EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004
Telephone: (415) 703-5876
Fax: (415) 703-5843
E-Mail Address: susan.lee@doj.ca.gov

June 16, 2009

Chuck Murray
Chairman, California Citizens Compensation Commission
c/o Linda Mayhew, Assistant Chief Counsel
Department of Personnel Administration
1515 S St., North Building, Suite 400
Sacramento, CA 95811-7258

Re: Request for Attorney General's Opinion
No. 09-0511

Dear Mr. Murray:

I am writing in response to your letter of June 1, 2009, which requested an opinion on two questions. In order to accommodate your request for a response before June 19, my office has decided to respond to your request with this informal letter opinion, rather than with a formal published opinion. This opinion will not be disseminated in the same manner as our published opinions, and is not citable in the same manner as our published opinions. On the other hand, this letter is not provided in the context of a confidential attorney-client relationship and does not constitute legal advice. This informal opinion is provided to you in consideration of our duties and authority under Government Code section 12519.

Your letter requests opinions on two questions:

1. Can the California Citizens Compensation Commission implement a cut in salary and/or benefits during the current term of an elected official?

2. If cuts in salary and/or benefits cannot be made during the current term of an elected official, how can the Commission challenge this?

The Commission's powers to establish and adjust the salary and benefits of certain elected state officers are set forth in Article III, section 8 of the California Constitution.[1] This provision was added to the Constitution as the result of voter approval of Proposition 112 on June 5, 1990.

[1] Section 8 is reprinted in Attachment 1 to this letter.

As to the timing of such adjustments, section 8 states that, "[A] t or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December."[2] Further, section 8 specifies that, "Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously."[3]

Your question arises because of the tension between this section and section 4 of Article III of the California Constitution. Section 4 states that, "Except as provided in subsection (b) [relating to compensation of judges], salaries of elected state officials may not be reduced during their term of office. Laws that set these salaries are appropriations."[4] This provision was added to the Constitution in 1972. As I understand it, the crux of your question is whether section 8 supersedes section 4, such that if the Commission adopted a resolution reducing the salary or benefits of an elected state officer, the reduction would take effect on the first Monday of the next December following adoption of the resolution. After carefully reviewing the relevant law, my conclusion is that section 8 does not supersede section 4 in that manner. Instead, both sections are to be given effect, so that the Commission may adjust state officers' salaries and benefits upward at any time, but any adjustment that constitutes a reduction in salary would not take effect until the end of an affected officer's current term in office.

My reasoning rests primarily on the application of well-established principles of constitutional construction.[5] As is true for all types of legislative construction, the central purpose is to determine and effectuate the intent of those who enacted the constitutional provision at issue. Because the statutory language is generally the most reliable indicator of intent, the first order of business is to examine the words themselves, giving them their usual and ordinary meaning and construing them in context.[6] "[E]very statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect."[7] In *Mejia v. Reed*, for example, our Supreme Court was presented with a situation in which portions of two separate state codes that dealt with the same subject were potentially in conflict, but did not refer to one another.[8] The Court explained that in such a situation the two

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[2] Art. III, § 8(g).
[3] Art. III, § 8(i).
[4] Art. III, § 4(a). Section 4 is reprinted in Attachment 2 to this letter.
[5] These principles apply as much to initiative measures as to those enacted by the Legislature. *DaFonte v. Up-Right, Inc.*, 2 Cal. 4th 593, 601 (1992); *see In re Lance W.*, 37 Cal. 3d 873, 886 (1985).
[6] *E.g., Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003); *Esberg v. Union Oil Co.*, 28 Cal. 4th 262, 268 (2002).
[7] *Moore v. Panish,* 32 Cal. 3d 535, 541 (1982).
[8] *Mejia v. Reed*, 31 Cal. 4th at 663 (quoting *Tripp v. Swoap*, 17 Cal. 3d 671, 679 (1976).)

codes "must be regarded as blending into each other and forming a single statute." In other words, the apparently conflicting enactments "must be read together and so construed as to give effect, when possible, to all the provisions thereof."[9]

In this case, I believe that the provisions of section 4 and section 8 may readily be harmonized, as follows: The Commission may adjust salaries *upward* at any time, and the adjustments will take effect in the following December for any office affected. The Commission may also adjust salaries *downward* at any time, and the adjustments will take effect upon the commencement of the next term of office for any office affected. The interaction between sections 4 and 8, however, means that any downward adjustment may not be given effect during the current term of office of a sitting state officer. Interpreting sections 4 and 8 in this way gives maximum effect to both provisions, with the result that what might at first blush appear to be an inconsistency is in practice not an inconsistency at all.

At the heart of your request is the question whether section 8 might supersede section 4, thereby permitting the Commission to reduce the salary of an elected state official during his or her current term of office. I do not believe that would be a proper interpretation of section 8. For one thing, interpreting section 8 in that manner would nullify section 4 as it applies to the elected state officials over whose salaries the Commission has jurisdiction. But California law carries a strong presumption against any interpretation of two conflicting statutes which effectively nullifies one of the statutes. "The presumption against implied repeal is so strong that, 'To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'"[10] With that admonition in mind, I have examined in detail the purposes of section 8 as described by both the proponents and opponents of Proposition 112 in 1990.[11] I see no indication that Proposition 112 was intended to effect any change to section 4. To the contrary, I note that Proposition 112 incorporated changes to no less than seven different parts of the Constitution, and section 4 was not among them.[12]

Your second question asks how the Commission can challenge the law if cuts in salary and benefits cannot be made during an elected official's current term. One possibility, of course, would be to change the law through the legislative process, as was done by Proposition 112. Another possibility would be for an interested party, such as the Commission, to file a suit against the state entity or entities responsible for administering the law, seeking declaratory and/or injunctive relief to clarify the law's effect.[13] I regret that I cannot be more specific than

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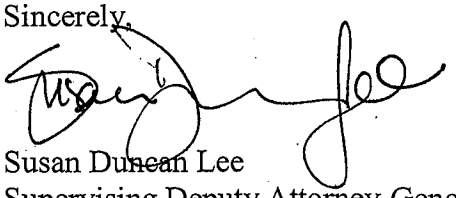
[9] *Id; see Co. of Los Angeles. v. California*, 43 Cal. 3d 46, 58 (1987).
[10] *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 569 (1998) (internal citations omitted).
[11] Ballot Pamph., Primary Elec. June 5, 1990, pp. 22-25.
[12] *Id.* at pp. 23, 64-65.
[13] *E.g., White v. Davis,* 108 Cal. App. 4th 197 (2002); *Olson v. Cory*, 134 Cal. App. 3d 85 (1980).

this in answering your second question. I am authorized to provide opinions to you only on questions of law, not on matters of practice or strategy.[14]

Sincerely,



Susan Duncan Lee
Supervising Deputy Attorney General
Opinions Unit

[14] Govt. Code § 12519.

Attachment 1

California Constitution, Article III, section 8

(a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this state which ranks among the largest private sector employers in the state based on the number of employees employed by the corporation in this state and one of whom is an owner of a small business in this state.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the state in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this state is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990. Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental,

insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this state with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(l) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature.

Attachment 2

California Constitution, Article III, section 4

(a) Except as provided in subdivision (b), salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.