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OPINION	:	No. 81-1215
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of	:	<u>APRIL 8, 1982</u>
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THE HONORABLE CURTIS R. TUCKER, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following question:

Does Business and Professions Code section 3011, which declares faculty members of schools of optometry to be ineligible for membership on the State Board of Optometry, bar part-time clinical instructors or part-time faculty members, who are primarily engaged in private practice, from membership on the State Board of Optometry?

CONCLUSION

Business and Professions Code section 3011, which declares faculty members of schools of optometry to be ineligible for membership on the State Board of Optometry, bars part-time clinical instructors or part-time faculty members, who are primarily engaged in private practice, from membership on the State Board of Optometry.

## ANALYSIS

Enforcement of the statute regulating the practice of optometry (Bus. & Prof. Code §§ 3000-3167)<sup>1</sup> is vested in the State Board of Optometry. (§ 3010.) In specifying the qualifications for members of that board, section 3011 provides, among other things, that "[n]o person, including the public members, shall be eligible to membership in the board who is a stockholder in or owner of or a member of the faculty of or of the board of trustees of any school of optometry . . . ."<sup>2</sup> We have been asked to determine whether or not this restriction against faculty members operates to exclude from optometry board membership faculty members, or those designated as clinical instructors, if they serve only part-time at an optometry school and are primarily occupied in the private practice of optometry.<sup>3</sup>

At the outset we note that the word "faculty" is not assigned any special meaning by the optometry statute. Thus the applicable rule of construction is that "[w]ords in a statute should be given their ordinary meaning unless otherwise clearly intended or indicated." (*Estate of Richartz* (1955) 45 Cal.2d 292, 294; *accord, Standard Oil Co. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 765, 768; see Civ. Code, § 13.) As commonly understood the word "faculty" refers to the staff of teachers at a school. Thus, in relation to school personnel, the word "faculty" is defined in Webster's Third New International Dictionary (1966) to mean "the teaching staff and those members of the administrative staff having academic rank in a college, university, or other educational institution. . . ."

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<sup>1</sup> Hereafter all section references are to the Business and Professions Code unless otherwise specified.

<sup>2</sup> As set forth in full, section 3011 provides:

"Members of the board, except the public members, shall be appointed only from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment. The public members shall not be a licentiate of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600.

"No person, including the public members, shall be eligible to membership in the board who is a stockholder in or owner of or a member of the faculty of or of the board of trustees of any school of optometry or who shall be financially interested, directly or indirectly, in any concern manufacturing or dealing in optical supplies at wholesale.

"No person, including the public members, shall serve as a member of the board for more than two consecutive terms."

<sup>3</sup> We assume that the clinical instructors referred to in the question are clinical instructors at a school of optometry.

Considering first the question of whether the position of clinical instructor would be encompassed by the word "faculty," as used in the statute, we note initially that the United States Labor Department's Dictionary of Occupational Titles (4th ed. 1977) specifically designates "clinical instructor" as among the types of positions included within the term "faculty member, college or university." (*Id.*, item No. 090.227-010, p. 67.) Thus with regard to schools in general a clinical instructor would be regarded as a faculty member. The same is true with regard to optometry schools in particular. As is stated in the University of California Berkeley School of Optometry's job description of the "clinical professor series":

"Appointees in the clinical series teach the application of basic sciences and clinical procedures to clinical practices in all those areas concerned with the care of patients. Classifications in the series are:

Clinical Instructor  
Assistant Clinical Professor  
Associate Clinical Professor  
Clinical Professor

"Most of the *clinical faculty* serve 10-20 percent time at the University, with the remainder of their time engaged in the private practice of optometry. The part-time faculty do not receive University benefits or voting privilege in the Academic Senate." (Emphasis added; School of Optometry, University of California, Berkeley, Job Description Document (Jan. 1982).)

Thus a "clinical instructor" teaches matters concerned with the care of patients,<sup>4</sup> and is in a position at the beginning rank of the clinical professor series which constitutes the clinical faculty of the School of Optometry at U.C. Berkeley. An instructor in the same position at the Southern California College of Optometry<sup>5</sup> is also deemed to be a faculty member although that school does not use the term "clinical" to distinguish

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<sup>4</sup> The word "clinical" is generally defined as ". . . pertaining to or founded on actual observation and treatment of patients as distinguished from theoretical or experimental." (Dorland's Illustrated Medical Dictionary (24th ed. 1965) p. 315.)

<sup>5</sup> There are only two accredited schools of optometry in California: The School of Optometry, University of California, Berkeley, and the Southern California College of Optometry, Fullerton. (Board of Optometry, Syllabus of Requirements for Obtaining a License (2-82), p. 7.)

between instructors in the clinical departments and those in other departments.<sup>6</sup> However, it can be seen that where the term "clinical instructor" is used, whether in reference to colleges generally or in reference to optometry schools in particular, the term normally refers to a position that is included within the term "faculty." Since in the absence of a clear indication to the contrary we must accord words in a statute their ordinary meaning (*Estate of Richartz, supra*, 45 Cal.2d at p. 294), and since there is nothing in the optometry practice statute which indicates that the word "faculty" was used other than in its ordinary sense, we conclude that one who is a clinical instructor would be subject in the same manner as the other faculty members to the restriction in section 3011 against faculty members' serving on the Board of Optometry.<sup>7</sup> However, there is still the question of whether that restriction applies to one who serves only part-time on an optometry school's faculty.

