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OPINION	:	No. 11-1113
of	:	October 9, 2012
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THE ARROWBEAR PARK COUNTY WATER DISTRICT has requested leave to sue in quo warranto upon the following question:

Is Richard Kuritz unlawfully holding the office of director of the Arrowbear Park County Water District because he does not reside within the boundaries of the District?

CONCLUSION

Whether Richard Kuritz is unlawfully holding the office of director of the Arrowbear Park County Water District because he does not reside in the District presents substantial questions of fact and law warranting judicial resolution; accordingly, the application for leave to sue in quo warranto is GRANTED.

## ANALYSIS

### **Introduction**

The Arrowbear Park County Water District (District) is a public corporation established and organized under the County Water District Law.<sup>1</sup> The District is located in the San Bernardino Mountains, in San Bernardino County. Richard Kuritz (Kuritz) was elected to a four-year term as a member of the District's Board of Directors (Board) in November 2009, and assumed office on or around December 4, 2009. The District, as proposed relator, alleges that Kuritz, the proposed defendant in this matter, is unlawfully serving as a member of the Board because, both at the time of his election and thereafter, Kuritz was not a resident of the District. The District requests that, pursuant to Code of Civil Procedure section 803, we grant leave to sue in quo warranto to remove Kuritz from his office.<sup>2</sup> Kuritz has submitted no response to the District's application for leave to sue in quo warranto.<sup>3</sup>

### **Nature of and Criteria for Quo Warranto**

Code of Civil Procedure section 803 provides in pertinent part: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own

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<sup>1</sup> Wat. Code §§ 30000-33901.

<sup>2</sup> Action taken on behalf of a county water district by its board of directors requires the affirmative votes of at least a majority of the members of the board. Wat. Code § 30525. On October 20, 2011, a majority of the members of the District's Board authorized the District's legal counsel to initiate this quo warranto proceeding on behalf of the District.

<sup>3</sup> In both written and telephonic communications with this office, Kuritz claimed to have formally resigned from the Board in late October 2011 (purportedly in order to save the taxpayers further expense on the issue of his residency). However, despite repeated requests from this office that Kuritz provide documentation of his resignation, and Kuritz's repeated promises to do so, this office has never received any evidence that Kuritz ever resigned from his office as Board Director. Counsel for the District has also informed this office that the District has not received any letter of resignation from Kuritz. This office also gave Kuritz the opportunity to provide some other response to the District's application for leave to sue in quo warranto, but no response has been received.

information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state.”<sup>4</sup> An action filed under the terms of this statute is known as a “quo warranto” action, and is the proper legal means for testing title to public office.<sup>5</sup> A member of the governing board of a county water district holds a public office.<sup>6</sup> Therefore, this proceeding is properly initiated to test whether Kuritz “unlawfully holds or exercises” office as a member of the Board of the District.

In determining whether to grant a particular application to sue in quo warranto, we do not resolve the matter on its merits but rather consider two questions: (1) Does the application present a substantial issue of fact or law appropriate for judicial resolution; and (2) If so, would granting the application serve the overall public interest?<sup>7</sup> For the reasons given below, we answer both questions in the affirmative in this case.

### **Residency Requirement**

Water Code section 30500 provides: “Each district shall have a board of five directors each of whom, whether elected or appointed, shall be a voter of the district.” Section 30021 provides that, for purposes of the County Water District Law, “voter” has the same meaning as it does in the Elections Code, and a voter “shall also be a resident of the district . . . involved.” Elections Code section 359 defines “voter” as any elector who

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<sup>4</sup> Although Code of Civil Procedure section 803 refers to the complaint “of a private party,” public officers and agencies may also apply to the Attorney General for leave to sue in quo warranto. 76 Ops.Cal.Atty.Gen. 157, 162 (1993).

<sup>5</sup> *Elliott v. Van Delinder*, 77 Cal. App. 716, 719 (1926) (“statutory procedure in the nature of quo warranto is the proper remedy by which directly to test the title to all public offices”); *Visnich v. Sacramento Co. Bd. of Educ.*, 37 Cal. App. 3d 684, 690 (1974) (“title to an elective office cannot be litigated by any other means than in quo warranto”); *Nicolopoulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1125-1126 (2001); 93 Ops.Cal.Atty.Gen. 144, 145 (2010); 81 Ops.Cal.Atty.Gen. 207, 208 (1998).

