



MEMORANDUM



DATE: May 24, 2012

TO: Chairman and Members
California Citizens Compensation Commission

FROM: Melissa M. Meith
Legal Counsel
Legal Division
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SUBJECT: Review of Legal Authority of the California Citizens Compensation Commission
Over Travel and Living Expenses

Introduction:

At the California Citizens Compensation Commission (Commission) meeting on March 29, 2012, the Commissioners asked that an argument be developed to support the Commission's authority to establish per diem and travel expense rates for members of the Legislature, to be compared to previous opinions. Commissioners also asked for definitions of terms used in the Commission's enabling law, such as "salary" and "benefits." The final request was for a discussion of how the Commission could learn more about whether per diem payments to legislators are taxable if the topic is consistent with the Commission's responsibilities.

This memo includes an overview of Proposition 112, which established the Commission and made other changes to the law regarding Legislators' compensation while retaining the Legislature's authority to set travel expense and per diem reimbursement rates. An argument supporting the Commission's authority over per diem and travel expenses for legislators is provided along with a summary of earlier contrary opinions. Then the arguments are compared using the rules of statutory construction followed by the courts. The memo concludes with information about tax treatment of per diem and travel reimbursement payments.

Background:

Before Proposition 112 was passed in 1990, the Legislature set its own salaries as well as per diem and travel expense reimbursement rates under the authority of California Constitution Article IV, section 4. Subsection (a) read: "Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring."

Proposition 112 amended Section 4 by deleting the Legislature's authority to set the salaries of members in subsection (a), but reiterated and preserved the Legislature's authority to set travel and living expenses in connection with official duties of members with certain limits, in new subsection (b), as follows:

"Travel and living expenses for members of the Legislature in connection with their official duties shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. A member may not receive travel and living expenses during the times that the Legislature is in recess for more than three calendar days, unless the member is traveling to or from, or is in attendance at, any meeting of a committee of which he or she is a member, or a meeting, conference, or other legislative function or responsibility as authorized by the rules of the house of which he or she is a member, which is held at a location at least 20 miles from his or her place of residence." Article IV § 4(b).

Proposition 112, titled "State Officials, Ethics, Salaries, Open Meetings," made several other revisions to the law and also created the Commission. "The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers." California Constitution Article III, section 8(a). A copy of the ballot pamphlet with the full text of Proposition 112 and the arguments pro and con is attached. (Attachment 1)

The California Government Code included then as now provisions specific to the payment of travel expenses and per diem for state officers and legislators. Government Code sections 8902 and 8903. Government Code section 11030 provides that all elective constitutional officers along with members of the Legislature, "shall receive in addition to their salaries, their actual necessary traveling expenses." The complete text of these provisions is attached. (Attachment 2)

Argument in Favor of Commission's Authority over Travel Expenses and per Diem:

The Commission's authority as stated in the Constitution is to, "establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers." This language is used in subsection (a) of Article III, section 8 as well as in subsections (g), (h), and (i). However, Prop 112 did not define "salary" or "benefits."

Webster's Dictionary defines the term "benefit" as it relates to employment as, "a service (as health insurance) or right (as to take vacation time) provided by an employer in addition to wages or salary." Are travel expenses and per diem payments benefits? Arguably yes, since those items are in addition to salary and are discussed as benefits in federal and state tax guides, as referenced in the guidelines provided to the Commission by the Franchise Tax Board (although not taxable as income if certain requirements are met; see below).

To support the Commission having authority over per diem and travel expenses, we would first argue that the law is ambiguous due to the lack of specific definition of the term "benefits" in Prop 112. If the language is ambiguous, then a reviewing court may refer to extrinsic aids such as the ballot pamphlet to determine the meaning of the language and the intent of the voters. In describing the Commission's role, the ballot pamphlet includes language that is more expansive than the law itself.

The official Title and Summary for Prop 112 states: "Repeals current provisions setting salaries, benefits of legislators, elected statewide officials; establishes seven-member Commission, appointed by Governor, to annually establish salaries, benefits."

In the Analysis by the Legislative Analyst for Proposition 112, the Commission's authority is described as: "In addition, it (the Proposition) creates a Citizen's Compensation Commission, which shall have the exclusive authority to set the salaries and all fringe benefits, except retirement, for these elected state officers."

