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OPINION	:	No. 12-1204
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THE HONORABLE CONNIE CONWAY, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. After the passage of Assembly Bill No. 1X 26—which, among other things, dissolved redevelopment agencies in California and designated "successor agencies" to wind down their affairs—are the conflict-of-interest provisions set forth in Health and Safety Code sections 33130 and 33130.5 still in effect and applicable to members of the governing bodies of successor agencies?

2. If so:

(a) Does Health and Safety Code section 33130 prohibit a member of a city council and the governing body of the city's successor agency from acquiring real property in the redevelopment project area, even if the member discloses his or her interests in the property and disqualifies himself or herself from participating in decisions concerning the project area?

(b) If Health and Safety Code section 33130 generally prohibits the council member described above from acquiring real property in the redevelopment project area, are there nonetheless circumstances under which the member may acquire real property in the project area?

(c) May the council member described above resign from the successor agency without resigning from the city council, and would such a resignation cure any past violations of Health and Safety Code section 33130?

CONCLUSIONS

1. After the passage of Assembly Bill No. 1X 26, the conflict-of-interest provisions set forth in Health and Safety Code sections 33130 and 33130.5 are still in effect and applicable to members of the governing bodies of successor agencies.[1]

2. In accord with Health and Safety Code sections 33130 and 33130.5:

(a) Unless a statutory exception applies, Health and Safety Code section 33130 prohibits a member of a city council and the governing body of the city's successor agency from acquiring real property in the redevelopment project area, even if he or she discloses the interest and disqualifies himself or herself from participating in decisions concerning the project area.

(b) The council member described above may acquire real property in the project area pursuant to the exceptions set forth in Health and Safety Code sections 33130 and 33130.5, subject to any restrictions and limitations construed to be included in those statutes.

(c) The council member described above may resign from the successor agency without resigning from the city council, but such a resignation would not cure any past violations of Health and Safety Code section 33130.

ANALYSIS

The statutory scheme that came to be known as the Community Redevelopment Law ("CRL") was enacted in 1945 to promote the redevelopment of blighted areas of

[1] The conclusions reached in this opinion are based on the law as it stands on the opinion's date of publication. Any material changes to the relevant statutes, whether accomplished by legislative amendment or otherwise, would require further analysis.

communities,[2] and established "in each community a public body . . . known as the redevelopment agency of the community."[3] A city's mayor, or the chair of the county board of supervisors, with the approval of the relevant legislative body, was empowered to appoint the members of a redevelopment agency board.[4] Alternatively, the legislative body of the particular community could act as the redevelopment agency.[5]

Under the CRL, agencies were given broad powers to identify blighted areas and propose a plan for their improvement. Redevelopment agencies were granted the power to acquire property through eminent domain, as well as the power to issue bonds to finance their projects. Redevelopment agencies were not authorized to levy taxes,[6] but rather funded their projects primarily through a method of financing, known as "tax increment financing."[7] Under this method, those public entities entitled to receive property tax revenue in a redevelopment project area were allocated a portion based on the assessed value of the property prior to the effective date of the redevelopment plan. Any tax revenue in excess of that amount—i.e., the tax "increment" created by the increased value of project area property—went to the redevelopment agency, on the theory that the increase was the result of redevelopment.[8]

In 2011, in response to a statewide fiscal crisis, the Legislature passed Assembly Bill 1X 26, which barred existing redevelopment agencies from engaging in new

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[2] Health & Saf. Code, §§ 33000-33855 (Community Redevelopment Law); see Stats. 1945, ch. 1326, § 1 (Community Redevelopment Act); *City of Cerritos v. Cerritos Taxpayers Assn.* (2010) 183 Cal.App.4th 1417, 1424 (redevelopment laws intended to help local governments revitalize blighted communities).

[3] Health & Saf. Code, § 33100; see also Health & Saf. Code, §§ 33101-33103 (ordinance of local legislative body required to activate the agency).

[4] Health & Saf. Code, §§ 33003, 33007, 33110.

[5] Health & Saf. Code, § 33200.

[6] *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106.

[7] See, e.g., *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 866; *City of El Monte v. Com. on State Mandates* (2000) 83 Cal.App.4th 266, 269; 93 Ops.Cal.Atty.Gen. 90, 91 (2010); 81 Ops.Cal.Atty.Gen. 281, 283 (1998). The legal authority for tax increment financing for projects undertaken pursuant to the CRL was provided by California Constitution, article XVI, section 16, and Health and Safety Code section 33670.