<sup>6</sup> 85 Ops.Cal.Atty.Gen. 239, 240 (2002); 82 Ops.Cal.Atty.Gen. 68, 69 (1999); 73 Ops.Cal.Atty.Gen. 268, 270 (1990); 64 Ops.Cal.Atty.Gen. 288, 288 (1981); 37 Ops.Cal.Atty.Gen. 21, 22 n. 1 (1961); 32 Ops.Cal.Atty.Gen. 250, 252 (1958).

<sup>7</sup> 93 Ops.Cal.Atty.Gen. at 145; 89 Ops.Cal.Atty.Gen. 55, 56 (2006); 88 Ops.Cal.Atty.Gen. 25, 26 (2005).

is registered under the Elections Code, and Elections Code section 321 in turn defines “elector” as “any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election.”<sup>8</sup> Elections Code section 349 defines “residence” as follows:

- (a) “Residence” for voting purposes means a person’s domicile.
- (b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.
- (c) The residence of a person is that place in which the person’s habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

Thus, to be a candidate for, and serve on, a water district’s governing board, a person must be domiciled within the district. If, at the time of his election, Kuritz was not domiciled within the District, he was not eligible to become a Director and is not entitled to retain that office.<sup>9</sup>

Furthermore, under the provisions of Water Code section 30508, even if Kuritz was domiciled within the District at the time of his election and thus initially eligible to become a Director, he would forfeit that office if he gave up his domicile in the District and did not re-establish his domicile there within 180 days. Section 30508<sup>10</sup> refers to

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<sup>8</sup> See also *Neilson v. City of Cal. City*, 133 Cal. App. 4th 1296, 1312-1313 (2005) (a “qualified elector” of a particular district is a properly registered voter of that district).

<sup>9</sup> See 86 Ops.Cal.Atty.Gen. 82, 83 (2003); 83 Ops.Cal.Atty.Gen. 181, 183 (2000); 81 Ops.Cal.Atty.Gen. 98, 101 (1998); 73 Ops.Cal.Atty.Gen. 197, 207 (1990).

<sup>10</sup> Water Code Section 30508 states, in full:

If a director’s place of residence, as defined in Section 244 of the Government Code, is moved outside district boundaries or outside the boundaries of that director’s division where elected from a division, and if within 180 days of the move or of the effective date of this section the director fails to reestablish a place of residence within the district or within the director’s division, it shall be presumed that a permanent change of

Government Code section 244, which defines “residence,” in the sense of domicile,<sup>11</sup> for various purposes, and which states in pertinent part:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another one is gained.
- . . .
- (f) The residence can be changed only by the union of act and intent.

As both Elections Code section 349(b) and Government Code section 244(b) provide, a person has only one domicile at any given time.<sup>12</sup> The main test for determining a person’s domicile is “physical presence plus an intention to make that place his permanent home.”<sup>13</sup> Courts, and this office, have generally considered a range of factors as indicia of a person’s domicile, including the address shown on the person’s voter registration, driver’s license, vehicle registration, homeowner’s exemption (if any), other official papers such as tax records, and telephone listing; the person’s mailing address for such things as bills and invoices; the location of bank accounts; where the majority of the person’s business and personal contacts are; and the acts and declarations of the person.<sup>14</sup>

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residence has occurred and that a vacancy exists on the board of directors pursuant to Section 1770 of the Government Code.

Government Code 1770(e) provides that an office becomes vacant on the failure to satisfy a residency requirement.

<sup>11</sup> *Walters v. Weed*, 45 Cal. 3d 1, 7-8 (1988) (“residence” as used in Govt. Code § 244 means “legal residence” or “domicile”); *Smith v. Smith*, 45 Cal. 2d 235, 239 (1955) (“residence” as used in Govt. Code § 244 is synonymous with domicile); *Fenton v. Bd. of Directors*, 156 Cal. App. 3d 1107, 1113 (1984) (“residence” as used in Govt. Code § 244 means “domicile”); 89 Ops.Cal.Atty.Gen. 44, 47 (2006) (same).

<sup>12</sup> Courts have also consistently stated this principle. *See e.g. Smith*, 45 Cal. 2d at 239; *DeMiglio v. Mashore*, 4 Cal. App. 4th 1260, 1268 (1992).

<sup>13</sup> *Fenton*, 156 Cal. App. 3d at 1116; *see also* 89 Ops.Cal.Atty.Gen. at 47; 86 Ops.Cal.Atty.Gen. at 83; 81 Ops.Cal.Atty.Gen. 94, 97 (1998).

<sup>14</sup> *See e.g. Fenton*, 156 Cal. App. 3d at 1116 (voter registration; acts and declarations

With this legal framework in mind, we proceed to the particulars of this matter.