The Argument in Favor of Proposition 112 includes this statement: "VOTE YES ON PROPOSITION 112 and create a truly *independent* citizens commission which will have complete authority to set salaries and benefits for all state elected officials." (Emphasis Original)

Therefore, the voters intended the Commission to have authority over any form of compensation to a constitutional officer or legislator, including salaries and all types of benefits. Since federal and state tax authorities treat travel expense recovery and per diem as "fringe benefits" when determining whether income taxes apply, such payments should be considered as within the scope of the Commission's authority based on the terms used in the ballot pamphlet.

Previous opinions provided to the Commission illustrate the opposing "side" of the debate, concluding that the Commission's authority is limited to setting annual salaries and health, dental, insurance and other similar benefits while the Legislature has the authority to establish travel and living expense rates for its members. To summarize:

- September 17, 1990 – Chief Counsel of the Department of Personnel Administration (DPA) Christopher Waddell provided a survey memo on the many aspects of Proposition 112 to the newly formed Commission. (Attachment 3) The memo references Government Code section 8902 and states that the Legislature, "remains vested with the authority to provide for per diem by statute."
- June 15, 2009 – DPA legal provided an opinion that the Commission's authority was limited to adjusting those benefits "similar" to the ones listed in the Constitution, which states "medical, dental, insurance and other similar benefits," and did not extend to setting travel expenses, including per diem and lodging. The opinion focused on the phrase "similar benefits" and concluded that travel expenses are dissimilar from the benefits described in Article III §8. The opinion also relied on Article IV section 4 vesting travel expense authority in the Legislature, as further explained by Government Code section 8902. (Attachment 4)
- April 7, 2011-- DPA legal addressed the Commission's authority to set travel and living expenses with regards to vehicles used by some legislators and paid for by the Legislature's operating budget, with a share paid by the legislator, and concluded the Commission has no such authority for the same reasons as cited in the 2009 opinion. (Attachment 5.)
- September 15, 2011 – The State Controller requested an opinion from the Attorney General on whether he had the authority to pay legislators a \$300 per month allowance as directed by the Commission in its 2011 Resolution. The Controller initiated the inquiry in his capacity as the state officer authorized to draw warrants on the treasury for lawful claims. The Attorney General's office concluded that the Controller did not have authority to pay that allowance and the Commission lacked legal authority to authorize it since the allowance was neither salary nor a benefit similar to those listed in Article III, section 8. The

opinion was transmitted to the Commission by the State Controller on November 18, 2011 and was attached to the March 29, 2012 meeting materials.

Analysis of Arguments:

In analyzing the meaning of constitutional provisions, the courts follow a highly structured and sequential analysis. First, the court looks at the language of the entire provision of law to determine its "plain meaning." If the language is clear and unambiguous, the court makes its ruling on that basis alone and may not consider any other materials.

However, if the court finds that the language of the law is ambiguous, meaning susceptible of two meanings, then the court may use specific documents that were available to all who enacted the measure in order to construe the language in a way that honors the voters' intent. In the case of ballot propositions, the main interpretive aid is the ballot pamphlet.

The Supreme Court of California explained the steps of the analysis and summarized the precedents in *Robert L v. Superior Court* (2003) 30 Cal.4th 894, 135 Cal.Rptr.2d 30, 69 P.3d 95. "In interpreting a voter initiative ..., we apply the same principles that govern statutory construction. (See *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276, 87 Cal.Rptr.2d 222, 980 P.2d 927 (*Horwich*)).) Thus, 'we turn first to the language of the statute, giving the words their ordinary meaning.' (See *People v. Birkett* (1999) 21 Cal.4th 226, 231, 87 Cal.Rptr.2d 205, 980 P.2d 912 (*Birkett*)).) The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]. (*Horwich, supra*, 21 Cal.4th at p. 276, [280].) When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' (*Birkett, supra*, 21 Cal.4th at p. 243.) (*People v. Rizo* (2000) 22 Cal.4th 681, 685 [94 Cal.Rptr.2d 375, 996 P.2d 27] (*Rizo*))." *Robert L v. Superior Court, supra*, at 900-901.

