

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 04/29/2022

TIME: 10:55:00 AM

DEPT: C31

JUDICIAL OFFICER PRESIDING: Martha K. Gooding

CLERK: J. Quamina

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2022-01255279-CU-MC-CJC** CASE INIT.DATE: 04/18/2022

CASE TITLE: **People of the State of California vs. Shaw**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 73750342

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 04/28/2022 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Before the Court is the Ex Parte Application ("Application") by Plaintiff People of the State of California, ex. Rel. Michael Sean Wright ("Plaintiff"). The Application asks the Court to issue a temporary restraining order ("TRO") restraining Defendant Tim Shaw ("Defendant") from serving as a member of the Orange County Board of Education ("OCBOE") pending a hearing on a preliminary injunction, and an order to show cause ("OSC") why the Court should not issue a preliminary injunction restraining Defendant from serving as a member of the OCBOE until the earlier of (1) the conclusion of this action; and (2) certification of election results electing Plaintiff to the OCBOE.

The Court has reviewed all papers filed by Plaintiff in support of its Application. In addition, after continuing the hearing to allow Defendant additional time to submit its opposition to the Application, the Court has reviewed all papers filed by Defendant in opposition to the Application. Both Plaintiff and Defendant submitted Requests for Judicial Notice ("RJN") in connection with their respective briefing on the Application. Both parties advised the Court at the April 28, 2022 hearing they do not object to the other's RJN. Accordingly, both RJNs are granted.

Based on the record before it and the written and oral arguments of the parties, the Court concludes Plaintiff has satisfied the standards for issuance of the requested TRO and OSC. Plaintiff has shown a strong likelihood of success on the merits of its claim that Defendant's appointment to the OCBOE – and his resulting service on the OCBOE – was in violation of Government Code section 1752. Plaintiff also has shown that allowing Defendant to continue to serve on the OCBOE would cause irreparable harm.

With an exception both parties acknowledge is not relevant here, Section 1752 provides that "*no person* elected or appointed to the governing body of any city, county, or district having an elected governing

body, shall be appointed to fill *any vacancy* on that governing body during the term for which he or she was elected or appointed.” Gov. Code § 1752(b) (emphases added). (Unless otherwise noted, all statutory reference herein are to the Government Code.)

Based on the plain language of the statute, the Court finds Defendant’s appointment by the OCBOE in December 2020 to fill the seat to which he had been elected in March 2020 for a four-year term, but from which he had resigned in November 2020 in the face on a different quo warranto action against him, was in violation of section 1752.

The Court rejects Defendant’s argument that the Court lacks authority to enter any TRO that would alter the status quo. The law does not impose such a blanket prohibition. Where, as here, Plaintiff has shown a very strong likelihood of success that it will prevail on the merits – i.e., a strong likelihood of showing that the “status quo” (Defendant’s service on the OCBOE) resulted from a violation of law – a TRO to temporarily alter that wrongful status quo is warranted and within the Court’s authority.

The Court finds unpersuasive Defendant’s argument that it is not a governing body of a “district” within the meaning of section 1752. The California Attorney General has recognized the OCBOE is “deemed to be in a school district in its own right in its operation of direct instruction community schools.” 104 Ops.Cal.Atty.Gen. 58 (2021) No. 21-103 at n. 3 (citing Ed. Code §§ 1980, 1984); see Ed. Code § 1984 (“For the purposes of establishing and maintaining a county community school, a county board of education shall be deemed to be a school district.”) “Attorney General opinions are entitled to considerable weight.” *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1087, fn. 17; see *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 (“ ‘Opinions of the Attorney General, while not binding, are entitled to great weight.’ ”).

Moreover, the OCBOE has recognized that it is the governing board of a district, repeatedly adopting resolutions referring to itself as such. See Plaintiff’s RJN Exhs. D, E, I, J, L, M.

The Court also is unpersuaded by Defendant’s argument that the Court should read into section 1752 a qualification that the prohibition of the statute only applies if (1) the vacancy to which Defendant was appointed was caused by the resignation of *another member* of the Board; and (2) the effect of Defendant’s appointment was to extend what would otherwise have been his elected term of office.

Defendant’s proposed qualifiers or limitations find no support in the plain language of section 1752. The statute applies to any “person” and “any vacancy.” “It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed.” *Security Pacific National Bank v. Wozab*, 51 Cal.3d 991, 998. This Court cannot, in the guise of statutory construction, rewrite the statute in a manner not reflected in its explicit terms. See *id.* (it is a “cardinal rule of statutory construction that courts must not add provisions to statutes.”).

Moreover, the legislative history provided as part of Plaintiff’s RJN reflects that the very limitations Defendant urges the Court to graft onto the statute were rejected by the Legislature in the final, adopted version of section 1752. See Plaintiff’s RJN Exh. N (Bates numbered “Wright v. OCBOE p. 053” and “Wright v. OCBOE p. 069”) (striking the phrase “caused by the resignation of another member thereof if the effect of such appointment would be to extend what would otherwise be the current term of office of such appointee. This section shall apply only to appointees who are also members of the body to which they are being appointed.”).

The Court sets an OSC re Preliminary Injunction on the Court’s law and motion calendar.

A separate TRO and OSC re Preliminary Injunction will follow.

The Motion for Preliminary Injunction is scheduled for 05/16/2022 at 01:30 PM in Department C31.

Court orders Plaintiff to give notice.