prohibition.")

> would be best served by allowing the interests of the appointing agencies to be represented on the Authority's board of directors. After all, the Authority is created and exists to benefit its constituent member agencies.[28]

Thus, in section 6(b), the Legislature has anticipated and sanctioned the possibility that an officer of a member agency will concurrently serve as an Authority director.

However, the abrogation of the doctrine of incompatible offices for purposes of the Act is subject to certain limitations. Section 6(b) imposes limits on the number of officers of any one member agency who may serve as Authority directors. In addition, the Legislature has directed that, "Any director holding dual offices shall not vote upon any contract between a county water authority and the member public agency he or she represents on the authority's board." This provision was added to section 6(b) as part of the same 1973 amendment to section 6(b) that added the Legislature's express permission for officers of member agencies to concurrently serve as directors of an Authority.[29] As we have previously observed, this prohibition serves as a check on an Authority director's loyalties to his or her own appointing agency. It thus appears to us that, in enacting the voting restriction, the Legislature intended to preserve the purposes of the incompatible offices doctrine in connection with the specified contracts.

Although the legislative history of the 1973 amendment to section 6(b) is scant, we believe that it supports our interpretation. The enrolled bill report from the Department of Water Resources states that the bill enacting the amendment to section 6(b) "permits any member of the governing body of a member agency to be appointed as the agency representative," but also that the bill "is aimed at preventing a county water authority from becoming the alter ego of any of its constituent public agencies."[30] Of course, the likelihood that each Authority director will have loyalties to his or her own

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[28] 90 Ops.Cal.Atty.Gen. at 29.

[29] *See* 1973 Stat. ch. 754, § 1 (eff. Sept. 25, 1973). Section 3, an uncodified section of the legislation, acknowledged that SDCWA already had members of governing bodies of water districts on its board, and stated that the amendment was sought to confirm that such appointments were permissible.

[30] Cal. Nat. Resources Agency, Dept. of Water Resources, Enrolled Bill Rpt. on Sen. 1056, 1973-1974 Reg. Sess. 1 (Sept. 20, 1973). Although a bill report prepared by an executive agency does not carry as much weight as does one prepared by a legislative body or committee, it may nevertheless be instructive in ascertaining legislative intent. *See Elsner v. Uveges*, 34 Cal. 4th 915, 934 n. 19 (2004) ("[W]e have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent.").

appointing agency—a circumstance which is the product of the organizational structure of an Authority—serves as the major check on any one director's or member agency's ability to dominate the board.[31] Section 6(e) also ensures that no one member agency can outvote all the others combined.

With respect to Question 1, we believe that the meaning of the penultimate sentence of section 6(b) is plain, and we conclude that an Authority director who is also an officer of the member agency that person represents on the Authority board is prohibited from voting on any contract between the represented member agency and the Authority. Because the voting restriction applies to an Authority director holding "dual offices," section 6(b) does not prohibit a non-officer representative of a member agency from voting on contracts between that representative's agency and an Authority.[32]

We note that section 6(e) presents an apparent impediment to our conclusion that section 6(b) restricts the voting rights of officer-representatives of member agencies, as described above. Section 6(e) states, in relevant part: "Each member of the board of directors [of an Authority] shall be entitled to vote on all actions coming before the

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[31] *See* 90 Ops.Cal.Atty.Gen. at 29.

[32] The Act plainly contemplates that non-officer representatives of member agencies may serve as Authority directors. For example, section 6(b) specifically provides that only one representative of a constituent agency that is not a water district may be a member of that agency's governing board. It may seem inconsistent, then, that the prohibition against voting on a contract between a constituent agency and an Authority does not also extend to Authority directors who are not officers of the agencies they represent. The question of why the voting prohibition of section 6(b) applies only to dual office holders is not discussed in the legislative history of the Act. We are mindful, however, that the incompatible offices doctrine, which is both partially abrogated and partially preserved by section 6(b), itself applies only to a person holding dual offices, and not to a person who holds an office with one public agency and is the employee of another. Consistent with the doctrine, it could be argued that allowing a member of the governing board of a constituent agency to vote on a contract between the agency and an Authority would pose a greater threat to the independence of the Authority because the governing board member ordinarily has far more control over the affairs of the member agency than does a non-officer. In any event, it is for the Legislature to determine whether the policies underlying section 6(b) would be better served by extending the voting restriction to Authority directors who do not hold dual offices. *See Wells Fargo Bank v. Super. Ct.*, 53 Cal. 3d 1082, 1099 (1991) (our function is not to judge wisdom of statutes, nor insert what Legislature has omitted) (citations omitted); 81 Ops.Cal.Atty.Gen. 397, 403 (1998).