In arriving at the meaning of a constitutional provision, the courts give every word, clause and sentence its ordinary meaning. *Mutual Life Insurance Company of New York v. City of Los Angeles* (1990) 50 Cal.3d 402, 267 Cal.Rptr. 589, 787 P.2d 996. The courts avoid any interpretation that renders parts of a statute surplus. Instead the courts look for ways to harmonize all of the provisions. *Elsner v. Uveges* (2004) 34 Cal.4th 915, 22 Cal.Rptr.3d 530, 102 P.3d 915. A specific provision prevails over a general one relating to the same subject. *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (1999) 71 Cal.App.4th 1518, 1524, 84 Cal.Rptr.2d 621.

The intent of the author or drafter of a law is not considered in the analysis. The court in *Robert L* explained the rule, saying, "The opinion of drafters or legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters' intent. [Citations.]" (*Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Comm.* (1990) 51 Cal. 3d 744, 764-765, fn. 10, 274 Cal. Rptr. 787, 799 P.2d 1220.) *Robert L v. Superior Court, supra*, at 904.

Applying these rules to the question of the Commission's authority to set travel and living expenses, it is unlikely that a court would find in the Commission's favor because doing so would require the court to ignore both the principles of construction and the required process. The court would have to find the plain meaning of Prop 112 as a whole ambiguous; then find the ballot pamphlet's broad references to benefits more controlling than the language of the law itself; and

finally conclude that those general references to the Commission's authority in the ballot pamphlet nullify the Legislature's express authority to set travel and living expenses stated in the law itself. That result is contrary to precedent in several respects.

First, the plain meaning of Prop 112 on its face is that the Commission sets salaries and certain benefits like medical, health, and insurance benefits, while the Legislature sets rates for travel and living expense reimbursement. Construing the Commission's authority as including travel expenses and per diem would create a conflict where none exists when you review Prop 112 in total. Since the division of authority is clear in the language of the Proposition, a court could stop the discussion simply by concluding that the Legislature has authority over travel and living expenses and the Commission does not.

However taking the process a step farther, in order for a court to find that the language giving travel and living expense authority to the Legislature is superseded by the Commission's authority over medical, dental, insurance, and other similar benefits, it would have to nullify a portion of Prop 112, and doing so is also prohibited. "An interpretation that renders related provisions nugatory must be avoided (Citation); each sentence must be read not in isolation but in the light of the statutory scheme (Citation); and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed (Citation). These rules apply as well to the interpretation of constitutional provisions (Citation)." *Lundgren v. Deukmejian* (1988) 45 Cal. 3d 727 at 735, 248 Cal. Rptr. 115, 755 P.2d 299.

Finally, construing the Commission's authority over benefits so broadly as to subsume the Legislature's express authority ignores the principal that a more specific provision controls over a more general one. In addition, as the Commission has been advised, limiting the Commission's role to those subjects explicitly ascribed to it in the Constitution is supported by the principle of statutory interpretation *ejusdem generis*, meaning, "where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." *Mutual Life Insurance Company of New York v. City of Los Angeles* (1990) 50 Cal.3d 402, 410, 267 Cal. Rptr. 589, 787 P.2d 996.

To summarize, while an argument could be proffered that the intent of Proposition 112 as manifested in the discussion in the Ballot Pamphlet was to vest the Commission with authority over all benefits of state officers, including travel and living expense reimbursement for members of the Legislature, that argument is not likely to prevail given rules the courts follow when construing constitutional provisions, the plain meaning of the words of Prop 112 when reviewed as a whole, and the explicit nature of the grant of authority over travel and living expenses to the Legislature.

Regarding Taxability of Travel and Living Expense Payments:

Some of the Commissioners expressed an interest in pursuing more details about the question of whether travel and living expense payments are taxable, but only if the analysis of the Commission's authority concluded such reimbursements were within the Commission's authority. Accordingly, I did not pursue this question in any depth.