[8] *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 246-247; 93 Ops.Cal.Atty.Gen., *supra*, at p. 91.

business, directed that existing agencies be dissolved, and provided for the creation of "successor agencies" charged with winding down the affairs of the dissolved redevelopment agencies.[9] Redevelopment agencies were dissolved as of February 1, 2012,[10] and their assets and obligations were transferred to successor agencies[11]—usually the governing body of the city or county that created the redevelopment agency.[12]

In June 2012, the Legislature enacted Assembly Bill 1484,[13] which gave more specificity to the responsibilities of successor agencies and the procedures required for winding down redevelopment activities.[14] The questions here explore whether and how conflict-of-interest rules that applied to the former redevelopment agencies now apply to successor agencies.

Question 1

We first consider whether the conflict-of-interest provisions set forth in Health and Safety Code sections 33130 and 33130.5—both enacted as part of the CRL—are still in effect and applicable to members of the governing bodies of successor agencies. Subdivision (a) of section 33130 (section 33130(a)) establishes a general prohibition against redevelopment officials acquiring real property located within the redevelopment project area.[15] Subdivisions (b) and (c) of section 33130, as well as section 33130.5, set

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[9] Assem. Bill No. 26 (2011-2012 1st Ex. Sess.), enacted as Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 5 (eff. June 29, 2011).

[10] Health & Saf. Code, §§ 34170, subd. (a), 34172, subd. (a).

[11] Health & Saf. Code, §§ 34172, subd. (c), 34174, subd. (a), 34175.

[12] See Health & Saf. Code, § 34173.

[13] Assem. Bill No. 1484 (2011-2012 Reg. Sess.), enacted as Stats. 2012, ch. 26 (eff. June 27, 2012).

[14] See Sen. Rules. Com., Floor Analysis of Assem. Bill No. 1484 (2011-2012 Reg. Sess.) as amended June 25, 2012, pp. 2-10 (analysis dated June 27, 2012); Legis. Counsel's Dig., Assem. Bill No. 1484 (2011-2012 Reg. Sess.) chaptered June 27, 2012.

[15] Health & Saf. Code, § 33130, subd (a), states:

> No agency or community officer or employee who in the course of his or her duties is required to participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in property included within a project area, that

forth exceptions to the general prohibition.[16] The purpose of these provisions is to

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officer or employee shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered on the minutes of the agency and the legislative body. Failure to make the disclosure required by this subdivision constitutes misconduct in office.

[16] The full text of these provisions are as follows:

Health & Saf. Code, § 33130, subd. (b):

> Subdivision (a) does not prohibit any agency or community officer or employee from acquiring an interest in property within the project area for the purpose of participating as an owner or reentering into business pursuant to this part if that officer or employee has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area.

Health & Saf. Code, § 33130, subd. (c):

> A rental agreement or lease of property which meets all of the following conditions is not an interest in property for purposes of subdivision (a): (1) The rental or lease agreement contains terms that are substantially equivalent to the terms of a rental or lease agreement available to any member of the general public for comparable property in the project area[;] (2) The rental or lease agreement includes a provision which prohibits any subletting, sublease, or other assignment at a rate in excess of the rate in the original rental or lease agreement[;] (3) The property which is subject to the rental or lease agreement is used in the pursuit of the principal business, occupation, or profession of the officer or employee[;] (4) The agency or community officer or employee who obtains the rental or lease agreement immediately makes a written disclosure of that fact to the agency and the legislative body.

Health & Saf. Code, § 33130.5:

> Notwithstanding any other provisions of law, an officer, employee, consultant, or agent of the agency or community, for personal residential use, may purchase or lease property within a project area after the agency has certified that the improvements to be constructed or the work to be done on the property to be purchased or leased have been completed, or has certified that no improvements need to be constructed or that no work needs to be done on the property. Any such officer or employee who purchases or leases such property shall immediately make a written disclosure to the

prevent conflicts of interest on the part of redevelopment agency members.[17]

Do these statutes have any continuing vitality in light of the dissolution of redevelopment agencies and the winding down of their affairs? In this connection, it has been suggested that, because a successor agency is not the same as a redevelopment agency, the anti-conflict rules set forth in sections 33130 and 33130.5 do not apply to successor agency board members.[18] We reject that suggestion.

