



MEMORANDUM



DATE: May 18, 2009
TO: K. William Curtis, Chief Counsel; Linda A. Mayhew, Assistant Chief Counsel
FROM: Jake M. Hurley, Labor Relations Counsel
SUBJECT: Mid-Term Salary Reductions of Elected State Officers

INTRODUCTION

In an email dated May 15, 2009, Scott Somers, a member of the California Citizens Compensation Commission (Commission), requested legal guidance from the Department of Personnel Administration. Specifically, Mr. Somers requested a legal opinion as to whether the Commission's duty to annually adjust state officers' salary, imposed by Article III, Section 8(g) of the California Constitution, vitiates the constitutional bar of mid-term salary reductions of elected state officials imposed by Article III, Section 4(a).

ISSUE

- 1. Does Article III, Section 8(g) of the California Constitution permit the Commission to reduce the salaries of an elected state official during that official's term of office?

SHORT ANSWER

- 1. No. The plain language of the California Constitution bars the mid-term salary reduction of a state officer's salary during that officer's term of office. Although the Commission is ultimately empowered to reduce the salaries of certain elected state officers, the reduction can only be effective as to a future term of office.

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## RELEVANT PROVISIONS OF THE CALIFORNIA CONSTITUTION

Article III, section 4 (section 4), provides in relevant part:

- (a) Except as provided in subsection (b), **salaries of elected state officers may not be reduced during their term of office.**<sup>1</sup> Laws that set these salaries are appropriations.
- (b) [Provisions solely related to the compensation of a judge of court.]

Article III, section 8 (section 8), provides in relevant part:

- (g) **[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...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.  
...
- (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.  
...
- (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.

## ANALYSIS

Looking at Section 8(g), requiring an annual adjustment of state officer salary, one might reasonably conclude the provision directly conflicts – even supersedes – section 4(a)’s prohibition of mid-term salary reductions. After all, one might wonder how the Commission might adjust salaries downward, if needed, in any given year if the Commission is limited by section 4(a).

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<sup>1</sup> All emphasis is added unless otherwise noted.

Despite this concern, one cannot so easily dispense with section 4(a)'s clear constitutional prohibition on the mid-term salary reduction of state officials. Section 8 is silent as to section 4(a) and, therefore, it is highly unlikely a court would allow the annual adjustment provision to "silently overrule" the protections of section 4(a). Moreover, the constitutional provisions can be harmonized, *i.e.* read as being entirely consistent with each other, a reading most preferred as a matter of law. Consequently, it appears the Commission is prohibited from reducing a state officer's salary during his/her term of office, although the Commission is empowered to reduce the salary of the same (or different) state officer serving a future term.

### **1. The Plain Language of Article III, Section 4(a) is Clear: The Salary of a State Officer Cannot be Reduced During His or Her Term of Office.**

Proposition 6, passed by voters in the 1972 general election, added Article III, section 4(a) to the Constitution. (See, *Olson v. Cory* (1980) 27 Cal. 3d. 532, 543.) Proposition 6 was intended by its authors to strengthen the independence of those holding office in any of the three branches of government. (*Olson v. Cory*, *supra*, 27 Cal. 3d. at 543.) Article III, section 4(a), still in effect today, provides "the salaries of elected state officers<sup>2</sup> may not be reduced during their term of office." (Art. III, section 4(a).)

There are no cases discussing any exception to this clear prohibition against mid-term salary reductions. In fact, the California Supreme Court, in a relatively recent case, upheld portions of a lower court's ruling applying the provision to protect the salaries of state officers during during a time of legislative budget impasse. (See, *White v. Davis* (2002) 30 Cal. 4th 528.) Consequently, section 4(a), on its face, prohibits the Commission from reducing the salary of a state official during his or her term of office.

### **2. Article III, Section 8, Imposing the Commission's Constitutional Duty to Annually Adjust Salaries Does Not Supersede the ban on Mid-Term Salary Reductions**

Proposition 112, adopted by voters and effective June 6, 1990, created the Commission and established, among other things, the Commission's duty to annually adjust the salaries of state officers.<sup>3</sup> Specifically, Proposition 112, now Article III, section 8, added language requiring the

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<sup>2</sup> While the term "elected state officers" is not defined for purposes of section 4(a), the California Supreme Court has held this term to include elected state officers in all three branches of government. (*Olson v. Cory*, *supra*, 27 Cal. 3d at 543.) Importantly, all of the state officers over which the Commission has jurisdiction appear to be elected state officers, and therefore covered by the constitutional protection of Article III, section 4(a).

<sup>3</sup> "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." These officers are all "elected state officers" for purposes of Article III, section 4(a).

commission to “adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers,” at or before the end of each fiscal year. (Art. III, section 8(g).)

While one might argue the Commission’s duty to annually adjust salaries (section 8) potentially overrides the bar of mid-term salary reductions (section 4), nothing in section 8 expressly supersedes section 4. Accordingly, this argument would rely on a theory of implied revocation, *i.e.* the revocation of section 4 merely by virtue of the operation of section 8.

As a matter of statutory construction, however, courts abhor these theories of “implied” or “silent” repeal of existing law. (See, *Stone Street Capital, LLC v. California State Lottery Com.* (2008) 165 Cal.App.4th 109, 119.) This holds true even though one provision is necessarily more recent than the other.<sup>4</sup> And this is particularly true where no express language of section 8 supersedes the exceedingly clear right provided by section 4 which, in turn, protects the independence of our separate branches of state government. Instead, a court is required to first ascertain whether the two provisions can be harmonized with one another.

### **3. Because the Annual Adjustment Provisions can Be Harmonized with the Ban on Mid-Term Salary Reductions, the Provisions Should be Read as Consistent with Each Other**

If two seemingly inconsistent statutes conflict, the court’s role is to harmonize the law. (*People v. Pieters* (1991) 52 Cal.3d 894, 889 [“[W]e do not construe statutes in isolation, but rather read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.”]; *Chatsky & Associates v. Superior Court* (2004) 117 Cal.App.4th 873, 876 [“Where, as here, we are called upon to interpret two seemingly inconsistent statutes to determine which applies under a particular set of facts, our goal is to harmonize the law and avoid an interpretation that requires one statute to be ignored.”].)

Here, the provisions of section 4 and section 8 are easily harmonized. The Commission may adjust salaries upward at any time in accordance with the provisions of section 8. The Commission may adjust salaries downward during any fiscal year, but any reduction in an elected state officer’s salary cannot become effective during that state officer’s term of office. (Art. III, section 4.) In essence, the Commission would be determining the salary for a future term of office. In the meantime, and prior to the pending salary reduction taking effect, the “state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.” (Art. III, section 8(i).)

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<sup>4</sup> It has long been held by the California Supreme Court the “last in time” analysis is an analysis of last resort. (See, *Scofield v. White* (1857) 7 Cal. 400 [“where there is an apparent conflict between two acts, it is the duty of the Court, if possible, to reconcile them; but if this cannot be done, then the last act must govern”].)

## **CONCLUSION**

For the forgoing reasons, the Commission cannot reduce the salary of a state officer during his or her term of office absent a constitutional amendment and/or revision eliminating, or exempting the Commission from, the provisions of Article III, section 4(a).