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OPINION	:	No. 11-302
of	:	December 19, 2012
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ED HOFFMAN, as proposed relator, has requested leave to sue in quo warranto upon the following question:

Is Linda Sanders Rubin ineligible to serve as director of the Pioneers Memorial Healthcare District while she is employed as the Director of Dietary Services at the El Centro Regional Medical Center?

CONCLUSION

Whether Linda Sanders Rubin is ineligible to serve as director of the Pioneers Memorial Healthcare District while she is employed as the Director of Dietary Services at the El Centro Regional Medical Center presents substantial questions of fact and law warranting judicial resolution; accordingly, the application for leave to sue in quo warranto is GRANTED.

ANALYSIS

Introduction

The Local Health Care District Law[1] authorizes health care districts to establish, maintain, and operate health facilities within their territorial limits.[2] A local health care district is governed by a board of directors typically consisting of five members, who are elected to four-year terms.[3] In 2010, proposed defendant Linda Sanders Rubin was elected to serve as a director on the governing board of Pioneers Memorial Healthcare District ("PMHD"), which was created and organized under the District Law. PMHD operates Pioneers Memorial Hospital, a general acute care hospital, as well as a variety of other health care facilities in the Imperial Valley region of southeastern California. Rubin began serving a four-year term on the PMHD board of directors in December 2010.

Rubin is also employed as the Director of Dietary Services at El Centro Regional Medical Center ("ECRMC"), and has held this job for more than ten years. ECRMC is a nonprofit, acute care municipal hospital owned by the City of El Centro, and, like PMHD, provides health care services in the Imperial Valley.[4]

Proposed relator Ed Hoffman argues that Rubin may not lawfully hold the positions of PMHD board director and Director of Dietary Services at ECRMC at the same time. Hoffman bases this argument on Health and Safety Code section 32110, which prohibits concurrent service as a director of a health care district and as a "policymaking management employee" of any other hospital serving the same area as that served by the district. Hoffman alleges that Rubin is a policymaking management employee at ECRMC, and requests permission, pursuant to Code of Civil Procedure section 803, to file an action in quo warranto to remove Rubin from the office of PMHD director.

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[1] Health & Saf. Code §§ 32000-32492. In this opinion, we use the terms "hospital district" and "health care district" interchangeably.

[2] Health & Saf. Code § 32121(j), (m); 88 Ops.Cal.Atty.Gen. 213, 213 (2005).

[3] Health & Saf. Code § 32100. The number of board members may be increased under specified conditions.

[4] http://www.ecrmc.org.

Nature of and Criteria for Quo Warranto

Code of Civil Procedure section 803 provides in pertinent part: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state." An action filed pursuant to this statute is known as a quo warranto action, and is the proper legal means for testing title to public office.[5]

We have previously summarized the nature of a "public office" as "a position in government (1) which is created or authorized by the Constitution or some law; (2) the tenure of which is continuing and permanent, not occasional or temporary; (3) in which the incumbent performs a public function for the public benefit and exercises some of the sovereign powers of the state."[6] The position of director of a health care district is created by statute, and is one in which incumbents succeed one another.[7] The board of directors exercises sovereign powers,[8] and must "make and enforce all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of health care facilities under their management and all property belonging thereto . . . ."[9] Consequently, we conclude that director of a health care district is a public office for purposes of a quo warranto action.[10]

In determining whether to grant an application to sue in quo warranto, we do not resolve the matter on its merits but rather consider two questions: (1) Does the application present a substantial issue of fact or law appropriate for judicial resolution; and (2) if so, would granting the application serve the overall public interest?[11] For the reasons given below, we answer both questions in the affirmative.

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[5] *E.g. Nicolopulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1225-1226 (2001); 93 Ops.Cal.Atty.Gen. 144, 145 (2010).

[6] 68 Ops.Cal.Atty.Gen. 337, 342 (1985); *see also Schaefer v. Super. Ct.*, 113 Cal. App. 2d 428, 432 (1952).

[7] Health & Saf. Code § 32100.

[8] Health & Saf. Code § 32121 (control property, manage officers and employees, engage in joint ventures, etc.).

[9] Health & Saf. Code § 32125(a).

