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Sacramento County
Voter Registration & Elections

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

10	COUNTY OF FRESNO,)	No. 351952-7	Dept. 15
11	Plaintiff,)		
12	v.)	<u>RULING ON CROSS-MOTIONS</u>	
13	CLOVIS UNIFIED SCHOOL)	<u>FOR SUMMARY JUDGMENT</u>	
14	DISTRICT, et al.,)		
15	Defendants.)		

Neither side has fully complied with the procedural requisites of C.C.P. §437c. For example, the County neglected to support its Statement of Undisputed Facts with evidentiary citations, and the District failed to properly notice its purported cross-motion for summary judgment. Because the papers expose a triable issue about the precise amount of the costs involved, were I to ruthlessly enforce the statute I should be required to deny the County's motion. Likewise, because the District's cross-motion was inadequately noticed, it too should be denied. Moreover, since neither party requested a summary adjudication of issues in the manner demanded by C.C.P. §437c, faithful adherence its provisions would mandate my refusal to decide the discreet issue submitted by the parties.

1 However, the relevant, essential facts are not disputed,
2 and each side has waived the other's compliance with the formal
3 niceties of C.C.P. §437c and has asked that I rule on the
4 question presented by these cross-motions, which is:

5 "In an unsuccessful recall effort to
6 recall school trustees, where a county clerk
7 performs services including checking
8 signatures on the recall petition and
9 certifying the petition as insufficient, are
10 the costs incurred by the county clerk a
11 county charge or a school district charge?"

12 There is no Legislative "history" extant which treats
13 with the issues raised by the cross-motions.

14 Given the currency of the "pay as you play" philosophy
15 of civic financing, I suspect the Court of Appeal will soon have
16 the opportunity to definitively resolve the matter, so I have not
17 prepared an exhaustive opinion which details the authorities and
18 reasons underlying this decision. However, I submit the
19 following abbreviated exposition of my views.

20 I do not agree with the District's contention that
21 Govt.C. §6103 is dispositive. That is a general statute of broad
22 application which must yield to more specific, later enacted,
23 legislation which directs otherwise. Cf., Anaheim City School
24 Dist. v. County of Orange (1985) 164 Cal.App.3d 697, 702.

25 Insofar as its provisions are pertinent, Govt.C. §6103
26 was promulgated in 1943. Elections Code §10,000, which imposes
27 on the county treasury the burden of all costs "incurred in the
28 preparation for and conduct of elections," is a 1961 enactment,
and to the extent it is not displaced by a more recent and

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1 explicit rule, it must be accorded precedence.¹

2 Chapter 3 of Article 8 of the Education Code (which
3 became the law in 1976), particularly Sections 5420 et seq.,
4 directly addresses the topic of school district recall election
5 costs. It is thus controlling as far as it goes. Where it does
6 not reach, Elections Code §10,000 governs.

7 Education Code §5424 provides:

8 "The cost of any recall election shall be
9 borne by the district in which the recall
election is held and paid from district funds."

10 I have declined to adopt the reasoning of the Attorney
11 General's Office (cf., Moore v. Panish (1982) 32 Cal.3d 535,
12 544), and instead have concluded that section 5424 is not
13 applicable to the costs of services performed by the County Clerk
14 in advance of the "call."

15 The Attorney General's opinion turns upon an expansive
16 interpretation of the word "election" in §5424 so as to include
17 services antecedent to the call. However, it seems to me that
18 that position neglects the plain meaning of the precise wording
19 of Ed. Code §5424, overlooks the content of related and companion
20 statutes, and reaches a conclusion about the Legislature's
21 "intent" which is contrary to the direct expression of the
22 lawmaker's will exposed by the words of the pertinent statutes.

23 Education Code §5424 unmistakably refers to the costs of

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27 ¹Education Code §5300 provides, in relevant part, that
28 "school district elections ... shall be governed by the Elections
Code, except as otherwise provided in this Code." See also
Elections Code §19 and §25.

1 an election that is held;² it says nothing about costs expended
2 in preparation for an election, whether held or not. That the
3 Legislature was cognizant of the distinction is manifest by
4 reference to other related statutes, such as Elections Code
5 §10,000 and Education Code §5303, each of which rather clearly
6 demarcates between the "preparation for" and the "holding of"
7 elections. In fact, although Education Code §5303, promulgated
8 as a part of the same act at the same time as §5424 (Stats.
9 1976), assigns to the County Clerk the obligation to "perform the
10 duties incident to the preparation for, and holding of, all
11 district elections," that particular phraseology was not carried
12 over into §5424 or its sister statutes.

13 The result I have reached seems buttressed by the
14 provisions of Government Code §5420 which lists as reimburseable
15 certain identified expenses that are clearly attributable to post
16 call events. Although §5420 does not purport to be exhaustive,
17 the presence of the phrase "including but not limited to" among
18 its terms does not to my mind sanction an interpretation of a
19 sister statute which is inconsistent with the latter's plain
20 meaning. Section 5420 is merely definitional; it should not
21 control interpretation of the substantive statute, §5424, which
22 directly allocates and imposes the burden of recall election
23 costs.

24 In the absence of a constitutional question, the
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27 ²The Random House Dictionary of the English Language
28 (1966) defines "election" (usage 2) as "a public vote on a
proposition submitted," and defines "held" (usage 6) as "to
engage in" or "to carry on."