board . . . ." This subdivision has contained the same or substantially similar language since the Act was first enacted in 1943.[33] Because the term "actions coming before the board" could be read to include votes on contracts, section 6(e) might be construed to conflict with section 6(b)'s bar of certain Authority directors from voting on certain contracts. In interpreting statutes, however, we must attempt to harmonize statutory sections relating to the same subject.[34] Here, we advert to the familiar principle that when a specific and a general provision are inconsistent, the specific provision controls the more general provision.[35] Quoting one of its own precedents, our Supreme Court has stated:

> It is well settled . . . that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.[36]

This principle may apply whether the specific provision was passed before or after the general enactment.[37]

Section 6(b) applies specifically to votes on contracts between the Authority and a member agency.[38] Section 6(e) deals more generally with votes on "actions" on a variety

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[33] *See* 1943 Stat. ch. 545, § 6. At that time, and also at the time of the 1973 amendment to section 6(b), this provision stated that each representative on an Authority board "shall be entitled to vote on all questions, orders, resolutions, and ordinances coming before the board . . . ." The word "actions" was substituted for "questions, orders, resolutions, and ordinances" by legislation passed in 1997. *See* Stat. 1997 ch. 368, § 1 (Assembly 692).

[34] *Dyna-Med*, 43 Cal. 3d at 1387.

[35] *See* Code Civ. Proc. § 1859 ("[i]n the construction of a statute . . . when a general and particular provision are inconsistent, the latter is paramount to the former"); *People v. Super. Ct. (Jimenez)*, 28 Cal. 4th 798, 808 (2002); *Woods v. Young*, 53 Cal. 3d 315, 325 (1991); 87 Ops.Cal.Atty.Gen. 148, 152 (2004).

[36] *S.F. Taxpayers Assn. v. Bd. of Supervisors*, 2 Cal. 4th 571, 577 (1992) (quoting *Rose v. State of Cal.*, 19 Cal. 2d 713, 723-724 (1942); *accord Miller v. Super. Ct.*, 21 Cal. 4th 883, 895 (1999).

[37] *Miller*, 21 Cal. 4th at 895.

[38] Water Code App. ch. 45, § 6(b).

of matters before the Authority, including but not limited to contracts.[39] When it comes to the specific matter of votes on contracts between the Authority and a member agency, therefore, the language of section 6(b) prevails over that of section 6(e). Thus we need not alter the conclusions we have reached above.

Returning, then, to the subject of the incentive contracts that have been contemplated between each of nine member agencies and SDCWA, and taking them as our example, we reach the following conclusions: If the member agency's representative on the SDCWA board is an officer of the member agency, that representative may not vote on a proposed incentive contract between that member agency and SDCWA, but may vote on the other proposed incentive contracts between other member agencies and SDCWA.[40] If the member agency's representative on the SDCWA board is not an officer of the member agency, that representative may vote on an incentive contract between that member agency and SDCWA, as well as on the other incentive contracts between other member agencies and SDCWA. These conclusions may be generalized to other contracts between individual member agencies and SDCWA.

2. Activities Related to Contracts between Member Agency and Authority

Even among those who agree that the prohibition in section 6(b) must be given effect, the scope of that prohibition is contested. Some have suggested that section 6(b) should be broadly construed to prohibit officer-representatives of member agencies from participating in virtually all proceedings regarding a proposed contract between that representative's agency and an Authority. Under this interpretation, which we shall call the "broad construction" of the statute, it would be impermissible for the affected representative to receive confidential information available to the other directors that is relevant to the contract; to discuss matters related to the contract with the Authority's staff; to participate in deliberations and policy decisions related to the contract; to make a motion related to the contract; or to engage in any other activities that might be perceived as an attempt to influence other board members with respect to the contract.[41] Others

[39] Water Code App. ch. 45, § 6(e).

[40] Of course, if a single contract were drafted between SDCWA and multiple member agencies, no officer-representative of a member agency that was a party to the contract could vote on the contract.

[41] According to those advancing a broad construction of section 6(b), a representative of a member agency would be authorized to receive non-confidential information, to attend open meetings on the contract, and to state his or her position on the contract at open meetings.

disagree with such a broad construction of section 6(b). After careful consideration, we conclude that this broad construction is not warranted in the context of the Act.