[10] *See also Eldridge v. Sierra View Loc. Hosp. Dist.*, 224 Cal. App. 3d 311, 319 (1990) (characterizing position of hospital district director as public office for purposes of incompatible offices doctrine).

[11] *E.g.* 93 Ops.Cal.Atty.Gen. at 145; 89 Ops.Cal.Atty.Gen. 55, 56 (2006).

Health and Safety Code section 32110(d)

This quo warranto application is predicated on Health and Safety Code section 32110.[12] Section 32110 "is a conflict of interest statute making certain persons ineligible to hold office as a director of a hospital district."[13] Relevant here is subdivision (d), which states:

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[12] In full, Health and Safety Code section 32110 states:

> (a) Except as provided in subdivision (d), no person who is a director, policymaking management employee, or medical staff officer of a hospital owned or operated by a district shall do either of the following:
>
> (1) Possess any ownership interest in any other hospital serving the same area as that served by the district hospital of which the person is a director, policymaking management employee, or medical staff officer.
>
> (2) Be a director, policymaking management employee, or medical staff officer of any hospital serving the same area as the area served by the district hospital.
>
> (b) For purposes of this section, a hospital shall be considered to serve the same area as a district hospital when more than 5 percent of the hospital's patient admissions are residents of the district.
>
> (c) For purposes of this section, the possession of an ownership interest, including stocks, bonds, or other securities by the spouse or minor children or any person shall be deemed to be the possession or interest of the person.
>
> (d) No person shall serve concurrently as a director or policymaking management employee of a district and as a director or policymaking management employee of any other hospital serving the same area as the district, unless the boards of directors of the district and the hospital have determined that the situation will further joint planning, efficient delivery of health care services, and the best interest of the areas served by their respective hospitals, or unless the district and the hospital are affiliated under common ownership, lease, or any combination thereof.
>
> (e) Any candidate who elects to run for the office of member of the board of directors of a district, and who owns stock in, or who works for any health care facility that does not serve the same area served by the district in which the office is sought, shall disclose on the ballot his or her occupation and place of employment.

[13] *Franzblau v. Monardo*, 108 Cal. App. 3d 522, 525 (1980).

> No person shall serve concurrently as a director or policymaking management employee of a district and as a director or policymaking management employee of any other hospital serving the same area as the district, unless the boards of directors of the district and the hospital have determined that the situation will further joint planning, efficient delivery of health care services, and the best interest of the areas served by their respective hospitals, or unless the district and the hospital are affiliated under common ownership, lease, or any combination thereof.

According to section 32110, a hospital is considered to "serve the same area as a district" if more than five percent of the non-district hospital's patient admissions are residents of the district.[14] The application before us makes credible representations that this criterion is met here. Therefore, whether Health and Safety Code section 32110(d) prohibits Rubin from concurrently serving as a director of PMHD and as the Director of Dietary Services at ECRMC depends on whether Rubin functions as a "policymaking management employee" in her job at ECRMC.

Hoffman argues that legal requirements and her job description establish conclusively that Rubin is a policymaking management employee. Rubin counters that neither her actual authority to make policy, nor the authority ascribed to her in her job description, rises to the level contemplated by section 32110(d). There is no special definition in the District Law or in the Health and Safety Code of the term "policymaking management employee," and the term has not yet been judicially construed.[15] Before we further explore the parameters of the term "policymaking management employee," however, we examine the nature of Rubin's job.

The Position of Director of Dietary Services

According to the ECRMC job description, the Director of Dietary Services "[p]lans, organizes, and directs various functions of the dietary department, including staff development, budgeting, purchasing, food production, and distribution of food." Among the job's enumerated duties are maintaining applicable policies, procedures, and objectives; developing or revising departmental policies when necessary; directing dietary planning and supervising dieticians; and advising superiors as necessary. Specifically, number 2 on the list of duties and responsibilities states: "Establishes policy.

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[14] Health & Saf. Code § 32110(b).

[15] *Franzblau v. Monardo*, 108 Cal. App. 3d 522 (1980), the only published case to discuss section 32110, pre-dates the introduction of the term "policymaking management employee" into the statute.