First, Health and Safety Code section 34173, subdivision (b), which was added by AB 1X 26, provides:

> Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.[19]

Neither section 33130 nor section 33130.5 was repealed, restricted, or revised by AB 1X 26 (or by any other legislation). The successor agency therefore steps into the shoes of the former redevelopment agency for purposes of these statutes.

Nonetheless, it has also been argued that, even if these statutes nominally apply to successor agency board members, the general prohibition established in section 33130(a) no longer has practical effect, because it applies only to an officer or employee who is required to "participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area,"[20] and successor agency board members are largely barred from engaging in such activities. Given that the purpose of successor agencies is

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> agency and the legislative body, which disclosure shall be entered on the minutes of the agency. Any such officer or employee shall thereafter be disqualified from voting on any matters directly affecting such a purchase, lease, or residency. Failure to so disclose constitutes misconduct in office.

[17] See 61 Ops.Cal.Atty.Gen. 243, 246-247 (1978).

[18] For purposes of Health and Safety Code sections 33130 and 33130.5, "agency" is a redevelopment agency created pursuant to the CRL, or a legislative body that has elected to exercise the powers granted to a redevelopment agency. (Health & Saf. Code, § 33003.)

[19] Health & Saf. Code, § 34173, subd. (b).

[20] Health & Saf. Code, § 33130, subd. (a).

to "[e]xpeditiously wind down the affairs of the redevelopment agency,"[21] can it fairly be said that a member of a successor agency participates in the formulation or approval of redevelopment plans? The answer is yes.

Here it is important to be clear about what "redevelopment" means. Health and Safety Code section 33020 provides, in relevant part:

> "Redevelopment" means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them . . . .[22]

While it is true that, under AB 1X 26, successor agencies may generally not undertake *new* obligations or redevelopment projects, the legislation plainly contemplates that redevelopment activities will continue under the management of successor agencies for some period of time. For example, successor agencies are specifically authorized to begin new redevelopment work in compliance with enforceable obligations that existed prior to June 28, 2011.[23] As for redevelopment work already in progress, successor agencies are required to "oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties."[24]

Further, the enactment of AB 1484 added provisions to the AB 1X 26 scheme that, under certain circumstances, authorize a successor agency to formulate or approve plans for a project area.[25] Health and Safety Code section 34191.4 also provides that, where a

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[21] Health & Saf. Code, § 34177, subd. (h).

[22] Health & Saf. Code, § 33020; *see also* Health & Saf. Code, § 33021. Under the CRL, a "survey area" is an area selected for study to determine if one or more redevelopment projects in the area are feasible. (Health & Saf. Code, §§ 33310, 33312.) A "project area" consists of all or part of any survey area that is selected for redevelopment. (Health & Saf. Code, §§ 33320.1, 33322.)

[23] Health & Saf. Code, § 34177.3, subd. (a).

[24] Health & Saf. Code, § 34177, subd. (i). Health and Safety Code section 34177, subdivision (c), also provides that the successor agency must "[p]erform obligations required pursuant to any enforceable obligation."

[25] A successor agency that meets certain requirements will be issued a "finding of

successor agency has been issued a "finding of completion" from the Department of Finance, "[b]ond proceeds derived from bonds issued on or before December 31, 2010, shall be used for the purposes for which the bonds were sold," and that, "[n]otwithstanding Section 34177.3 or any other conflicting provision of law, bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants."[26] All of these provisions contemplate that members of successor agencies may still be required to participate in the formulation or approval of "redevelopment" plans, and therefore such members come within the purview of 33130(a).

Because Health and Safety Code sections 33130 and 33130.5 have not been repealed or made inoperative, and because successor agencies may still engage in conduct that is governed by those statutes, we conclude that both statutes remain in effect and continue to apply to members of the governing bodies of successor agencies.[27]

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completion" by the Department of Finance. (Health & Saf. Code, §§ 34179.5-34179.7.) The issuance of a finding of completion suspends requirements for the disposition of real property assets of the former redevelopment agency. (Health & Saf. Code, § 34191.3; see also Health & Saf. Code, § 34177, subd. (e).) Instead, the successor agency may retain and manage most of the properties, and the agency must prepare a long-range property management plan that addresses their disposition and use. (Health & Saf. Code, § 34191.5, subd. (b).) In devising the plan, the successor agency must determine whether each property should be retained for governmental use; retained for future development; sold; or used to fulfill an enforceable obligation. (Health & Saf. Code, § 34191.5, subd. (c)(2).)