1 judicial function is that of application and, if necessary,
2 interpretation of legislation; it does not include the power to
3 amend under the guise of interpretation. Wilcox v. Enstad (1981)
4 122 Cal.App.3d 641, 652-653; County of Contra Costa v. East Bay
5 M.U.D. (1964) 229 Cal.App.2d 556, 566 . Much mischief may be
6 (and, indeed, already has been) done under the cloak of
7 "interpretation."

8 "I think we are not, as Judges (living
9 though we do in a more enlightened and liberal
10 age), to be liberal above what is written, or
11 by any method of construction, when the
12 statutes distinctly, expressly, and impera-
13 tively require one form, to substitute another
14 as equivalent for the object or purpose, as
15 one may think, of the Legislature." Pollock,
16 C.B., Miller v. Salomons (1852) 17 Ex. 475,
17 566.

18 The Attorney General's inability to "... discern [a]
19 reason why the Legislature would have distinguished between costs
20 incurred by the County for the benefit of a school district after
21 the certification of a recall petition and those incurred by the
22 County for the benefit of a school district before certification
23 of a recall petition" is simply beside the point. The
24 Legislature, by the sequence of the words a majority of its
25 members chose to include in the relevant statutes, did in fact
26 make that distinction, and whether or not the Attorney General or
27 I or anyone else for that matter finds it rational or justifiable
28 is of no moment. "We must not be guilty of taking the law into
our own hands, and converting it from what it really is to what
we think it ought to be." Coleridge, C. J., R. v. Ramsey (1883)
1 C & E 126, 136.

On that point, I submit the Legislature could have

1 concluded that in light of the purpose "of sections 5420, 5421
2 and 5424 of the Education Code [which] is to charge school
3 districts with costs they generate because of elections" (Op.
4 A.G. No. 85-906, 3/14/86), the process of verifying signatures on
5 a recall petition is a chore within the official duties of the
6 County Clerk, the costs of which ought to be borne by the county
7 at large, just as they are with respect to other official duties
8 of the Clerk (cf., Govt.C. §6103), and that the point at which a
9 school district is to be required to come forward and pay for its
10 recall election activities commences with the call. An
11 equivalent rationale is evident in Elections Code §10,000, which
12 imposes all costs, preparatory or otherwise, upon the county,
13 except those which relate to elections which are "called" by a
14 city. Thus, under §10,000, if there is no "call" for a city
15 recall election by reason of a deficiency in the petition, the
16 costs of checking the inadequate petition are nonetheless borne
17 by the county, not the city.³ The Attorney General asks, in
18 the context of Ed.C. §5420 et seq., "Why ... would the
19 Legislature have intended to require the county, as opposed to a
20 school district, to pay preliminary costs of a recall proceeding
21 merely because the recall effort failed at the petition stage
22 instead of the election stage?" The complete answer to the
23 question is "Because it chose to do so." In Elections Code
24 §10,000, the Legislature did place such a requirement on the
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27 ³On this point, the Attorney General's opinion is not
28 entirely accurate, for it implies that §10,000 impresses all
costs upon the city regardless of whether or not an election is
called. That is not the case.

1 County with respect to abortive attempts to call a municipal
2 recall election; it had a perfect right to do the same with
3 respect to proposed school district elections. The source of the
4 law is authority, not wisdom.

5 I will admit that legislative inarticulateness or
6 oversight or error demands that the judicial function include the
7 power to subordinate the literal meaning of a particular statute
8 to its general or specific purposes, or both, in order to avoid
9 results which are absurd or at odds with obvious goals sought to
10 be attained by the statute.⁴ I will also allow that because it
11 is oftentimes impossible to draft a statute which addresses and
12 directs a result for every conceivable occasion that might arise
13 under it, the judicial role includes the making of choices about
14 whether a particular incident does or does not fall within the
15 ambit of a piece of legislation. That process of selection,
16 delegated by the Legislature to the courts out of necessity,
17 deliberation or carelessness, includes the "hazardous" practice
18 of attempting to divine how the lawmakers would have dealt with
19 the matter had "it been presented to them at the time." Borella
20 v. Borden (1944) 145 F.2d 63, 64-65. This case presents neither
21 situation.

22 Because Ed. Code §5424 does not apply to the costs here
23 in issue, Elections Code §10,000, which imposes the burden of
24 pre-call costs on the county, is controlling. Accordingly, the
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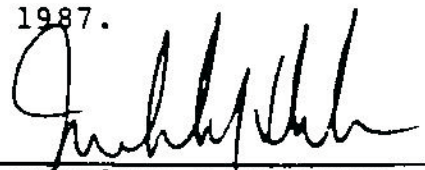
26 ⁴Learned Hand illustrated the point by referring to
27 the acquittal of the Italian surgeon who had bled a patient in
28 the face of a law prohibiting anyone from drawing blood in the
streets of Bologna. Griffith, Learned Hand (1973) Oklahoma
Press, p. 167.

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County's motion for summary judgment is denied; the District's motion for summary judgment is granted. Counsel for the District to prepare and submit a form of order and a separate form of judgment.

Because the instant cross-motions raise issues of law and not issues of fact, a statement of decision is not required. C.C.P. §632.

DATED this 23 day of July, 1987.



NICKOLAS J. DIBIASO
Judge of the Superior Court