However, for the Commission's information, I did review briefly the resources available on the topic, including the background information provided to the Commission by the Franchise Tax Board and publications of the Internal Revenue Service. It appears that the simple answer is that while such payments may be taxed as income, they are tax exempt when provided to an employee

under an "Accountable Plan." An Accountable Plan is defined in federal tax regulations (which are followed by the Franchise Tax Board in California) as follows:

An accountable plan is an allowance or reimbursement policy (not necessarily a written plan) under which amounts are nontaxable to the recipient if the following requirements are met:

- There must be a business connection to the expenditure.
- There must be adequate accounting by the recipient within a reasonable period of time.
- ~~Excess reimbursements or advances must be returned within a reasonable period~~ of time. *IRC §62©; Reg. §1.62*

In response to my question, Gus Demas, Fiscal Officer of the Assembly, provided me with documentation that the Legislature operates under an Accountable Plan.

ATTACHMENT 1

California

BALLOT PAMPHLET

IMPORTANT NOTICE TO VOTERS

You will receive a separate supplemental ballot pamphlet to provide you with information about Propositions 122 and 123, which qualified for the ballot after the printing deadline for this ballot pamphlet. It will be clearly marked "Supplemental Ballot Pamphlet" and printed in blue ink to help you distinguish the two pamphlets. If you do not receive your supplement by May 30, contact your county elections official or call the toll-free voter hotline at 1-800-345-VOTE.

Primary Election

JUNE 5, 1990

CALIFORNIA STATE ARCHIVES
SECRETARY OF STATE

CERTIFICATE OF CORRECTNESS

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the PRIMARY ELECTION to be held throughout the State on June 5, 1990, and that this pamphlet has been correctly prepared in accordance with law.



Witness my hand and the Great Seal of the State in Sacramento, California,
this 21st day of March 1990.

March Fong Eu

MARCH FONG EU
Secretary of State



Secretary of State

SACRAMENTO 95814

Dear Fellow Californians:

~~This is one of two~~ California ballot pamphlets you will receive for the June 5, 1990 Primary Election relating to STATE measures. In addition, you will also receive a sample ballot and information regarding local measures. This pamphlet contains the ballot titles, short summaries, the Legislative Analyst's analyses, the pro and con arguments and rebuttals, and the complete texts for Propositions 107 through 121. It also contains the legislative votes cast for and against each measure proposed by the Legislature.

You will also receive a supplemental ballot pamphlet containing similar information for Propositions 122 and 123, which qualified for the ballot too late to meet the printing deadlines for this pamphlet. This supplement will also contain a statement about California's bonded indebtedness condition.

Many rights and responsibilities go along with citizenship. Voting is one of the most important, as it is the foundation on which our democratic system is built. Read carefully all of the measures and information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and exercise your rights by voting on June 5, 1990.

SECRETARY OF STATE

Please note that Proposition 107 is the first proposition for this election. To avoid confusion with past measures, the Legislature passed a law which requires propositions to be numbered consecutively starting with the next number after those used in the November 1982 General Election. This numbering scheme runs in twenty-year cycles.

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An Overview of State Bond Debt: See Supplemental Ballot Pamphlet

Official Title and Summary

STATE OFFICIALS, ETHICS, SALARIES, OPEN MEETINGS, LEGISLATIVE CONSTITUTIONAL AMENDMENT. Prohibits legislators, statewide elected officers from accepting honoraria, or accepting compensation for representing another before a state board or agency. Directs Legislature to enact laws applicable to legislators, statewide elected officers, implementing honoraria and compensation prohibitions, limiting acceptance of gifts, strengthening conflict laws, prohibiting receipt of income from lobbying firms, and prohibiting lobbying for compensation within 12 months after leaving office. Repeals current provisions setting salaries, benefits of legislators, elected statewide officials; establishes seven-member Commission, appointed by Governor, to annually establish salaries, benefits. Mandates open meetings of Legislature, with specified exceptions. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Unknown costs to state General Fund, depending on levels of salaries, benefits established by Citizens Compensation Commission. Relatively minor costs to state for support of Commission and enforcing provisions of this measure.

Final Vote Cast by the Legislature on SCA 32 (Proposition 112)

Assembly: Ayes 68 Senate: Ayes 33
 Noes 7 Noes 3

Analysis by the Legislative Analyst

Background

The California Constitution includes a number of requirements regarding the duties and responsibilities of the Legislature. For example, the Constitution requires the Legislature to enact laws to prohibit its Members from engaging in activities or having interests which conflict with the proper discharge of their duties. Current law generally requires that the proceedings of the Legislature and its committees be open to the public.