[26] Health & Saf. Code, § 34191.4, subds. (c)(1)-(c)(2)(A).

[27] Although the amount of redevelopment activity may vary widely from agency to agency now that such activity is winding down, potential violations of section 33130(a) "must be determined from the perspective that conflict of interest statutes are interpreted broadly to *avoid the possibility* of divided loyalty or bias on the part of public officials in executing their responsibilities." (61 Ops.Cal.Atty.Gen., *supra*, at p. 246 (emphasis added); see *People v. Honig* (1996) 48 Cal.App.4th 289, 324-325.) Any ambiguities regarding the applicability of such statutes are, therefore, likely to be resolved in favor of their applicability. (See *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207 ("Statutes prohibiting such 'conflict of interest' by a public officer are strictly enforced."); *People v. Honig*, *supra*, 48 Cal.App.4th at pp. 324-325 (conflicts statute will be construed against one who places himself in the ambivalent position at which the statute is aimed).)

Question 2(a)

Having determined that sections 33130 and 33130.5 apply to members of successor agencies, the next question is whether a member of a city council and the governing body of the city's successor agency may lawfully acquire property within the redevelopment project area (despite the prohibition set forth in section 33130(a)) by disclosing his or her interest in the property and by disqualifying himself or herself from decisions concerning the project area. We conclude that such an acquisition is not lawful, notwithstanding the member's disclosure of his or her interest in the subject property and his or her self-disqualification from decisions concerning the project area.

Section 33130(a) expressly states that officials *shall not* acquire any interest in any property included within the community's project area. "It is a well established rule of statutory construction that the word 'shall' connotes mandatory action and 'may' connotes discretionary action."[28] Indeed, Health and Safety Code section 16 provides that "'[s]hall' is mandatory and 'may' is permissive" in construing the Code.[29] Hence, the prohibition in section 33130(a) has effect unless an express exception applies.[30]

The second sentence of section 33130(a) requires an official to disclose any financial interest he or she possesses in any property included within a redevelopment

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[28] *Rea Enterprises v. California Coastal Zone Conservation Com.* (1975) 52 Cal.App.3d 596, 606; accord, *In re Marriage of Hokanson* (1998) 68 Cal.App.4th 987, 993; *People v. Lockwood* (1998) 66 Cal.App.4th 222, 227.

[29] Health & Saf. Code, § 16; see also Health & Saf. Code, § 5 (unless context requires otherwise, "these definitions . . . govern the construction of this code").

[30] See 92 Ops.Cal.Atty.Gen. 19, 20-21 (2009); 88 Ops.Cal.Atty.Gen. 222, 223 (2005). In this regard, the first sentence of 33130(a) is similar to Government Code section 1090, a conflict-of-interest statute to which we have analogized 33130(a) in the past. (See 88 Ops.Cal.Atty.Gen., *supra*, at pp. 224-225; 61 Ops.Cal.Atty.Gen., *supra*, at pp. 244-248.) Government Code section 1090 provides, in relevant part, that public officers or employees "shall not be financially interested in any contract made by them in their official capacity," and "is concerned with ferreting out any financial conflicts of interest . . . that might impair public officials from discharging their fiduciary duties with undivided loyalty and allegiance to the public entities they are obligated to serve." (*Lexin v. Super. Ct.* (2010) 47 Cal.4th 1050, 1073; see also *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) As we stated in a 1978 opinion: "Both Health and Safety Code section 33130 and Government Code section 1090 deal with conflicts of interest by banning transactions which may give rise to them." (61 Ops.Cal.Atty.Gen., *supra*, at p. 248.)

project area.[31] However, compliance with the disclosure requirement in the second sentence of section 33130(a) does not excuse an official from complying with the rule stated in the statute's first sentence. The first sentence of section 33130(a) prohibits an official from *acquiring* an interest in any property within a project area while the official is serving on the agency. The second sentence addresses a different circumstance: it requires an official who *already has* an interest in a property within a project area to disclose that interest when the official takes office, or when the project area is identified.[32] This interpretation of section 33130(a) is consistent with our previous analysis of this provision,[33] and with the relevant legislative history.[34]