### **Factual Allegations**<sup>15</sup>

For the purposes of this opinion, we assume the following factual allegations to be true: Kuritz took his seat on the District's Board in December 2009. In August 2010, in response to complaints by certain members of the public and ratepayers of the District that Kuritz was not a resident of the District, counsel for the District, Mr. Joseph S. Aklufi (Aklufi), began an investigation of Kuritz's residence status. By October 6, 2010, Kuritz had produced some documentation, and additional information by letter, sufficient to lead Aklufi to believe that Kuritz was in compliance with the residency requirements of the County Water District Law. Aklufi terminated the District's inquiry into Kuritz's residence on October 8, 2010, and so informed Kuritz on that date. In or around October or November 2010, Kuritz also submitted to the general manager of the District a residential address on Music Camp Road, in Arrowbear Lake, which is located within the District.

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of party involved; mailing address) (citations omitted); *In re Marriage of Leff*, 25 Cal. App. 3d 630, 642 (1972) (location of owned property; voter registration; car registration; driver's license; intentions as manifested by acts and declarations); *Noble v. Franchise Tax Bd.*, 118 Cal. App. 4th 560, 569 (2004) (vehicle registrations; driver's license; location of business office; address to which credit card and bank statements sent; location of post office box and checking accounts; place where medical care received); 86 Ops.Cal.Atty.Gen. 194, 197 (2003) (address shown on voter registration, driver's license, vehicle registration, and tax records; declarations of intent); 85 Ops.Cal.Atty.Gen. 101, 104 (2002) (address shown on tax returns, driver's license, automobile registration, homeowner's exemption, telephone listing, and voter registration); 85 Ops.Cal.Atty.Gen. 90, 93 (2002) (same); 84 Ops.Cal.Atty.Gen. 154, 157 (2001) (same); 72 Ops.Cal.Atty.Gen. 8, 14 (1989) (voter registration, mailing address, where tax returns are filed, homeowner's exemption).

<sup>15</sup> The facts as stated in this opinion are compiled from a verified statement of facts submitted by counsel for the District, a declaration from the District's general manager signed under penalty of perjury, and various records and documents submitted in support of the District's application. Kuritz has provided no evidence to controvert these allegations.

However, on March 14, 2011, Aklufi advised Kuritz that additional allegations had been made by District residents and ratepayers that Kuritz did not reside in the District. In written communications between March 14 and March 16, 2011, Aklufi asked Kuritz to provide certain items generally considered indicative of residency, such as income tax returns, voter registration, auto insurance policies, and major bills (showing address), as well as any other documents that Kuritz might consider helpful in resolving questions concerning his legal residence. Kuritz did not provide the requested documents, nor did he provide any additional information.

Kuritz's residence was discussed at a regular meeting of the District's Board held on July 8, 2011, at which Kuritz was present. Aklufi presented evidence and information regarding Kuritz's residence, which was conflicting. As evidence in support of Kuritz's residency within the District, Aklufi cited two utility bills and a motor vehicle registration, all showing the Music Camp Road address; records indicating that Kuritz had a checking account and post office box in Running Springs (a village located adjacent to the service territory of the District); and voter registration in San Bernardino County. As evidence of residency outside the District, Aklufi reported that Kuritz did not own or rent real property within the District; there was no significant utility usage at the Music Camp Road address; Kuritz was registered to vote in San Diego County; the Franchise Tax Board address for Kuritz was in the city of San Diego; Kuritz's telephone numbers were all San Diego telephone numbers; Kuritz's business was in San Diego; Kuritz's family lived in San Diego; and neighbors of the Music Camp Road property stated that the residence was rarely occupied.

At this meeting, Kuritz promised to produce copies of federal income tax returns, but subsequently failed to do so, and he failed to respond to renewed requests for additional documentation such as credit card billings, automobile insurance policies, statements from the Social Security Administration, or other documents that would indicate the address at which Kuritz received important mail.

The Board held another regular meeting on August 12, 2011, at which Kuritz was present. Kuritz's residence status was again discussed. According to the minutes of the meeting, Kuritz refused to provide documentation in support of his residency on the ground that the Board did not have authority to request it. Kuritz also contended that the Board had no legal authority to take action regarding his residency. At the conclusion of the meeting, a majority of the Board passed a resolution declaring Kuritz's seat vacant

because Kuritz had failed to prove his residency.<sup>16</sup> The District's request to the Attorney General for permission to sue Kuritz in quo warranto followed.