Plans and directs the activities of the Dietary Department for patients, employees, visitors and special functions." The job requires that the holder be a Registered Dietician; Rubin is one.

The ECRMC job description for the Director of Dietary Services is supplemented by the ECRMC Policy and Procedure Manual. For example, the manual states that the Director of Dietary Services "has authority and responsibility for the overall coordination of the therapeutic and administrative aspects of the department, and is responsible for the quality, safety, and appropriateness of the dietetic service being monitored and evaluated."[16]

On the ECRMC Organizational Chart (dated January 2011), the position of Director of Dietary Services is listed as subordinate to the Assistant Administrator of Clinical Ancillary Services, who in turn is one or two levels below ECRMC's Chief Executive Officer.[17] Rubin supervises approximately 25 employees, including dieticians, cooks, and other cafeteria staff.[18]

Is the Director of Dietary Services a Policy-Making Employee?

As Director of Dietary Services, Rubin is required to file a statement of economic interests under the conflict of interest code applicable to ECRMC,[19] which the El Centro city council adopted pursuant the Political Reform Act.[20] Hoffman asserts that this fact indicates that Rubin is the type of employee that Health and Safety Code section 32110(d) is intended to cover. We find this fact, by itself, to be inconclusive. Rubin is required to make the prescribed financial disclosures as an employee whose position at ECRMC may "involve the making or participation in the making of decisions which may

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[16] El Centro Regional Medical Center, *Policy and Procedure Manual*, *Dietary*, vol. 1, no. 1087, approved eff. June 24, 2009.

[17] ECRMC Org. Chart dated Jan. 2011. Nine officers and employees report directly to the Chief Executive Officer. A total of thirty-five positions report to one of those nine; the Director of Dietary Services is one of them.

[18] According to the ECRMC website, ECRMC's staff consists of more than 150 physicians and 900 employees.

[19] *See* El Centro City Council Res. No. 91-43, as amended by Res. Nos. 06-12 and 08-127 (Dec. 17, 2008).

[20] Govt. Code §§ 81000 et seq. Government Code section 87300 mandates that every agency adopt and promulgate a Conflict of Interest Code pursuant to the provisions of the Political Reform Act.

foreseeably have a material effect on" a financial interest.[21] Having the authority to make or participate in the making of such decisions does not necessarily mean that the person is a either a policymaker or a management employee within the organization; employees at many different levels within an organization may be designated in a conflict of interest code adopted in conformity with the Political Reform Act.

Hoffman also cites a number of legal requirements applicable to ECRMC as evidence that Rubin is a "policymaking management employee" within the meaning of Health and Safety Code section 32110(d). For example, in order to maintain the license of a hospital such as that operated by ECRMC, "[p]olicies and procedures shall be developed and maintained in consultation with representatives of the medical staff, nursing staff, and administration to govern the provision of dietetic services."[22] Further, as a condition of ECRMC's participation in federal Medicare and Medicaid programs, ECRMC must have an appropriately-qualified full-time employee who directs the food and dietetic service and is "responsible for the daily management of the dietary services."[23] In addition, both state and federal law require that ECRMC have a diet manual, approved by a dietician and the medical staff, to be used as the basis for diet orders for patients.[24] Hoffman maintains that, pursuant to these legal requirements, Rubin's job requires her to perform policymaking and managerial functions.

Rubin concedes that her job description includes some policymaking responsibilities, but argues that, as a practical matter, she has substantially less managerial and policymaking authority than the job description suggests. For example, while Rubin conducts performance evaluations of her staff, she does not have the authority to hire, fire, or set compensation or benefits for her staff. Further, while she is responsible for day-to-day operations of ECRMC's food service department, she does not have authority to choose vendors, to purchase supplies, or to alter the hours of operation for the hospital's cafeteria. Rubin states that she may only make recommendations about Dietary Department operational policy to her direct supervisor, the Assistant Administrator of Clinical Ancillary Services.

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[21] Govt. Code § 87302(a). A financial interest for purposes of the Political Reform Act is generally a personal economic interest of the person or a member of his or her immediate family (*see* Govt. Code § 87103), but may also be one that affects a business entity in which the person is employed or holds any position of management. Govt. Code § 87103(d).