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[31] Although the second sentence of Health and Safety Code section 33130(a) mandates only disclosure of the property interest, and not disqualification of the affected officer from participating in decisions concerning the project area in which the interest in real property is held, such abstention may nevertheless be required by the Political Reform Act of 1974 (Gov. Code, §§ 81000-91014) and the common law doctrine against conflicts of interest. (See 61 Ops.Cal.Atty.Gen., *supra*, at p. 248, fn. 1; 92 Ops.Cal.Atty.Gen., *supra*, at pp. 23-24.) The Political Reform Act of 1974 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." (Gov. Code, § 87100.) When a disqualifying conflict of interest exists, the Act requires that the official abstain from participating in every aspect of the decision-making process. (See *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1058-1059; 88 Ops.Cal.Atty.Gen. 32, 33 (2005); 86 Ops.Cal.Atty.Gen. 142, 143 (2003).) The common law doctrine against conflicts of interest prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their duty to the public. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171; 46 Ops.Cal.Atty.Gen. 74, 86 (1965).) In addition to being subject to the conflict-of-interest provisions in the CRL, successor agency board members are subject to any otherwise-applicable conflict-of-interest rules, including the Political Reform Act, Government Code sections 1090 et seq., and the common law doctrine against conflicts of interest. Those schemes are still applicable to a successor agency board member and to a city council member acting in that capacity, to the extent that the schemes are not abrogated by or in conflict with the CRL or other provisions of law specifically governing the subject matter of Health and Safety Code sections 33130 and 33130.5. (See 61 Ops.Cal.Atty.Gen., *supra*, at p. 248, fn. 1.) A full discussion of the applicability of those conflicts schemes to the conduct and questions discussed above is beyond the scope of this opinion.

[32] We note that this latter circumstance is not likely to occur today, because new project areas are no longer being selected.

[33] 61 Ops.Cal.Atty.Gen., *supra*, at p. 245.

A redevelopment official's self-disqualification from participating in decisions concerning the project area also does not nullify the prohibition of section 33130(a).[35] Nor does self-disqualification in tandem with disclosure abrogate the prohibition. The fact that the Legislature has provided certain exceptions to the general prohibition of section 33130(a) bolsters our conclusion. If disclosure and abstention were sufficient to create an exception to the rule, that would make all other exceptions, including those set out in the statutory scheme, superfluous. Such a construction is to be avoided.[36] Moreover, where specific exceptions to a rule are stated, we must conclude that the Legislature intended to include no unstated or implied ones.[37]

Finally, the very purpose of the rule would be undermined if an official could evade it merely through disclosure and abstention. The statute then would not prevent an official from exploiting his or her position to acquire properties in the redevelopment area, to the possible detriment of the community. The Legislature surely did not intend such a result.[38] A construction that defies common sense or leads to mischievous or

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[34] Assem. Com. on Housing and Community Development, Analysis of Assembly Bill No. 1075 (1985-1986 Reg. Sess.) as amended Apr. 23, 1985, p 1; Assem. Third Reading of Assem. Bill No. 1075 (1985-1986 Reg. Sess.) as amended Apr. 23, 1985, p. 1 (analysis dated May 6, 1985).

[35] Similarly, abstention by the affected official does not avoid the proscription of Government Code section 1090. (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 195; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201, 211-212; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 81 Ops.Cal.Atty.Gen. 373, 374 (1998).)

[36] *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 ("We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous."); accord, *Dyna-Med, Inc. v. Fair Employment & Housing Commission* (1987) 43 Cal.3d 1379, 1387; 95 Ops.Cal.Atty.Gen. 121, 127 (2012).

[37] *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195 ("Under the familiar rule of construction, *Expressio unius est exclusio alterius*, where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed."); accord, *People v. Standish* (2006) 38 Cal.4th 858, 870 (presence of express exceptions ordinarily implies that additional exceptions are not contemplated); 95 Ops.Cal.Atty.Gen. 89, 96 (2012).

[38] In its analysis of the bill that added subdivision (c) to section 33130, the Senate Local Government Committee characterized the first sentence of section 33130(a) as "the strongest and most specific protection against economic conflicts of interest" in the context of redevelopment. (Sen. Local Gov. Com., Analysis of Assem. Bill No. 1075

unreasonable results is to be avoided,[39] and we decline to adopt one here.