### **Issues of Fact and Law<sup>17</sup>**

The District concedes that Kuritz may have a residence within the boundaries of the District (the house on Music Camp Road), but contends that Kuritz's legal residence, in the sense of domicile, has been and is in San Diego, California. At all relevant times, the Music Camp Road property has been owned by Antoinette Kuritz, Kuritz's ex-wife.<sup>18</sup> Kuritz represented to the District's general manager that Kuritz uses the Music Camp Road house with Antoinette Kuritz's permission, but without any formal rental or lease agreement. These facts alone would carry little weight, as there is no legal requirement that a person own or rent the dwelling that is one's domicile. However, the District has also submitted a variety of documents that raise questions as to whether the Music Camp Road house was or is Kuritz's domicile. These documents include a letter from a neighbor of the Music Camp Road house who reports that she rarely sees any lights on in the house and rarely sees Kuritz in the community; electricity bills for the Music Camp Road property for August and September 2010 that show electricity usage significantly lower than the average usage for the area; records showing that water usage at the Music Camp Road house for the period of 2009 through September 2011 was between 6 and 16 percent of the average water usage of each of the other four Board Directors during the same period; a copy of Kuritz's driver's license, valid from December 13, 2006 to January 25, 2012, which shows as Kuritz's address a post office box in the city of San Diego; an Earnings Withholding Order for Personal Income Tax issued by the Franchise Tax Board of the State of California, dated June 7, 2010, which shows Kuritz's mailing address as a post office box in the city of San Diego; and a record of voter registration from the County of San Diego indicating that Kuritz had last registered to vote in September 2003 and was, as of August 10, 2010, registered to vote in the County of San Diego.

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<sup>16</sup> As legal authority for the resolution, the Board cited Water Code sections 30500, 30021, and 30508; Elections Code section 349; and Government Code section 1770.

<sup>17</sup> The question of residence, in the sense of domicile, is a mixed question of fact and law. *Fenton*, 56 Cal. App. 3d at 1117; 73 Ops. Cal. Atty. Gen. at 209.

<sup>18</sup> Property tax statements for the Music Camp Road residence are mailed to a post office box in the city of San Diego.



While we do not consider these pieces of documentation all to be of equal weight, we believe that, taken in the aggregate, they indicate little physical presence at the Music Camp Road address, coupled with significant activity and evidence of residence within the city of San Diego. Moreover, while both we and courts have generally accorded great weight to a person's statements of intent regarding his or her domicile, as corroborated by the person's conduct,<sup>19</sup> Kuritz has repeatedly refused to declare which residence he considers his domicile, or to provide this office with any evidence that would tend to prove domicile within the District.

We do not say here that no such materials exist. For example, the District itself acknowledges that Kuritz had or has a post office box in Running Springs, and a checking account in a bank located in Running Springs, indicating some presence or activity within the vicinity of the District. There are also suggestions in some of the District's submissions that, either before his election or during his term as Director, Kuritz changed the address for his driver's license and for a vehicle registration to one within the District, and may have registered to vote in San Bernardino County.

To be clear, it is not our role here to predict how a court would ultimately resolve the question of Kuritz's eligibility to hold the office of District Director. Rather, "the action of the Attorney General is a preliminary investigation, and the granting of the leave is not an indication that the position taken by the relator is correct, but rather that the question should be judicially determined and that quo warranto is the only proper remedy."<sup>20</sup> In this case, the District's allegations raise substantial issues of fact and law as to Kuritz's place of domicile, both at the time of Kuritz's election and thereafter, that are appropriate for judicial resolution.

### **The Public Interest**

As a general rule, we have viewed the need for judicial resolution of a substantial question of fact or law as a sufficient "public purpose" to warrant the granting of leave to

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<sup>19</sup> See e.g. 81 Ops.Cal.Atty.Gen. 95, 97 (1998); 75 Ops.Cal.Atty.Gen. 26, 28 (1992); 72 Ops.Cal.Atty.Gen. at 14; *Fenton*, 156 Cal. App. 3d at 1117; *Mauro v. Dept. of Mental Hygiene*, 207 Cal. App. 2d 381, 389 (1962).

<sup>20</sup> 12 Ops.Cal.Atty.Gen. 340, 341 (1949).

sue in quo warranto, absent other overriding considerations.<sup>21</sup> No countervailing considerations are present in this instance. Both the public and the District have an interest in the integrity of public office and in the qualifications of their officials. Accordingly, the application for leave to sue in quo warranto is GRANTED.

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<sup>21</sup> See 89 Ops.Cal.Atty.Gen. at 48; 85 Ops.Cal.Atty.Gen. at 93-94; 82 Ops.Cal.Atty.Gen. 78, 81-82 (1999); 81 Ops.Cal.Atty.Gen. at 98.