[22] Cal. Code Regs. tit. 22, § 70273(b).

[23] 42 C.F.R. § 482.28(a)(1)(ii).

[24] Cal. Code Regs. tit. 22, § 70273(d); 42 C.F.R. § 482.28(b).

As to the diet manual, Rubin and her staff review and recommend a commercially-produced manual to the Infection Control Committee and to the Pharmacy and Therapeutics Committee,[25] with Rubin having little input into the content. With respect to the Department's Policy and Procedure Manual, Rubin contends that most of the policy content is prescribed by law and the Joint Commission.[26] Both manuals are to be approved and adopted by the ECRMC Board of Trustees.

Rubin thus characterizes herself as a middle-level manager who implements and recommends policy, rather than someone who makes it. As Rubin notes, virtually every employee in a complex endeavor is required to exercise some level of discretion. She contends that the actual level of discretion she is accorded in her position as Director of Dietary Services does not qualify her as a "policymaking management employee" so as to preclude her from holding office as a hospital district director.

Taking Rubin's representations together with ECRMC's written descriptions of her position, it appears to us that Rubin's policymaking and management authority are modest. This conclusion begs the question, however, of whether the nature and scope of Rubin's authority suffices to qualify her as a "policymaking management employee."

"Policymaking Management Employee"

In attempting to determine the scope and meaning of the term "policymaking management employee" as it is used in Health and Safety Code section 32110(d), we employ well-established principles of statutory interpretation. As our Supreme Court has instructed:

> [O]ur first task is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of 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

[25] Rubin is a voting member of the Pharmacy and Therapeutics Committee.

[26] The Joint Commission is a national organization that inspects and accredits health care organizations and programs, often as a condition of licensure and the receipt of Medicaid reimbursement. In California, the Joint Commission operates in conjunction with state authorities.

> harmonized, both internally and with each other, to the extent possible. [Citations omitted.] . . . Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citations omitted.][27]

Consistent with the rules of construction, we first look to the usual and ordinary meaning of the words "policymaking" and "management," which may be obtained by referring to a dictionary.[28] "Management," with respect to an organization, means "the conducting or supervising of something (as a business)," especially "the executive function of planning, organizing, coordinating, directing, controlling, and supervising any industrial or business project or activity with responsibility for results."[29] A "policy" is a "course or method of action selected (as by a government, institution, group, or individual) from among alternatives in light of given conditions to guide and usu[ually] determine present and future decisions" or "a projected program consisting of desired objectives and the means to achieve them" (in the sense of the formulation of policy).[30] To "make" has multiple possible meanings, including "cause to happen," "enact," and "formulate."[31]

Here we confront an ambiguity. Hoffman emphasizes the "formulate" connotation of the word "make," and argues that Rubin's recommendations ultimately make policy for ECRMC even if her recommendations must be approved by others before being adopted. Rubin, on the other hand, emphasizes the "enact" and "cause to happen" connotations, arguing that she lacks significant authority to formalize her recommendations as official policies of the ECRMC. Because the term "policymaking management employee" is thus susceptible of different meanings, we find that an examination of the language alone is not sufficient to answer our questions. Therefore we turn to the legislative history of Health and Safety Code section 32110(d).

As originally enacted in 1959, section 32110 prohibited concurrent service as a health care district officer and as a director or other officer of any private hospital serving

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[27] *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987) (citations omitted).

[28] *Smith v. Selma Comm. Hosp.*, 188 Cal. App. 4th 1, 30 (2010) (citations omitted).

[29] *Webster's Third New International Dictionary of the English Language (Unabridged)* 1372 (Philip Babcock Gove, ed. in chief, Merriam-Webster, Inc. 2002).

[30] *Id*. at 1754.