Accordingly, we conclude that the first and second sentences of Health and Safety Code section 33130(a) address different situations, and that neither disclosure nor abstention, nor disclosure and abstention together, is sufficient to overcome the prohibition expressed in the first sentence of section 33130(a).[40]

Question 2(b)

Given our conclusion that section 33130(a)'s general prohibition on property acquisition would apply even where the successor agency board member discloses his or her interest in the subject property and abstains from any further decisions concerning the project area, we now consider the limited and specific circumstances—i.e., the statutory exceptions to this general prohibition—under which a successor agency board member may acquire real property in the project area. In subdivisions (b) and (c) of section 33130,[41] and in section 33130.5,[42] the Legislature has specified exceptions to the general

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(1985-1986 Reg. Sess.) as amended Apr. 23, 1985, p. 2 (analysis dated May 30, 1985).) Such a statement is evidence that the Legislature views section 33130(a) as a safeguard against an official's possible misuse of information or influence in the acquisition of a redevelopment area property.

[39] *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 388 (citations omitted); *Fields v. Eu* (1976) 18 Cal.3d 322, 328; 83 Ops.Cal.Atty.Gen. 124, 125 (2000); 71 Ops.Cal.Atty.Gen. 235, 240 (1988).

[40] As discussed, the disclosure requirement of Health and Safety Code section 33130(a) does not apply to a property interest covered by the first sentence of that subdivision, but rather applies to a property interest covered by the second sentence of that subdivision. We have been asked to discuss whether there is a specific manner or format in which such a disclosure should be made.

Section 33130(a) specifies several requirements for a disclosure. One requirement is that the disclosure must be made "immediately." Section 33130(a) also mandates that the disclosure be in writing, be made to the successor agency and the legislative body, and be entered on the minutes of those bodies. Pursuant to the general provisions of the Health and Safety Code section 8, the writing must be made in the English language. Beyond these requirements, we have found no statutory or judicial authority that prescribes the precise format for the disclosure required by section 33030(a), or the manner in which it must be made.

[41] The provision now contained in section 33130, subdivision (b), was added to section 33130 in 1965 (see Stats. 1965, ch. 1991, § 1, p. 4519), and the provisions

prohibition on acquiring property within a project area. These exceptions allow an officer to acquire and hold a property interest within a project area only for limited purposes, and contain safeguards to ensure that the officer will not, by virtue of his or her position, gain an unfair advantage with respect to the terms of the property acquisition, or profit from redevelopment improvements. We briefly set forth these exceptions, and their requirements, below.

Subdivision (b) of section 33130 allows the acquisition of project area property for "the purpose of participating as an owner or reentering into business pursuant to this part if that officer or employee has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area." Subdivision (c) of section 33130 allows a rental or lease of property on terms substantially equivalent to those available to a member of the public, and prohibits subleasing at a rate higher than the original rate paid by the officer.[43] Section 33130.5 allows a covered officer or employee to purchase or lease a project area property for "personal residential use" but only after any needed property improvements have been completed, or where no improvements are needed.[44] The exceptions set forth in section 33130, subdivision (c), and in section 33130.5 require written disclosure of any property interest permitted under those provisions.

Section 33130.5 additionally requires disqualification "from voting on any matters directly affecting" the purchase, lease, or residency. Government Code section 1091, which establishes certain exceptions to the conflict-of-interest provision set forth in Government Code section 1090, similarly disqualifies the affected official from voting on the contract in which the official has a remote interest. That requirement has consistently been construed to mean that the official must *also* abstain from participating in deliberations on the matter and must refrain from influencing other members of the body.[45] Health and Safety Code section 33130.5, like Government Code section 1091, provides a limited exception to a general conflict-of-interest prohibition and therefore

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contained in 33130, subdivision (c) were added in 1985 (see Stats. 1985, ch. 87, § 1, pp. 223-224). Section 33130 was also divided into subdivisions by the 1985 amendment. (See *ibid*.)

[42] Added by Stats. 1967, ch. 1242, § 2.5, p. 3013.

[43] Health & Saf. Code, § 33130, subd. (c).

[44] Health & Saf. Code, § 33130.5.

