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California State Senate

SENATOR
THOMAS J. UMBERG

THIRTY-FOURTH SENATE DISTRICT



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April 28, 2022

Honorable Rob Bonta, California Attorney General
Department of Justice
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550

Dear Attorney General Bonta,

I write to ask your office to opine on the issue of the adoption of new Supervisorial District boundaries ahead of the next regularly scheduled election in the County of Orange.

Included in the redistricting ordinance adopted by the Orange County Board of Supervisors on December 7, 2021 was the implementation of new district boundaries effective January 6, 2022.

Over 1.4 million Orange County residents, including many of the communities I represent in Anaheim, Fountain Valley, Huntington Beach, Garden Grove, Los Alamitos, Orange, Santa Ana, and Seal Beach suddenly found themselves with a new Supervisor they did not have the opportunity to elect. Put differently, the residents that elected their representatives for the current term of office had their representative changed by a vote of the elected body and not the voters themselves.

On December 16, 2021 you answered the following question asked by the County Counsel of San Luis Obispo County related to a vacancy on the County Board of Supervisors.

QUESTIONS PRESENTED AND CONCLUSIONS

1. Will the boundaries for San Luis Obispo County Supervisorial District Three adopted in 2011 apply to the 2022 election to fill the unexpired term of a deceased incumbent elected in 2020?

Yes. The boundaries of District Three adopted in 2011, which were in effect at the time of the deceased incumbent's election in 2020, control until the next regular election for that seat in 2024, when the boundaries adopted in 2021 will control.

Furthermore, in your analysis of the statute you elaborated on what constitutes a "term of office:"

Third, subdivision (a) of section 21606 (essentially identical to its county counterpart in section 21506) "specifies that 'the term of office' of any council member shall not be affected by a change in district boundaries" and therefore that "the 'term of office' would continue for its full duration, further indicating that the redrawn boundaries should not be used for a given office until the first regular election for that office."

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Fourth, we believed that “it would be inharmonious if the boundaries that the appointed member represented were to change during the elective term of office, based on the fortuity that the elected incumbent happened to resign or was otherwise unable to serve out his or her full term.”

Lastly, our interpretation found analogous support in California Supreme Court precedent that had applied this same rule to district boundaries for United States representatives and California state senators after redistricting.

More recently, on April 5, 2022, the City Attorney of Sacramento, published an opinion in which she cited this earlier finding of your office, in which she concluded that Councilmembers represent the districts they were elected to until the end of their term of office, stalling the implementation of new district boundaries ahead of the next regularly scheduled election. According to Sacramento City Attorney Alcala Wood, “this statute makes plain that the new districts do not govern until the next “regular” election for a given council seat. The Attorney General has recently so concluded.” The City of Sacramento is a charter city whose charter does not address redistricting; therefore, general law applies. The same is true for the County of Orange.

This question must be addressed expeditiously. With every day that passes, the voters of Orange County are being disenfranchised. The voters are entitled to their representative for the term office to which they were duly elected.

I am aware that guidelines proliferated by your office suggest that County Counsel should be seeking this opinion – but in cases like these, it seems antithetical. Quite simply, I do not have confidence that the County Counsel of the County of Orange will be authorized by the Board of Supervisors to seek this opinion on their own redistricting plan. As a matter of addressing state law, however, it is appropriate for members of the State Legislature to seek guidance on this matter. As Chair of the Senate Judiciary Committee and the former Chair of the Senate Elections and Redistricting Committee I have a unique interest in clarifying state law in this instance – and a particular interest in representing the needs of my constituents.

Thank you for your timely attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Umberg', written in a cursive style.

Thomas J. Umberg
Senator, 34th District