The Constitution provides that the salaries of all elected state officers shall be set by statute. Salaries of Members of the Legislature cannot be increased by more than five percent per year.

Proposal

This constitutional amendment prohibits Members of the Legislature and other elected state officers from receiving any honoraria. It also imposes restrictions on gifts, lobbying activity, and the sources of income of those officers. In addition, it creates a Citizens Compensation Commission, which shall have the exclusive power to set the salaries and all fringe benefits, except retirement, for these elected state officers.

The state officers that are affected by this measure include all Members of the Legislature, the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and the members of the Board of Equalization.

The specific provisions of this measure are:

Prohibition on Honoraria and Restrictions on Gifts

- Prohibits Members of the Legislature and other elected state officers from accepting honoraria.
- Requires the Legislature to enact laws that ban or strictly limit the acceptance of gifts by elected state

officers if the acceptance of the gifts might create a conflict of interest.

Restrictions on Lobbying

- Restricts Members of the Legislature and other elected state officers from accepting compensation for appearing before a state board or agency.
- Permits Members of the Legislature and other elected state officers to accept compensation for appearing on behalf of another person before any local board or agency. However, Members or state officers who accept this compensation may not participate, for the following 12 months, in any action or decision that uniquely affects a financial interest of that person.
- Prohibits Members from receiving any compensation from a lobbyist, or from any person who has been under contract with the Legislature during the previous 12 months. Also prohibits elected state officers from receiving any compensation from a lobbyist, or from any person who has been under contract during the previous 12 months with their state agency.
- Requires the Legislature to enact laws to prohibit a Member from lobbying, for compensation, before the Legislature for 12 months after the Member leaves office. This provision would affect Members whose terms begin on or after December 3, 1990.
- Requires the Legislature to enact laws to prohibit state officers, or heads of state agencies who are appointed by the Governor, from lobbying for compensation before the executive branch government for 12 months after leaving office. This provision would affect state officers and heads of agencies who are holding office on or after January 7, 1991.

Compensation

- Creates the California Citizens Compensation Commission with the exclusive authority to set the annual salaries, and the medical, dental, insurance, and other similar benefits of Members of the Legislature and the following elected state officers: the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, and the members of the Board of Equalization.
- The Governor must appoint the seven members of the commission within 30 days after the June election.
- The commission membership must include three public members: one member who has experience in employee compensation; one member who is a representative of a nonprofit public interest organization; and one member who is a representative of the general population. The commission membership must also include two members with experience in the business community and two members who are representatives of labor organizations. No current or former officer or employee of the state is eligible for appointment to the commission.

- The commission would have until December 3, 1990, to set the salaries and benefits which would be effective for one year beginning on that date.
- In the following years, the commission could adjust annually the salaries and benefits for elected state officers.

Other Legislative Rule Changes

- Limits the ability of the Legislature to close sessions of the Legislature or its committees to the public.
- Requires the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house to report to the Senate or Assembly at the beginning of each session on the goals and objectives of each house during the session. At the end of the session, these individuals would have to report to each house on the progress made toward meeting the goals and objectives.

Fiscal Effect

This measure would result in unknown costs to the state General Fund. The amount of these costs would depend on the levels of salaries and benefits established by the Citizens Compensation Commission.

The cost to the state of supporting the commission and enforcing the provisions of the measure would probably be relatively minor.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 32 (Statutes of 1989, Resolution Chapter 167) expressly amends the Constitution by repealing and adding sections thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES III, IV AND V

First—That Section 22 is added to Article IV thereof, to read:

SEC. 22. *It is the right of the people to hold their legislators accountable. To assist the people in exercising this right, at the convening of each regular session of the Legislature, the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leader of each house shall report to their house the goals and objectives of that house during that session and, at the close of each regular session, the progress made toward meeting those goals and objectives.*

Second—That Section 5 of Article IV thereof is amended to read:

SEC. 5. (a) Each house shall judge the qualifications and elections of its ~~members~~ Members and, by rollcall vote entered in the Journal, two thirds of the membership concurring, may expel a member. Member.