Proponents of a broad construction argue that a variety of rules against conflicts of interest advance a common policy goal of preventing public officials from being in the position of "serving two masters." To that end, they argue, elements of the Political Reform Act and of Government Code section 1090 rules should also inhere in the voting prohibition contained in section 6(b), and that authorities interpreting those other schemes should also guide our interpretation of section 6(b). The Political Reform Act of 1974 (PRA)[42] provides that no public official shall "make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."[43] The PRA applies to all government decisions, whether contractual or non-contractual in nature. When a disqualifying conflict of interest exists, the PRA requires that the disqualified official abstain from participating in every aspect of the decision-making process.[44]

Government Code section 1090 essentially codifies the common law rule against "self-dealing" with respect to contracts.[45] The section provides, in relevant part, that public officers or employees "shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." For purposes of the statute, a contract is "made" by a public official if the official has the opportunity to, and does, influence execution of the contract to promote his or her own financial interests.[46] Correspondingly, "to make" a contract has been broadly defined to include the various activities leading up to execution of the contract, including preliminary discussions, negotiations, compromises, reasoning, planning, and the "give and take which goes beforehand in the making of the decision to commit oneself."[47]

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[42] Govt. Code §§ 81000-91014.

[43] Govt. Code § 87100. Government Code section 87103 provides that a "financial interest" exists "if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on any of certain other financial interests, as defined.

[44] 88 Ops.Cal.Atty.Gen. 32, 33 (2005); 86 Ops.Cal.Atty.Gen. 142, 143 (2003).

[45] *Stigall v. City of Taft*, 58 Cal. 2d 565, 571 (1962); *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1230 (2000); 88 Ops.Cal.Atty.Gen at 35.

[46] *People v. Wong*, 186 Cal. App. 4th 1433, 1450 (2010).

[47] *Stigall*, 58 Cal. 2d at 569; *see also Millbrae Assn. for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968); 89 Ops.Cal.Atty.Gen. 49, 51 (2006).

When the officer with the proscribed financial interest is a member of the governing body of a public entity, the prohibition of Government Code section 1090 extends to the entire body.[48] In Government Code sections 1091 and 1091.5, the Legislature has ameliorated some of the effects of Government Code section 1090 by classifying certain financial interests as "remote interests" or "noninterests," which do not preclude the making of a contract.

Proponents of a broad construction of section 6(b) argue that the section should be read as requiring a member agency's officer-representative to abstain from participating in matters related to a contract between the member agency and an Authority, analogous to the broad abstention required under the PRA. Similarly, it is suggested that "voting" on a contract for purposes of section 6(b) should be interpreted not in a narrow, technical sense, but rather in the same way as "making" a contract has been interpreted for purposes of Government Code section 1090. Under such an interpretation, an officer-representative of a member agency would be required to recuse himself or herself from discussions, negotiations, and other activities leading to a decision on a contract between the member agency and an Authority.[49]

Following principles of construction laid down by our Supreme Court, our first step in interpreting section 6(b) is to examine the relevant words of the section, giving them their usual, ordinary meaning,[50] which may often be obtained simply by referring to a dictionary.[51] In doing so, we note that—unlike Government Code section 1090—section 6(b) does not proscribe participation in the making of a contract in general,[52] but rather prohibits a "vote upon" a specific kind of contract.[53] With respect to a member of a governing body, a "vote" is "a usually formal expression of opinion or will in response

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[48] *Fraser-Yamor Agency, Inc. v. Co. of Del Norte*, 68 Cal. App. 3d 201, 211-212 (1977); 89 Ops.Cal.Atty.Gen. at 50.

[49] The proponents of a broad construction of section 6(b) do not, however, suggest that the voting prohibition of section 6(b) should extend to all board members of an Authority, as the Government Code section 1090 rules would suggest. Indeed, such an extension would make it impossible for an Authority to contract with a member agency, and would make meaningless the language in section 6(b) that expressly contemplates such contracts.

[50] *See Dyna-Med*, 43 Cal. 3d at 1386.

[51] *Smith v. Selma Community Hosp.*, 188 Cal. App. 4th 1, 30 (2010).

[52] Govt. Code § 1090 (public officers or employees "shall not be financially interested in any contract made by them in their official capacity . . .").

