Are you Compatible? Second Appellate District Considers Incompatible Offices and Finds Offices of Mayor and Board Director are Incompatible

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Many public officials are unaware or forget that Government Code section 1099 (All future references are to the Government Code, unless otherwise stated.) makes it unlawful for a public official to hold multiple public offices where those offices are incompatible. A recent case from the Second Appellate District held that section 1099 prohibited a board member for a water replenishment district from simultaneously holding office as a mayor of a city within the district and that neither public agency could make the offices compatible through a resolution or ordinance. (*The People of the State of California ex rel. the District Attorney of Los Angeles County v. Albert Robles*, 2019 WL 2714538.)

This case is an excellent reminder to public officials that if they are considering taking on a second public office or already serve in multiple public offices, those offices must be compatible pursuant to section 1099 and thus careful consideration of the duties of each office should be considered.

In this case, Albert Robles ("Robles") held two offices: Mayor of the City of Carson ("Carson") and member of the board of directors of the Water Replenishment District of Southern California ("WRD"). The WRD serves 43 cities in southern Los Angeles County, including Carson, and is governed by a five-member board of directors. The WRD is empowered by the California Water Replenishment District Act ("Act"), which allows the WRD to replenish groundwater supplies by buying, selling, or exchanging water, among other things. Pursuant to the Act, WRD charges a replenishment assessment ("Assessment") to fund its operating expenses and other activities and every year holds hearings to determine whether and to what extent the costs of the ensuing year will be paid for by the Assessment. The public can attend these hearings and the Assessment may be challenged. Carson, as a city within the WRD is subject to the Assessment set by the board of WRD.

While serving on the board of WRD, Robles decided to run for a council seat and was elected in 2013. In 2014, the District Attorney informed Robles he was holding two incompatible offices under section 1099,

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which meant he would forfeit the first office on WRD. Robles continued to hold both offices and was appointed Mayor by his fellow councilmembers in 2015.

Ultimately, the District Attorney sought and was granted permission by the Attorney General to sue Robles in a quo warranto proceeding and the case was tried. The trial court held two hearings on the quo warranto petition and determined that Robles was in violation of section 1099. On appeal, Robles argued, among other things, that the two offices are compatible and regardless, the public bodies on which he sits consented to his holding of both offices so as to invoke the proviso in section 1099(a), which allows simultaneous holding of even possibly conflicting offices when "compelled or expressly authorized by law."

The Appellate Court affirmed the trial court's determination that the two offices held by Robles were incompatible and in violation of section 1099. The Appellate Court analyzed the language of section 1099, which codified the common law doctrine of incompatibility and determined that the question is whether a clash of duties or loyalties for a WRD director who is simultaneously a mayor for a city within the WRD boundaries is *possible* rather than inevitable or more likely than not. The Court found that it was possible that there would be a significant clash of duties or loyalties given that Carson was within the WRD geographic boundaries and given that the board of directors of WRD set an Assessment that Carson was subject to and required to pay. The Court also found that while there did not appear to be any current conflict between WRD and Carson that could result in conflict, there is a distinct possibility that Robles could be put in a position in the future where he would be asked to pick a side if Carson and WRD became opposed on some issue, including Assessments.

The Appellate Court also considered Robles' contention that he was "compelled or expressly authorized by law" to hold offices for both Carson and WRD because both of those entities have laws authorizing him to do so. WRD had passed a resolution authorizing directors to hold positions in other governmental agencies and cities within the WRD boundaries and Carson adopted an ordinance authorizing a city elected or appointed official to simultaneously hold office as a director of the WRD or on certain other bodies. The Court analyzed the language in section 1099(a), which allows simultaneous holding of even possibly conflicting offices when "compelled or expressly authorized by law" and the legislative history of section 1099 and concluded that the reference to "law" in section 1099(a) was to state law, not local law. Thus, the Carson ordinance and the WRD resolution cannot make the occupancy of two offices compatible by being "compelled or expressly authorized by law." Additionally, the Court found that even if that language applied to local law, WRD's resolution did not qualify as "law" because the Act does not specifically give

WRD authority to establish laws relating to incompatible offices and Carson's ordinance alone was not enough to cure the incompatibility. As a result of the incompatibility of the two offices held by Robles in violation of section 1099, the judgment was affirmed removing Robles from his office on the board of directors of WRD.