(b) *No Member of the Legislature may accept any honorarium. The Legislature shall enact laws that implement this subdivision.*

(c) *The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a Member of the Legislature from any source if the acceptance of the gift might create a conflict of interest.*

(d) *No Member of the Legislature may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a Member knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the Member may not, for a period of one year following the acceptance of the compensation, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or action before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar*

manner. As used in this subdivision, "public generally" includes an industry, trade, or profession. However, a Member may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the Member is a member if the Member does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

(e) *The Legislature shall enact laws that prohibit a Member of the Legislature whose term of office commences on or after December 3, 1990, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the Legislature for 12 months after leaving office.*

(f) *The Legislature shall enact new laws, and strengthen the enforcement of existing laws, to prohibit prohibiting members Members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities; provided that. However, the people reserve to themselves the power to implement this requirement pursuant to Section 22 of this article Article II.*

Third—That subdivision (c) of Section 7 of Article IV thereof is amended to read:

(c) (1) The proceedings of each house and the committees thereof shall be open and public. However, closed sessions may be held solely for any of the following purposes:

(A) To consider the appointment, employment, evaluation of performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a Member of the Legislature or other public officer or employee, or to establish the classification or compensation of an employee of the Legislature.

(B) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.

(C) To confer with, or receive advice from, its legal counsel regarding pending or reasonably anticipated, or whether to initiate, litigation when discussion in open session would not protect the interests of the house or committee regarding the litigation.

(Continued on page 53)

Argument in Favor of Proposition 112

PROPOSITION 112 IS YOUR CHANCE TO FREE STATE GOVERNMENT FROM THE INFLUENCE OF SPECIAL INTEREST DOLLARS.

PROPOSITION 112 IS YOUR CHANCE TO GUARANTEE THAT OUR STATE ELECTED OFFICIALS REPRESENT YOU AND NOT THE SPECIAL INTERESTS.

VOTE FOR HONEST AND ACCOUNTABLE GOVERNMENT.

Proposition 112 is a well-thought-out reform package that creates a *constitutionally required* set of laws that will hold government officials in both the legislative and executive branches to *tough new ethical standards*.

Proposition 112 is important because it will help return government to the people.

VOTE YES AND VOTE TO . . .

Prohibit legislators, the Governor and other elected officials from accepting honoraria and speaking fees.

Restrict legislators, the Governor and other elected officials from accepting gifts of unlimited value from special interest.

Prohibit legislators, the Governor and other officials from lobbying their former colleagues for twelve months after leaving office.

Prohibit legislators from taking actions when they have financial interests which conflict with their duties and responsibilities as public officials.

Restrict the types and sources of outside income earned by legislators, the Governor and other elected officials.

Hold the Legislature accountable by requiring that legislative leaders announce goals and objectives at the beginning of each session and issue a "report card" at the end of each session.

Proposition 112 will place ethics safeguards in our state Constitution. *Politicians will not be able to change one word of*

these provisions. . . ONLY THE PEOPLE CAN.

A YES vote is a vote FOR good government.

Do you believe that legislators ought to be able to set their own salaries and benefits? Proposition 112 says no.

It is a fundamental conflict of interest for elected officials like legislators to set their own salaries. *The people should decide what elected officials should earn, not the officials themselves.*

VOTE YES ON PROPOSITION 112 and give the people the power to set the salaries of our elected officials.

VOTE YES ON PROPOSITION 112 and create a truly independent citizens commission which will have complete authority to set salaries and benefits for all state elected officials.

This commission is constitutionally guaranteed to be made up of *ordinary Californians like average wage earners, business people, and public interest representatives.*

Absolutely no current or former elected official, employee of the state or lobbyist can be appointed to the commission.

The commission will have PUBLIC MEMBERS, PUBLIC MEETINGS and only the PUBLIC INTEREST in mind. Its decision is final.

Proposition 112 offers the best hope for all Californians to make their state government accountable to the people and free from the influence of unethical special interests.

VOTE FOR HONEST GOVERNMENT. VOTE FOR GOOD GOVERNMENT. VOTE YES ON PROPOSITION 112.

