



AB 1025 – Conflict Counsel for Treasurer-Tax Collectors

Background

Elected County Sheriffs, Assessors and Auditors are provided a safeguard in the statute in the rare circumstance that County Counsel faces a conflict of interest in representing that county-wide elected official. This is because County Counsel is accountable directly to the Board of Supervisors, not to any county department head or county-wide elected official.

The County Auditor was most recently added to the statute in 2018; in some counties, the Auditor's office is consolidated with the County Treasurer-Tax Collector, thereby extending protections to some elected consolidated Treasurer-Tax Collectors by virtue of their consolidated status. However, over thirty elected Treasurer-Tax Collectors do not enjoy this same protection because they are not consolidated with an office that has this protection.

In rare circumstances, such as with regard to County Pool Participation, the County Treasurer-Tax Collector must represent all pool participants and not just the County's own funds. If there were legal challenges associated with a pool participant, a conflict would arise. Another example is when a Board of Supervisors differs from the Tax Collector on a tax sale matter in potential litigation; the County Counsel may not be able to represent both the Board and the Tax Collector in such situations. Ensuring the Treasurer-Tax Collectors can make prudent and fair decisions in their administration of the tax collection and treasury management duties of their office, without fear of personal financial hardship due to the need to avail themselves of outside counsel at

their own expense, legislation is needed to ensure a process is in place for the Board to concur there is a conflict and make administrative and budgeting arrangements in order to secure outside counsel for the Treasurer-Tax Collector.

It is important to note that the vast majority of the time when counsel is needed, County Treasurer-Tax Collectors concur that County Counsel is more than capable of providing this critical legal service to their office. In fact, there is no current known circumstance where a Treasurer-Tax Collector is incurring the personal expense to represent them in a legal proceeding regarding their administration of duties. However, when a conflict of interest arises, it is a matter of fairness and equity that, when appropriate, a County Board can hire outside counsel to mitigate a conflict of interest under Rule 1.7 of the State Bar of California.

Historically, Treasurer-tax Collectors have anecdotally either had to hire outside counsel or had to represent themselves (and were not attorneys) because they did not have outside counsel. Rare conflicts do arise. Should the Legislature wait until the next conflict before acting, it could be too late for the affected individual elected official.

There are six consolidated, elected offices of Auditor-Controller-Treasurer-Tax Collector in California; there are thirteen appointed treasurer-tax collectors; there are thirty-nine elected treasurer-tax collectors in this State. Of note, twenty-one of those elected officeholders are women. The exclusion of treasurer-tax collectors from this statute disproportionately affects elected women.



Problem Being Addressed

Treasurer-Tax Collectors do not have authorization through Government Code to request outside legal counsel when a conflict of interest exists in representation. This exclusion leaves those elected officeholders in the position of facing enormous personal financial burden if they need to hire an attorney to represent them when County Counsel cannot provide representation due to a conflict.

Currently, Government Code 31000.6 speaks to this situation but only authorizes outside legal representation for the Assessor, Auditor-Controller, and Sheriff, but not Treasurer-Tax Collectors. The Legislature acted in 2018 (via AB 3068, Daly) to add Auditors to this statute. This addition covered consolidated offices of Treasurer-Tax Collector-Auditor-Controller, but left out those separate office holders.

Which code section is affected?

This bill would add Treasurer-Tax Collectors to Government Code 31000.6 as follows:

Upon request of the assessor, auditor-controller, sheriff, or treasurer-tax collector of the county, the board of supervisors shall contract with and employ legal counsel to assist the assessor, auditor-controller, sheriff, or treasurer-tax collector in the performance of his or her duties in any case where the county council, county attorney or district attorney would have a conflict of

interest in representing the assessor, auditor-controller, sheriff or treasurer-tax collector.

Summary

AB 1025 will authorize outside legal representation to be approved by the Board of Supervisors to assist the Treasurer-Tax Collector in the performance of their duties in any case where the County Counsel/County Attorney or District Attorney would have a conflict of interest in representing the Treasurer-Tax Collector.

This proposal does not authorize a treasurer-tax collector to unilaterally hire outside counsel at the expense of the County; the Board first either concurs with the conflict and moves to procure the outside counsel; if the Board does not concur, the Treasurer-Tax Collector may request the presiding judge of the Superior Court to opine, and if a conflict is confirmed, the judge would select appropriate counsel.

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Supporters

California Association of County Treasurer-Tax Collectors