[45] See, e.g., *Lexin v. Super. Ct.*, *supra*, 47 Cal.4th at p. 1073; *People v. Honig*, *supra*, 48 Cal.App.4th at p. 317; 67 Ops.Cal.Atty.Gen. 369, 377, fn. 8. (1984); 83 Ops.Cal.Atty.Gen. 246, 248 (2000).

must be strictly construed. We therefore construe Health and Safety Code section 33130.5 to require, as does Government Code section 1091, that the affected official abstain from voting on or participating in any matters directly affecting the purchase, lease, or residency, and refrain from influencing other board or council members with respect to such matters.

In an earlier opinion, we had occasion to interpret a different aspect of Health and Safety Code section 33130.5. There we were asked whether an officer of a redevelopment agency may acquire property for his or her residential use under the terms of the statute without having to dispose of a personal residence previously acquired under the statute's authorization. Applying the principle that exceptions to a general rule are to be strictly construed,[46] and that the construction of a statute should be consistent with the object to be achieved and the evil to be prevented by the legislation,[47] we concluded that the officer must dispose of his or her prior project-area residence in order to obtain another property for residential use in the project area:

> Otherwise, a redevelopment agency officer could theoretically acquire every residential property in the project area by moving from residence to residence and turning the former residences into rental properties. . . . We strictly construe the limited authorization of section 33130.5 so as to broadly construe the prohibition contained in section 33130. Such construction avoids absurd results and carries out the apparent purpose of the Legislature.[48]

We believe that the reasoning of that earlier opinion applies as well to successor agency and community officers. Accordingly, we view Health and Safety Code section 33130.5, in conjunction with section 33130, as precluding a city council/successor agency board member from simultaneously owning or leasing more than one property under the authorization of section 33130.5.

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[46] Cal. Atty. Gen., Indexed Letter, No. IL 92-1112 (Dec. 2, 1992) at p. 2 (citing *Da Vinci Group v. San Francisco Residential Rent etc. Bd.* (1992) 5 Cal.App.4th 24, 28; *Estate of Banerjee* (1978) 21 Cal.3d 527, 540; *People v. Melton* (1988) 206 Cal.App.3d 580, 592; *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 767).

[47] Cal. Atty. Gen., Indexed Letter, No. IL 92-1112 at pp. 2-3 (citing *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159).

[48] Cal. Atty. Gen., Indexed Letter, No. IL 92-1112 at p. 3. We note that Health and Safety Code section 33130.5 has not been amended since this letter opinion was issued.

Thus, we conclude that the circumstances under which a city council/successor agency board member may acquire property in the former redevelopment agency's project area under the exceptions set forth in sections 33130 and 33130.5 are delineated by the statutes themselves and subject to any restrictions and limitations construed to be included in those statutes.[49]

Question 2(c)

The final question consists of two parts: first, may a city council member who also sits on the board of the city's successor agency resign from the agency without also resigning from the city council; and second, if the council member may resign from the successor agency in this way, will the resignation cure any past violation of Health and Safety Code section 33130? We conclude that a council member may resign from the board of the city's successor agency without resigning from the city council, but that resigning from the successor agency post will not cure past violations of section 33130.

As we noted above, the CRL authorized a city council to serve as the city's redevelopment agency.[50] In 1984, the Legislature amended the statute establishing that authority, adding a sentence that states:

> If a member of the legislative body of a city or county does not wish to serve on the [redevelopment] agency, the members may so notify the legislative body of the city or county, and the legislative body of the city or county shall appoint a replacement who is an elector of the city or county to serve out the term of the replaced member.[51]

In an earlier opinion, we concluded that where a city council had designated itself as the city's redevelopment agency, a council member could not resign from the redevelopment agency but keep the council seat.[52] This opinion was issued shortly after the effective date of the 1984 statutory amendment, but made no reference to the

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[49] *Thorpe v. Long Beach Community College Dist.* (2001) 83 Cal.App.4th 655, 663-664 (applying maxim about exceptions to a general rule specifically to conflict-of-interest statutes); accord, 89 Ops.Cal.Atty.Gen. 69, 74 (2006); 88 Ops.Cal.Atty.Gen. 122, 128 (2005).

[50] Health & Saf. Code, § 33200, subd. (a).

[51] Added to Health & Saf. Code, § 33200, subd. (a) by Stats. 1984, ch. 15, § 2, p. 53 (Sen. Bill No. 617), eff. Feb. 22, 1984.