JOHN PHILLIPS

State Chair, California Common Cause

KIRK WEST

President, California Chamber of Commerce

CAROLE WAGNER VALLIANOS

President, League of Women Voters of California

Rebuttals to Argument in Favor of Proposition 112

PROPOSITION 112 is neither honest nor good government. It's a fraud.

The same people behind this proposition have put forth, time and time again, reforms they said would solve all the problems with special interest dollars. That simply has not been the case. The "reforms" have resulted in so elevating the costs to run for office that the average citizen is forced out of the system.

Restricting speaking fees and outside income is not the way to hold elected officials accountable. Only your vote can do that. Don't let this ill-conceived "reform" close the system to all but the rich and powerful.

Vote No on Proposition 112.

DIANE E. WATSON

State Senator, 28th District

DON'T BE DECEIVED.

Proposition 112 was placed on the ballot by Sacramento politicians who will benefit from its passage.

PROPOSITION 112 IS NOT A GRASSROOTS INITIATIVE.

In 1966, the people of California set salaries for legislators and allowed for increases of 5 percent per year. *That's fair.*

A pay commission made up of bureaucrats will have no such restrictions.

Proposition 112 stops NONE of the unethical practices it lists. The Legislature already has the authority to pass laws to reach those goals.

The people of California have the right to demand their legislators be honest and ethical without doubling their pay.

The people MUST retain *constitutional control* of legislative salaries!

VOTE NO ON PROPOSITION 112.

HONORABLE RICHARD L. MOUNTJOY

Member of the Assembly, 42nd District

HONORABLE PHILLIP D. WYMAN

Member of the Assembly, 34th District

State Officials, Ethics, Salaries, Open Meetings. Legislative Constitutional Amendment

112

Arguments Against Proposition 112

Vote NO on Proposition 112! Don't punish lawmakers for serving the public.

Most people, at one time or another, belong to organizations or enterprises which pay speakers to address them on issues of concern or interest. Such organizations don't expect any more than they get to hear and question a lawmaker about the legislative process. Legislators receive honoraria from teachers, environmentalists, churches, college organizations, consumer advocates, private enterprise and community groups.

Your state legislator's annual salary is \$40,800. Each legislator maintains two residences on that salary. Those costs far exceed the expense allowance legislators receive. Honoraria are a means of defraying those expenses without taxpayers footing the bill.

We don't want a Legislature which can only include the rich. Proposition 112 makes it a hardship on those you vote into office to stay there. Good candidates should not be unable to run for public office because they and their families cannot afford a reduction in income.

Current laws require that legislators, their families and their business associates disclose far more about their personal finances than most individuals would be comfortable revealing. Those laws are more stringently enforced than ever before. Based on that information, let voters make up their own minds at the voting booth about elected officials whom they feel are being unduly influenced by gifts or honoraria. This initiative punishes the innocent and the guilty alike.

Vote NO on Proposition 112.

DIANE E. WATSON
State Senator, 28th District

Proposition 112 is a legislative pay raise hiding behind an "ethics" smoke screen.

The California Constitution requires the Legislature to vote for a pay increase, and then stand for election before receiving that increase. Constitutional law also limits the increase to five percent per year.

Under the name of "ethics in government," this proposition will create a pay commission of nonelected bureaucrats, who will determine legislative salaries. This measure will get the legislators off the hook, and let them hide behind an unaccountable pay commission.

It is our opinion that this new pay commission will raise legislative salaries to the level of superior court judges, about \$94,000 per year. This would be more than a 100 percent pay increase for legislators. The really frightening part of this salary commission's power is that their ruling would be absolutely final and could not be overturned or changed by a vote of the people. The Congress tried this tactic last year, but the people rebelled and made them stand up and vote on their pay raise for the whole nation to see.

The real reason for this ballot measure is to change the State's Constitution to increase legislative salaries.

The people of California should not have to increase legislators' salaries to expect them to be ethical and honest. Pay raises are supposed to be rewards for a job well done. When people see us do a better and more honest job, the Legislature won't have to hide behind the ethics smoke screen for additional pay and benefits. Vote NO on Proposition 112.