[31] *Id.* at 1363.

the same area served by the district.[32] In 1970, a sentence was added to the statute providing that no person could hold any district office, or "any management position or office whatsoever in any district hospital" if the person was a director or officer, or occupied "any management position or office whatsoever, on the administrative staff" of any private hospital serving the same area as that served by the district.[33]

A 1986 amendment expanded the application of section 32110(d) to any hospital—not just a private hospital—serving the same area as that served by the district.[34] The amendment was a response to a situation in which the controller of one district hospital was elected to the board of directors of a competing district hospital in another district. The district hospital that employed the controller objected to the second hospital having access to its sensitive financial information, and the amendment was sponsored by the Association of California Hospital Districts to prevent the recurrence of similar conflicts of interest.[35]

The same 1986 amendment also introduced the phrase "policymaking management employee" into the statute, and deleted the phrase "person . . . who occupies any management position . . . whatsoever, on the administrative staff" that was contained in the prior version of the statute.[36] The legislative history of the 1986 amendment does not clearly indicate the reason for this change. Generally, however, a material change in the language of a statute indicates a change in its legal effect.[37] We construe the change

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[32] 1959 Stat. ch. 1602, § 1 (Sen. 1005). As originally enacted, section 32110 also prohibited a person from simultaneously possessing certain property or financial interests in a private hospital and holding a district office. This prohibition has undergone amendment but has continued to exist in the statute in some form. In the current version of section 32110, a prohibition against possessing an ownership interest in any hospital serving the same area as that served by a district hospital is set forth in subdivisions (a)(1) and (c).

[33] 1970 Stat. ch. 623, § 9 (Assembly 831).

[34] *See* 1986 Stat. ch. 514, § 1 (Sen. 945).

[35] *See* Assembly Third Reading of Sen. 945 (as amended May 13, 1986), 1985-1986 Reg. Sess. 2 (May 27, 1986); Sen. Rules Comm., Sen. Floor Analysis of Sen. 945 (as amended June 24, 1986), 1985-1986 Reg. Sess. 2 (July 1, 1986).

[36] *See* 1986 Stat. ch. 514, § 1 (Sen. 945).

[37] *Davis v. Harris*, 61 Cal. App. 4th 507, 511 (1998); *see also Moore v. State Bd. of Control*, 112 Cal. App. 4th 371, 383 (2003) (presumption is that amendment of statute is intended to change all the particulars wherein there is a material change in the language of the act); *Twin Lock, Inc. v. Sup. Ct. in and for L.A. Co.*, 52 Cal. 2d 754, 761 (1959)

in phraseology from "any management position . . . whatsoever" to "policymaking management employee" to have the effect of narrowing the class of employees to whom the prohibition of concurrent service applies. The question remains, however, as to whether Rubin is within the class of employees subject to the current prohibition.[38]

Rubin proposes that the term "policymaking management employee" should be interpreted as the functional equivalent of "managing agent," a term that appears in Civil Code section 3294(b). This provision limits the circumstances under which punitive damages may be awarded against a corporation for wrongdoing attributable to a "managing agent" of the corporation.[39] In *White v. Ultramar*, the California Supreme Court concluded that, for the purpose of determining organizational liability for punitive damages, a managing agent is an employee who exercises "substantial discretionary authority over significant aspects of a corporation's business"[40] and "substantial independent authority and judgment over decisions that ultimately determine corporate

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(stating that "an amendment making a material change in the phraseology of a statute is ordinarily viewed as showing an intention on the part of the Legislature to change the meaning of the provision"); *accord Comm. of Seven Thousand v. Sup. Ct.*, 45 Cal. 3d 491, 507 (1988). Moreover, even when the Legislature states that a statutory amendment is a restatement of existing law, that declaration is not binding or conclusive with regard to construction of the statute. *McClung v. Empl. Dev. Dept.*, 34 Cal. 4th 467, 473 (2003).

[38] Subdivision (d) of Health and Safety Code section 32110 took its current form in 1994, when it was amended to apply to a health care district, as distinguished from a district hospital. *See* 1994 Stat. ch. 696, § 5 (Sen. 1169). The prohibitions of concurrent service as director of a district hospital and as a policymaking management employee of a non-district hospital, or as a policymaking management employee of a non-district hospital and director of a district hospital, are preserved in subdivision (a) of the current statute.

[39] Civil Code § 3294(b) states in full:

> An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation."

