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OPINION	:	No. 12-902
	:	
of	:	October 10, 2014
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THE HONORABLE BEN HUESO, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

Does Health and Safety Code section 34179, subdivision (c), which pertains to an “oversight board” assembled to oversee the dissolution of a redevelopment agency and states that “members shall serve without compensation or reimbursement of expenses,” prohibit an appointing authority from compensating or reimbursing expenses of a person whom it appoints to an oversight board for his or her service on that board?

CONCLUSION

Health and Safety Code section 34179, subdivision (c), prohibits an appointing authority from compensating or reimbursing expenses of a person whom it appoints to an oversight board for his or her service on that board.

ANALYSIS

Redevelopment agencies first came into being in 1945 as a mechanism for urban renewal. The process would begin with the formation of a redevelopment agency, which would then identify “blighted” areas and propose a plan for their improvement. Redevelopment agencies were empowered to acquire property through eminent domain, as well as the power to issue bonds to finance their projects. Any increase in property taxes in the project area could then be used to repay the bonds. Meanwhile, the level of tax proceeds going to schools and other local agencies remained frozen at the pre-redevelopment level.¹ By 2011, there were more than 400 redevelopment agencies administering a vast array of projects throughout the state.²

In 2011, faced with an enormous budget deficit and looking to free up increased property tax revenues to fund local schools and services, the Legislature passed Assembly Bill 1X 26,³ authorizing the dissolution of all redevelopment agencies.⁴ To enable the dissolution process, AB 1X 26 transfers control of redevelopment agency assets to successor agencies (usually the city or county that created the redevelopment agency).⁵ Successor agencies are empowered to manage redevelopment projects currently underway, make payments on enforceable obligations, and dispose of redevelopment assets and properties.⁶

Each successor agency is required to have a seven-member oversight board to supervise its work, comprising representatives of the local agencies in the redevelopment area, as well as local schools, the public, and public employees.⁷ For purposes of this

¹ See *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 245-247, and authorities cited therein; see generally Health & Saf. Code, §§ 33000-33855.

² See Department of Finance’s Redevelopment Agency Dissolution Website, <http://www.dof.ca.gov/redevelopment/> (as of Oct. 9, 2014).

³ Stats. 2011, Ex. Sess., ch. 5, § 7.

⁴ *California Redevelopment Assn. v. Matosantos, supra*, 53 Cal.4th at p. 241 (AB 1X 26 responded to declared state fiscal emergency “by reducing or eliminating the diversion of property tax revenues from school districts to the state’s community redevelopment agencies”).

⁵ See Health & Saf. Code, §§ 34171, 34173, 34175.

⁶ Health & Saf. Code, § 34177.

⁷ Health & Saf. Code, § 34179, subd. (a). Generally speaking, one member is to be appointed by each of the following: the county board of supervisors; the mayor for the city that formed the redevelopment agency; the largest special district in the territory; the

opinion, the key provision of the statute governing the creation and operation of such oversight boards is Health and Safety Code section 34179, subdivision (c) (“section 34179(c)”), which provides:

The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board’s duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. *Oversight board members shall serve without compensation or reimbursement for expenses.*⁸

We are asked to construe the last sentence of this subdivision. Does it mean that oversight board members must serve as unpaid volunteers, with no compensation or reimbursement from any source whatsoever? Or does it mean that, while successor agencies and oversight boards are prohibited from compensating board members, *other* entities (specifically the agencies that appoint the constituent members) are free to compensate their appointees for service on the board?

To answer these questions, we apply settled principles of statutory interpretation. The guiding principle “is to ascertain the intent of the Legislature so as to effectuate the purpose of the law.”⁹ In determining that intent, we start with the words of the statute themselves, giving those words their ordinary meanings and construing them in context, both internally and with other parts of the statutory scheme.¹⁰ Where uncertainty exists, consideration may be given to the consequences that will flow from a particular interpretation.¹¹

county superintendent of education or county board of education; and the Chancellor of the California Community Colleges. In addition, the county board of supervisors appoints “one member of the public,” and either the mayor or the chair of the board of supervisors appoints one member “representing the employees of the former redevelopment agency.” (Health & Saf. Code § 34179, subds. (a)(1)-(a)(7); but see Health & Saf. Code, § 34179, subds. (a)(8)-(a)(10) (exceptions to oversight board appointment and composition in certain circumstances).)

⁸ Emphasis added.

⁹ *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.

¹⁰ *Id.* at p. 1387.

¹¹ *Ibid.*; see *In re Reeves* (2005) 35 Cal.4th 765, 771, fn.9; see also *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567.

We believe that the words of the statute itself are clear and unambiguous: “Oversight board members *shall* serve without compensation or reimbursement for expenses.”¹² The word “shall” is ordinarily construed as mandatory (except under unusual circumstances, such as when that construction would defeat the purpose of the statute).¹³ Construing the statute to require that board members serve without payment is fully consistent with the purpose of the statutory scheme as a whole, which is to wind down the affairs of former redevelopment agencies efficiently and economically, in the face of a statewide fiscal emergency.