Again, referring to the word "faculty" in its ordinary sense of "teaching staff," there is nothing in the meaning of the word "faculty," if not otherwise qualified, to indicate that it does not include part-time as well as full-time members of a teaching staff. Consequently the use of the term "faculty" in the statute does not in itself afford any basis for concluding that the provision restricting faculty members from the optometry board is applicable only to "full-time" faculty members.

Viewing the faculty member restriction within the general context of the optometry board's regulatory authority, we note that the board is authorized to examine and accredit optometry schools (§ 3023) and to adopt the rules and regulations necessary to govern the accreditation of optometry schools and to establish the educational requirements for admission to the examination for optometrist's license. (§§ 3023.1, 3041.2.) Thus, by virtue of this authority, the board has the power to take actions which can significantly affect the basic interests of optometry schools. It is apparent, in light of the general principles requiring an impartial administrative tribunal (see *American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal.App.3d 983, 990-993), that the purpose of the provision in section 3011 excluding faculty members from the board is to avoid conflicts of interest so as to ensure impartiality in the execution of the board's considerable duties impacting upon optometry schools. Again, this statutory purpose does not in itself afford any basis for concluding that part-time faculty members are not within the restriction since

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<sup>6</sup> ". . . clinical personnel [other than clinical director] are classified as faculty holding the rank of instructor, assistant professor, associate professor, or professor. . . ." (Southern California College of Optometry, Faculty Administrative Guide, p. G-2 (1/80).)

<sup>7</sup> That the Legislature regards clinical instructors as being within the term "faculty" is indicated by section 2007 which in specifying the qualifications for members of the Board of Medical Quality Assurance provides that "[f]our of the physician members of the board shall hold *faculty* appointments in a *clinical* department of an approved medical school. . . ." (Emphasis added.)

in the case of either a full-time or part-time faculty member there would be a potential conflict differing only in degree. Thus in order to find that the restriction does not extend to part-time faculty members, we would have to conclude that the Legislature intended to countenance a potential conflict if it was sufficiently limited. However, we are unable to discern anything in the terms of the statute or in its evident purposes which could afford the basis for so qualifying the faculty member restriction. We are thus constrained by the rule that:

"In construing a statutory provision, we are not authorized to insert qualifying provisions and we may not rewrite the statute to conform to an assumed intention which does not appear from its language, but are limited to the construction of the plain language of the statute as enacted and the intention therein expressed. . . ." (*Rowan v. City etc. of San Francisco* (1966) 244 Cal.App.2d 308, 314; *accord, Taylor v. McKay* (1975) 53 Cal.App.3d 644, 651-652; Code Civ. Proc., 1858.)

Any notion that the Legislature did intend to allow part-time faculty members on the Board of Optometry is dispelled by an examination of the Legislature's treatment of faculty status in relation to membership on other similar professional regulatory boards. For example, with reference to the Board of Dental Examiners, section 1602 formerly provided that members of that board could not be a "member of the faculty" of any dental school (see Stats. 1937, ch. 399, p. 1241), whereas that section now provides that "[n]o more than one member of the board shall be a member of the faculty of any dental [school]. . . ." And section 2462 provides that "[n]ot more than one member of the [Podiatry Examining] committee shall be a *full-time* faculty member of a college or school of podiatric medicine." (Emphasis added.)<sup>8</sup> But with respect to physicians, section 2007 provides that "not more than four members of the board [of Medical Quality Assurance] may hold *full-time* appointments to the faculties of . . . medical schools." (Emphasis added.) However, that section also requires that "[f]our of the physician members of the board shall hold faculty appointments in a clinical department of an approved medical school . . . ." Thus the Legislature has restricted faculty members from some boards while allowing a limited number of such members on other boards, and has confined such limitation to "full-time" faculty members on still other boards. The Legislature has thereby demonstrated its awareness of the various alternative possibilities for restricting or limiting the presence of faculty members on administrative boards and its awareness of the distinction between "full-time" and other faculty members.

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<sup>8</sup> See section 2464 providing that no public member of the Podiatry Examining Committee may be a faculty member of a podiatry school.

In light of such legislative awareness we are unable to presume that when the Legislature restricted "member[s] of the faculty" from the Board of Optometry, without further qualification (§ 3011), it intended this restriction to apply only to "full-time" faculty members, especially since the Legislature in other statutes on related subjects expressly affixed the qualification "full time" to the reference to faculty membership. (See §§ 2007, 2462.) As noted in *Anthony v. Superior Court* (1980) 109 Cal.App.3d 346, 355-356:

"[W]hen the Legislature has used different language in several provisions, it is presumed that it did so advertently and intended a difference in meaning. [Citation omitted.] Similarly, "[w]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.""

(See also *Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 668: "It is not a function of the reviewing courts to read into the statute a provision the Legislature plainly intended to omit.")

We therefore conclude that the provision in section 3011 prohibiting faculty members of optometry schools from serving on the Board of Optometry admits of no distinction between part-time and full-time faculty members. Consequently such prohibition is applicable to either.

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