[40] *White v. Ultramar*, 21 Cal. 4th 563, 577 (1999).

policy."[41] The Court reasoned that a "managing agent" for this purpose must be "more than a mere supervisory employee,"[42] even one who has the ability to hire and fire other employees.[43] Rather, as the court of appeal stated in a later case, managing agents must belong to an organization's "leadership group," along with officers and directors.[44] Rubin argues that she lacks "substantial discretionary authority over significant aspects" of ECRMC's activities, and is therefore neither a "managing agent" under Civil Code section 3294(b) nor a "policymaking management employee" under section 32110(d).

We must be cautious about transposing the meaning of "managing agent" to the phrasing "policymaking management employee." As a general rule of construction, we do "presume the Legislature intended that we accord the same meaning to similar phrases."[45] But the rule does not always apply. As the court of appeal has explained:

> Normally, a term having a specific meaning in one area of the law should be construed similarly elsewhere. But the rules of statutory construction permit different interpretations of the same or similar terms when the terms appear in different statutory schemes, each with a different legislative policy. Where such policies reveal a distinct legislative intent behind each respective statutory scheme, absolute symmetry in the construction of a term is not required.[46]

We believe that a court could reasonably determine that the subject matter and purpose of Civil Code section 3294(b) are too remote from those of section 32110(d) for the *White* court's construction of "managing agent" to be adopted for the present purposes.

The purpose of section 32110(d) is to prevent conflicts in the duties of loyalty that a person holding two positions in two competing hospitals owes to those institutions.[47]

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[41] *Id*. at 573; *see also Roby v. McKesson Corp.*, 47 Cal. 4th 686, 714-715 (2009).

[42] *Id*.

[43] *Id.* at 577.

[44] *Cruz v. HomeBase*, 83 Cal. App. 4th 160, 168 (2000).

[45] *Scottsdale Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 130 Cal. App. 4th 890, 899 (2005).

[46] *Britts v. Super. Ct.*, 145 Cal. App. 4th 1112, 1127 (2006).

[47] In this, Health and Safety Code section 32110(d) is similar in purpose to the incompatible offices doctrine, which prohibits concurrent office holding when, among other things, "there is a possibility of a significant clash of duties or loyalties between the offices." Govt. Code § 1099(a)(2). As the name of the incompatible offices doctrine

Because the prohibition of concurrent service does not apply to all employees, we infer that it is intended to strike a balance: that is, to prevent policymaking employees from improperly furthering the interests of one entity to the detriment of the other, without unduly curtailing other employees' opportunities for public service. In some instances, it will be relatively easy to determine whether an employee has access to sufficiently sensitive information, or has sufficient authority, to trigger the prophylactic rule. We consider Rubin's case to be a harder one. It is obvious that, as a PMHD director, she has a high level of access to information and policy authority in the district. Much less clear, however, is the extent to which she has access to information or policy authority within ECRMC.[48]

Issues of Fact and Law

Although we have employed many of the tools of construction at our disposal, we believe that this matter is properly within the province of a court. Again, our role is not to decide the question of Rubin's eligibility to hold the office of PMHD Director. Rather, "the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy."[49] We believe that there remain substantial questions of fact and law regarding the meaning of the term "policymaking management employee" for purposes of section Health and Safety Code section 32110(d), and whether Rubin is such an employee at ECRMC. We deem these issues to be appropriate for judicial resolution.

The Public Interest

As a general rule, we view the need for judicial resolution of a substantial question of fact or law as a sufficient "public purpose" to warrant the granting of leave to sue in quo warranto, absent countervailing circumstances such as pending litigation of the issues

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suggests, that doctrine applies only to public officers, whereas Health and Safety Code section 32110(d) applies to directors and to certain employees. However, certain employees, who both exercise some of the sovereign powers of the state and have significant policy-making authority, are deemed to be public officers for purposes of the doctrine. *See e.g.* 68 Ops.Cal.Atty.Gen. at 346 (concluding that General Manager/District Administrator of a hospital district, who functioned as the district's chief executive, held a public office for purposes of the incompatible offices doctrine).

[48] We know that, at the least, Rubin is familiar with the budget of the Department of Dietary Services.