[52] 67 Ops.Cal.Atty.Gen. 459, 460 (1984).

amendment. The opinion reasoned that because a council member was an ex officio member of the redevelopment agency, and because the member held the agency position not at his pleasure but as a matter of law, the member could not resign from the agency position without also resigning from the council.[53] It has been argued, on the basis of this opinion, that just as a city council member could not resign from the redevelopment agency but retain a seat on the council, a city council member may not resign from the board of the city's successor agency but still retain the council seat.

We reject the argument because we have re-examined our earlier opinion, and now conclude that it was in error on this point. First, of course, there is the express language permitting resignation added in 1984. Second, the legislative history of this statutory change clearly shows the Legislature's intent that city council members who served as redevelopment agency board members could resign from the redevelopment agency without resigning from the council. An uncodified section of the bill that amended the statute stated the reason for the new provision was that "some overburdened members of city councils and boards of supervisors are now finding it difficult to devote sufficient time to their duties with respect to community redevelopment agencies."[54] A legislative committee analysis of the bill stated, "Senate Bill 617 would allow members of city councils or boards of supervisors who also serve as members of a redevelopment agency governing body to resign their agency duties and be replaced on the agency."[55]

Here, we are asked whether a city council member, where the city council acts as the governing board of the city's successor agency, may resign from the successor agency board without resigning from the council. None of the legislative enactments regarding the creation, composition, and duties of successor agencies contains an express provision analogous to the resignation provision of the CRL, but Health and Safety Code section 34173, subdivision (b), enacted as part of AB 1X 26, provides that, except for those provisions of the CRL that are repealed, restricted, or revised, "all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies . . . are hereby vested in the successor agencies."[56] The resignation provision

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[53] 67 Ops.Cal.Atty.Gen., *supra*, at p. 460.

[54] Stats. 1984, ch. 15, § 3, p. 54 (Sen. Bill No. 617).

[55] Assem. Com. on Local Government, Analysis of Sen. Bill No. 617 (1983-1984 Reg. Sess.) as amended Jan. 13, 1984, p. 2 (analysis dated Jan. 18, 1984). The staff comments in this committee report go on to state: "This provision would be particularly appropriate in cases where the supervisor or councilperson has insufficient time to devote to these additional duties or has a conflict of interest because of a property or business interest within the redevelopment area." (*Id*. at pp. 2-3.)

[56] Health & Saf. Code, § 34173, subd. (b).

may reasonably be considered a right or power conferred upon redevelopment agencies that now vests with successor agencies. In the absence of any evidence of legislative intent to the contrary, we conclude that a city council member may resign from a successor agency board without resigning from the city council, in the same way that a city council member may resign from a redevelopment agency board and still retain his or her council seat.[57]

However, such a resignation will not cure any past violations of section 33130 that the council member may have committed.[58] If the council member has acquired a property interest in violation of section 33130(a), for instance, the resignation does not erase the fact of the acquisition. If it did, an official could engage in prohibited conduct, reap the benefits of the conduct, and then resign from the position to avoid liability. That result would be contrary to longstanding interpretations of analogous conflict-of-interest rules.[59]

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[57] This conclusion also comports with the principle that a "dual capacity legislative body" performs in only one capacity at a time. Because the redevelopment agency and the city council were separate and distinct public entities, even where the city council served as the agency, a city council member who was also a redevelopment agency board member served in separate and distinct capacities. (83 Ops.Cal.Atty.Gen. 215, 218 (2000) (where city council members declared themselves to be the city's redevelopment agency and housing authority, the three entities must be considered distinct and separate public agencies).)

[58] Nor would it excuse a council member from continuing to comply with section 33130(a), since membership on the governing body of the sponsoring community would continue to subject the member to the constraints of that provision.

[59] See *People v. Wong* (2010) 186 Cal.App.4th 1433, 1442, 1443-1444 (defendant criminally prosecuted for alleged violations of Government Code section 1090 that stemmed from actions taken by defendant while an official of a public body from which he subsequently resigned); see also *Stigall v. City of Taft*, *supra*, 58 Cal.2d at pp. 569-571 (Government Code section 1090 violated even where city council member resigned from the council *before* the council approved a contract that included work to be performed by a company the council member owned, when the council member, before resigning, had participated in preliminary activities that the Court determined to be part of the making of the prohibited contract).

Therefore, we conclude that, although a city council member may resign from his or her position on the board of a successor agency without also resigning from the city council, such a resignation would not cure past violations of section 33130.

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