[53] Water Code App. ch. 45, § 6(b).

to a proposed decision," especially "one given as an indication of approval or disapproval of a proposal, motion, or candidate for office,"[54] and "to vote" is the act of manifesting such an expression.[55] Although a vote may be informed by the processes of gathering and receiving information, discussing, negotiating, and debating, the definitions above indicate that, under most circumstances, voting is a specific act separable from such processes.

This is not to say, of course, that the term "vote" may never be construed more broadly than the ordinary dictionary definition suggests. Indeed, just as the terms "make" and "made" are interpreted broadly in connection with Government Code section 1090, the term "vote," as that term is used in the "remote interest" provisions of Government Code section 1091, has also been construed broadly. Government Code section 1091(b) specifies which financial interests are deemed remote interests, and Government Code section 1091(a) provides:

> An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member … if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Although this language does not, on its face, express an expansive meaning for the word "vote," we have consistently concluded that the structure of the Government Code section 1090 scheme as a whole calls for a generous construction in that context. For example, we have previously characterized the requirements of Government Code section 1091 as "as meaning that the member must not only disclose his interest in the proposed contract and refrain from attempting to influence other members, but that the member should completely abstain from any participation in the matter."[56] Our Supreme Court has similarly characterized compliance with Government Code section 1091 as requiring

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[54] *Webster's Third New International Dictionary of the English Language (Unabridged)* 2565 (Gove, ed., Merriam-Webster Inc. 2002).

[55] *See id.*

[56] 67 Ops.Cal.Atty.Gen. 369, 377 n. 8. (1984); *see also* 83 Ops.Cal.Atty.Gen. 246, 248 (2000).

"abstaining from voting on the affected contract *or influencing other board members in any way*."[57]

Thus, the question we confront here is whether the term "vote," as used in section 6(b), should be interpreted in accordance with its ordinary dictionary definition, or whether it should be interpreted to encompass other forms of participation and expressions of influence. For the reasons discussed below, we believe that in the context of the Act, the ordinary dictionary definition of the term should prevail.

The voting prohibition of section 6(b) is intended to mitigate a potential conflict arising from two *public* positions or interests, whereas the Political Reform Act and the statutory scheme embodied in Government Code section 1090 and its related provisions involve conflicts arising between an individual's public position and *personal* financial interests.[58] The PRA and Government Code section 1090 attempt to ensure that opportunities for personal profit do not improperly sway an officer's or employee's judgment in the performance of public duties.[59] In general, however, courts and this office have rejected efforts to engraft the rules of private-public conflict doctrine onto public-public conflict doctrines. As we have previously observed, "the PRA was intended to proscribe conflicts arising between public duties and private or personal financial interests, and not conflicts which might arise between two public interests an individual might have."[60] With respect to Government Code section 1090, the court of appeal has stated: "The purpose of this section is to prohibit self-dealing, *not representation of the interests of others*."[61]

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[57] *Lexin v. Super. Ct.*, 47 Cal. 4th 1050, 1073 (2010) (emphasis added); *see also People v. Honig*, 48 Cal. App. 4th 289, 317 (1996).

[58] *See* 55 Ops.Cal.Atty.Gen 36, 39 (1972) (referring to incompatible offices situation where no personal conflict of interest is involved as "public-public" situation, and distinguishing that from "private-public" situation, which does involve personal conflict of interest); *see also Am. Canyon*, 141 Cal. App. 3d at 103 n. 2 (discussing same).

[59] *See Honig*, 48 Cal. App. 4th at 333 (discussing Govt. Code § 1090); *Fraser-Yamor Agency*, 68 Cal. App. 3d at 212-215 (same); 67 Ops.Cal.Atty.Gen. at 376 (same); Govt. Code § 81001(b) (goal of PRA's conflict of interest provisions is to ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests").

[60] 59 Ops.Cal.Atty.Gen. 604, 612 n. 15 (1976).

[61] *BreakZone Billiards*, 81 Cal. App. 4th at 1230 (emphasis added); *see id.* at 1231 (for Govt. Code § 1090 to apply, "there must be some financial or pecuniary benefit to the governmental official which could sway his or her judgment").