[49] 12 Ops.Cal.Atty.Gen. 340, 341 (1949).

or shortness of the time remaining in the term of office.[50] While these particular circumstances are not present in this case,[51] there are other countervailing considerations that affect our assessment of the public interest. For one thing, we are mindful of the general principle that ambiguities concerning the right to hold public office should be resolved in favor of eligibility. As the court stated in *Helena Rubenstein International v. Younger*:

> We consider disqualification from public office a significant civil disability. In California, the right to hold public office has long been recognized as a valuable right of citizenship. . . . In *Carter v. Com. on Qualifications etc.*, 14 Cal.2d 179, 182 . . . [1939], the court pointed out: '[T]he right to hold public office, either by election or appointment, is one of the valuable rights of citizenship. . . . The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to the office.'[52]

We also recognize that requiring an officeholder to respond to a judicial proceeding could have the effect of discouraging participation by citizens in seeking and holding public office, which would not be in the public interest.[53] On the other hand, the public has an interest in the integrity of public office and in ensuring that those persons seeking or holding public office are doing so in compliance with the laws and regulations governing eligibility for office.[54] In addition, the public has a strong interest in ensuring

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[50] 89 Ops.Cal.Atty.Gen. at 61; 86 Ops.Cal.Atty.Gen. 82, 85 (2003); 84 Ops.Cal.Atty.Gen. 135, 139-140 (2001).

[51] We note that prior to the submission of this request for leave to sue in quo warranto, Hoffman attempted to contest Rubin's election by filing suit against Rubin and others in the Superior Court of Imperial County. The court granted Rubin's motion for non-suit on the ground that a petition for quo warranto was Hoffman's exclusive remedy for challenging Rubin's eligibility to serve on the PMHD board while also employed as Director of Dietary Services at ECRMC.

[52] *Helena Rubenstein Intl. v. Younger*, 71 Cal. App. 3d 406, 418 (1977); *see also People ex rel. Found. for Taxpayer and Consumer Rights v. Duque*, 105 Cal. App. 4th 259, 266 (2003) (statute effecting forfeiture of office must be strictly construed); 88 Ops.Cal.Atty.Gen. 25, 30 (2005); 79 Ops.Cal.Atty.Gen. 243, 247-248 (1996).

[53] 86 Ops.Cal.Atty.Gen. at 85; 79 Ops.Cal.Atty.Gen. at 247; 75 Ops.Cal.Atty.Gen. 26, 29 (1992); 74 Ops.Cal.Atty.Gen. 26, 29 (1991); 72 Ops.Cal.Atty.Gen. 15, 24 (1989).

[54] 86 Ops.Cal.Atty.Gen. at 85; 81 Ops.Cal.Atty.Gen. 94, 97-98 (1998).

that all public officials have undivided loyalties when performing their public duties.[55] Here, granting the quo warranto application will not necessarily lead to Rubin's removal from office, but not granting the application may result in the continued holding of the office of PMHD director by someone not eligible to hold that office because of possible conflicts of interest. Indeed, the issue whether a person with a job like Rubin's may also serve as a hospital district director is important to hospitals and hospital districts throughout the state.[56]

Therefore, on balance, we believe that the public interest will best be served if we authorize the proposed quo warranto action so that a court may determine Rubin's eligibility to serve as PMHD director, given her employment at ECRMC. Accordingly, the application for leave to sue in quo warranto is GRANTED.[57]

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[55] As we have stated in regard to the doctrine of incompatible offices: "We are guided by the long-established principle that one person may not serve two masters. The duties of loyalty and fidelity to the public interest—the soul of public service—cannot survive in an atmosphere in which the holder of multiple offices must disregard the interests of one constituency in order to serve the interests of another." 93 Ops.Cal.Atty.Gen. at 109. *See also* 86 Ops.Cal.Atty.Gen. 205, 209 (2003); 75 Ops.Cal.Atty.Gen. 112, 116 (1992).

[56] *See* 73 Ops.Cal.Atty.Gen. 191, 212 (1990).

[57] We note that all official actions taken while Rubin holds the office of director of PMHD remain valid and binding. *See In re Redev. Plan for Bunker Hill*, 61 Cal. 2d 21, 42 (1964); *People ex rel. Kerr v. Co. of Orange*, 106 Cal. App. 4th 914, 921 (2003); 76 Ops.Cal.Atty.Gen. 157, 167 (1993).