We have found the same or similar provisions in several other statutes and regulations. Among those who have been charged to serve on boards without pay are: individuals invited by the Superintendent of Public Instruction to serve on the State School Attendance Review Board;¹⁴ both statutory and appointed members of the Escrow Law Advisory Committee within the Department of Corporations;¹⁵ law enforcement representatives to the Public Safety Medal of Valor Review Board;¹⁶ industry representatives selected by the Labor Commissioner to serve on “an advisory committee on garment manufacturing”;¹⁷ and scientists and other professionals appointed by the Office of AIDS within the Department of Health Services to serve on a task force to study the use of “post-exposure prophylaxis in the general population.”¹⁸

Both in section 34179(c), and in other similar provisions, the Legislature has stated in one way or another that *all* members of the body are to serve without compensation and/or reimbursement. Section 34179(c) makes no distinction between those (such as a school board or special district appointee) who are regularly employed

¹² Health & Saf. Code, § 34179, subd. (c) (emphasis added).

¹³ *Boeken v. Philip Morris USA Inc.* (2013) 217 Cal.App.4th 992, 1002.

¹⁴ Ed. Code, § 48325, subd. (b)(3) (“Members of the board shall serve without compensation and without reimbursement of travel and living expenses.”).

¹⁵ Fin. Code, § 17214, subd. (a) (“All members shall serve without compensation or reimbursement for expenses.”).

¹⁶ Gov. Code, § 3402, subd. (c) (“Members shall serve without compensation or reimbursement for travel, per diem, or other expenses, . . .”).

¹⁷ Lab. Code, § 2674.1; 8 Cal. Code Regs. § 13632 (“Members shall serve without compensation or reimbursement for expenses.”).

¹⁸ Health & Saf. Code, § 121348.2, subd. (a) (“Representatives appointed to the task force shall serve without compensation and without reimbursement of expenses beyond any existing contract with the department.”).

by an appointing agency that may wish to compensate its appointee for his or her service on such a body, and those (such as a “member of the public”) who are not. Instead, the no compensation/reimbursement rule applies to “all” board members, however they came to be appointed on the board. Because the statute does not distinguish between board members who may or may not receive compensation or reimbursement from a particular outside source, we are not free infer such a distinction.¹⁹

It has been suggested that we should interpret section 34179(c)’s no-compensation/no-reimbursement provision as applying only to the successor agency, and not to entities making appointments or to entities (such as a special district or an education agency) that employ an appointee. This contention is based on the second sentence of section 34179(c), which states that, “The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget.” The argument is that, because section 34179(c) addresses the general subject of which costs are to be borne by successor agencies, it should be interpreted as not prohibiting—because it does not address—appointing agencies from compensating their own appointees.

We understand the argument, but are not persuaded to stray from the plain and mandatory command that “board members shall serve without compensation.” This language is directed at the persons serving on the board, not the entities that put them there. If the Legislature’s intent was only to limit the direct expenses of successor agencies and oversight boards, it could have used language to the effect of: “Neither the oversight board nor the successor agency shall compensate or reimburse the expenses of oversight board members.” The language that the Legislature used instead expresses a different—and, in context, perfectly reasonable—intent.

Moreover, the apparent severity of the no-compensation provision is tempered in several respects. First, persons appointed to oversight boards will often be employees of the entities appointing them.²⁰ Where an entity appoints its own employee to an oversight board as one of the employee’s duties, we see nothing in the statute that would bar the employee from receiving his or her usual compensation, even if the compensation covers the time the employee spends on the board. What the statute prohibits is a person’s receiving compensation or reimbursement *for service on an oversight board*; it

¹⁹ Code Civ. Proc., § 1858; see *People v. Guzman* (2005) 35 Cal.4th 577, 586-587.

²⁰ E.g. Health & Saf. Code, § 34179, subd. (a)(3)(A) (member appointed by special district), 34179, subd. (a)(4) (member appointed by county superintendent of education), 34179, subd. (a)(5) (member appointed by Chancellor of California Community Colleges); but see Health & Saf. Code, § 34179, subd. (a)(6) (member of public).

does not require a person to forego compensation or reimbursement the person earns in the course of performing his or her duties as an employee of the appointing entity. Second, we note that the first sentence of subdivision (c) allows an oversight board to “direct the staff of the successor agency to perform work in furtherance of the oversight board’s duties and responsibilities,”²¹ and that subdivision (o) allows the board to contract for administrative support.²² Thus, the oversight board may limit the workload of its members by delegating some of the work to others.

Therefore, we conclude that Health and Safety Code section 34179(c) prohibits an appointing authority from compensating or reimbursing expenses of a person whom it appoints to an oversight board for his or her service on that board.

²¹ Health & Saf. Code, § 34179, subd. (c).

²² Health & Saf. Code, § 34179, subd. (o).