In another case, *American Canyon Fire Protection District v. County of Napa*, the court of appeal was required to consider whether the Napa County Board of Supervisors should have been disqualified from allocating a portion of a special fund to the Napa County Fire Department, which was a special district governed by the Board of Supervisors.[62] Despite agreeing that "the public policy considerations which underlie both the incompatible offices and financial interest strains of conflict of interest law are similar,"[63] the court rejected appellants' attempt to merge the two strains:

> Appellants argue that the financial interest cases have application to the facts of this case because the board's agency, the Napa County Fire Department, received financial benefits. We find that argument superficial and attenuated, for there is no evidence that board members even indirectly received any personal financial benefit by the distribution of funds to its agency.[64]

Here too, there is no indication that an officer-representative of a member agency of SDCWA would personally profit from the approval of an incentive contract between the member agency and SDCWA. Following the authorities above, we decline to conclude that the rules against personal financial conflicts oblige us to adopt a broader construction of section 6(b).[65]

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[62] *Am. Canyon*, 141 Cal. App. 3d at 102-103. In *American Canyon*, the board of supervisors had the responsibility of distributing special fund monies both to special districts it governed and to districts it did not govern. As the court explained, "Any harm to the public in this case flows from the possibility that board members, in their dual capacities as distributors of the augmentation funds and governing board of a special district receiving such funds, might not give the public undivided allegiance in the performance of their duties in either capacity." *Id*. at 103. The court acknowledged that "[t]he more typical conflict arises where two incompatible public offices are held by one person." *Id*. at 105 n. 4.

[63] *Am. Canyon*, 141 Cal. App. 3d at 103.

[64] *Id*.; *see also id*. at 104-106.

[65] Of course, Authority board members are not exempt from any otherwise-applicable conflict-of-interest rules, including the PRA and Government Code section 1090. Those schemes are still fully applicable, according to their terms, to Authority directors. For example, section 1090 would still apply to votes that are permissible under section 6(b) but in which the officer is personally financially interested. How the various rules might affect specific contracts between an Authority and a member agency is beyond the scope of this opinion.

A comparison of the language of section 6(b) with other statutes addressing "public-public" conflict of interest also fails to support a broad construction of section 6(b). A 1978 opinion by this office that addressed a factual situation similar to the one presented here is instructive. In that case, the Legislature had specifically abrogated the incompatible offices rule with respect to membership on Local Agency Formation Commissions (LAFCOs).[66] We were asked to interpret former Government Code section 54784, relating to LAFCOs, which then provided in relevant part:

> Except in the case of counties with not more than two cities, when the commission is considering a proposal for the annexation of territory to a city of which one of the members of the commission is an officer, the member is disqualified from participating in the proceedings of the commission with respect to the proposal and the alternate member shall serve and vote in his place for such purpose.

We took this provision to mean that, despite the abrogation of the incompatible offices doctrine with regard to LAFCOs, the Legislature had determined that it was still contrary to public policy to permit a city officer either to participate in or to vote on an annexation proposal involving his or her own city, and thus had restored "some vestige of the doctrine of incompatibility of office with respect to conflict of duties and loyalties which arise in annexation proposals."[67] We concluded that, except under limited circumstances, a disqualified LAFCO member could not address the LAFCO on a proposal to annex territory to the member's city, because it was the Legislature's intent to preclude the disqualified member from influencing the outcome of the matter.[68] We based our conclusion squarely on the requirement in the statute "that the city officer not only not vote, *but also not participate in the proceedings*.[69] As we stated:

> The plain meaning of section 54784 is that a disqualified city officer shall neither *participate* in the proceeding nor vote upon an annexation

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[66] 61 Ops.Cal.Atty.Gen. 396, 398 (1978).

[67] 61 Ops.Cal.Atty.Gen. at 398.

[68] *Id*. at 399.

[69] *Id*. (emphasis added). In that opinion, we analogized former Government Code section 54784 to the PRA and to Government Code section 1090, construing all three schemes as requiring that a disqualified officer not attempt to influence other officers on the matter under consideration. *Id*. However, we did so in the context of interpreting a statute that included language similar to that of the PRA and Government Code section 1090, a circumstance not present in our current inquiry.

> proceeding involving his own city. The most appropriate definition we discovered for the word "participate" is "to take part in something (as an enterprise or activity) usu. in common with others . . . ." Certainly, a city officer who is disqualified and yet addresses LAFCO on an annexation proposal proceeding would be "participating" therein, that is, taking part in the proceeding. Therefore, the plain meaning rule as applied to section 54784 would appear to prohibit his addressing LAFCO subsequent to disqualification.[70]

In the statute at issue in our earlier opinion, the term "participate" was expressly used to refer to something broader than and distinguishable from a "vote." Such broad language is absent from section 6(b). We have found numerous other statutes in which the Legislature has expressly differentiated participation (or specified activities) from voting in the context of potential "public-public" conflicts of interest.[71] We believe it would be a mistake to equate the word "vote" in section 6(b) with other types of participation, or with participation in general.[72] Had the Legislature wished to give the

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[70] *Id*. at 399 (emphasis in original). We note that in a later opinion, we further interpreted former Government Code section 54784 in conjunction with another statute that permitted a LAFCO to adopt its own rules with respect to disqualification of members from participating in the review of a proposal. *See* 63 Ops.Cal.Atty.Gen. at 748, 752 (1980).

[71] *Cf.* Educ. Code § 94123 (service on governing board of California Educational Facilities Authority by trustee, director, officer, or employee of participating institution is not conflict of interest if board member "abstains from discussion, deliberation, action, and vote by the authority . . . with respect to the participating private college, public college, or public university for which that member is a trustee, director, officer, or employee"); Govt. Code § 7.8 (describing powers of director of State Allocation Board as "including the right to be counted in a quorum, the right to participate in the proceedings of the board and to vote on any and all matters"); Govt. Code § 67665 (board member of Fort Ord Reuse Authority "who is also a member of another public agency, a county supervisor, or a city council person, and who has in that designated capacity voted or acted upon a particular matter, may vote or otherwise act upon or participate in the discussion of that matter as a member of the board"); Pub. Util. Code § 30335 (general manager of So. Cal. Rapid Transit Dist. "shall attend meetings of the board and be entitled to participate in the deliberations of the board, but shall not have a vote as to any matter before the board").

[72] We do not assert that the Legislature lacks the authority to ascribe a broad meaning to the term "vote" in a "public-public" context, but only that it has not typically done so.

penultimate sentence of sentence 6(b) a broader meaning, it could have used different language to make that intention clear.

Moreover, our more narrow construction of section 6(b) is consistent with the statutory purpose of enabling a member agency's representative on an Authority board to assert and promote the interests of the member agency, while also ensuring that no one member agency can fully control the Authority board. We have already noted that an Authority's organizational structure itself militates against domination by any one member agency, and that section 6(e) contains another safeguard. Given the absence of evidence to the contrary, we must presume that the Legislature regarded the voting prohibition embodied in the penultimate sentence of 6(b) as a sufficient additional check. Accordingly, we conclude that the voting prohibition in section 6(b) does not also restrict the affected director in activities other than voting with respect to a contract between the member agency represented by that director and an Authority.

3. Voting on Other Actions in which Member Agency Has Financial Interest

In view of our answers to the first two questions presented, our response to the third question is straightforward. As mentioned earlier, it is likely that matters related to the seawater desalination plant, and implicating the financial interests of various or all member agencies, will eventually come before the SDCWA board. Indeed, as a practical matter, the member agencies of an Authority are all financially interested in virtually every decision of an Authority's board of directors. The voting restriction in section 6(b) is the only exception we find in the Act to the general rule embodied in section 6(e) that each Authority director is entitled to vote on all actions coming before the board. Thus, we conclude that a director of an Authority who represents a member agency of the Authority may vote on an action coming before the board of the Authority in which the member agency has a financial interest, so long as the action is not a vote on a contract between the member agency and the Authority. (The actual share of votes that may be cast by a director is subject to the formula set forth in section 6(e).)

In sum, the prohibition on voting in section 6(b) applies to officers of member agencies who also represent those agencies on an Authority board, and the prohibition is not negated by section 6(e). The prohibition does not extend to actions related to the specified contracts, other than voting. In addition, the Act expressly permits each Authority director to vote on matters, other than a contract as described in section 6(b), in which the member agency represented by the director has a financial interest.

Accordingly, we conclude as follows:

1. If a director of a County Water Authority is an officer of the member agency that he or she represents, then the director may not vote on a contract between the member agency and the Authority. If a director of an Authority is not an officer of the member agency, then the director generally may vote on a contract between the member agency and the Authority.

2. A director of a County Water Authority who represents a member agency of the Authority may participate in actions related to a contract between the member agency and the Authority, other than voting on the contract.

3. A director of a County Water Authority who represents a member agency of the Authority may vote on an action coming before the board of the Authority in which the member agency has a financial interest, if the action is not a vote on a contract between the member agency and the Authority.

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