RICHARD L. MOUNTJOY
Member of the Assembly, 42nd District
PHILLIP D. WYMAN
Member of the Assembly, 34th District

Rebuttal to Arguments Against Proposition 112

Opponents of Proposition 112 will say almost anything to defeat ethics reform in California.

They want you to believe that banning honoraria and unlimited gifts from special interests is really a smoke screen.

They want you to believe that there *isn't* an ethics problem in Sacramento.

They think using buzz words like "pay raise" and "nonelected bureaucrats" will frighten you into forgetting the *real* problems.

We think there *is* a problem and neither buzz words nor smoke screens can make it go away.

It's a problem when elected officials can be paid to give speeches to 3 people at the dinner table.

It's a problem when 120 legislators in Sacramento get over \$1.1 million each year in gifts and honoraria—from the same special interests seeking their votes.

It's a problem and a fundamental conflict of interest to have elected officials deciding their own pay.

The answer is *ban honoraria, limit gifts, and have ordinary Californians decide elected officials' pay.*

The answer is to vote YES ON PROPOSITION 112.

Don't be fooled with nonsense about nonelected bureaucrats setting salaries. Proposition 112 will create a salary commission that specifically *cuts out* bureaucrats and elected officers and *includes* average Californians.

The Commission is NOT a guaranteed pay raise. The opponents didn't tell you that the Commission has the power to *lower* salaries. More importantly, their decision will be made *in public by people like you.*

VOTE YES ON PROPOSITION 112.

JOHN PHILLIPS
State Chair, California Common Cause
CAROLE WAGNER VILLANOS
President, League of Women Voters of California

measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

4e) (h) Subparagraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other provisions of subdivision (b) of this section may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that no urgency statute enacted under this subdivision may not be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

Ninth—That Section 8.5 of Article XVI thereof is amended to read:

SECTION 8.5. Allocation to State School Fund

SEC. 8.5. (a) In addition to the amount required to be applied for the support of school districts and community college districts pursuant to Section 84(b) 8, the Controller shall during each fiscal year transfer and allocate all revenues available pursuant to paragraph 1 of subdivision (a) of Section 2 of Article XIII B up to a maximum of four percent (4%) of the total amount required pursuant to Section 84(b) of this Article, to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the ten 10 states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the ten 10 states with the lowest

class size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of the California Community Colleges mutually determine that current annual expenditures per student for community colleges in this state equal or exceed the average annual expenditure per student of the ten 10 states with the highest annual expenditures per student for community colleges.

(b) Notwithstanding the provisions of Article XIII B, funds allocated pursuant to this section shall not constitute appropriations subject to limitation; but appropriation limits established in Article XIII B shall be annually increased for any such allocations made in the prior year.

(c) From any funds transferred to the State School Fund pursuant to paragraph subdivision (a) of this section, the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) of this section, together with an amount equal to the total amount of revenues allocated pursuant to subdivision (a) of this section in all prior years, as adjusted as required by Section 84(b) of Article XVI, shall be expended solely for the purposes of instructional improvement and accountability as required by law.

(e) Any school district maintaining an elementary or secondary school shall develop and cause to be prepared an annual audit accounting for such funds and shall adopt a School Accountability Report Card for each school.

Tenth—That the amendment of the Constitution made by this measure shall take effect on July 1 next following the date on which this measure is approved by the electors.

Proposition 112: Text of Proposed Law

Continued from page 23

(2) A caucus of the Members of the Senate, the Members of the Assembly, or the Members of both houses, which is composed of the members of the same political party, may meet in closed session.

(3) The Legislature shall implement this subdivision by concurrent resolution adopted by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by statute, and shall prescribe that, when a closed session is held pursuant to paragraph (1), reasonable notice of the closed session and the purpose of the closed session shall be provided to the public, except as provided by statute or by concurrent resolution, when such resolution is adopted by a two-thirds vote of the members of each house, provided that if there is a conflict between such a statute and concurrent resolution and statute, the last adopted or enacted shall prevail.

Fourth—That Section 4 of Article IV thereof is amended to read:

SEC. 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment of the salary in effect when the statute is enacted. Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute.

(a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no Member of the Legislature may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the Legislature. The Legislature shall enact laws that define earned income.

However, earned income does not include any community property interest in the income of a spouse. Any Member who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official

position to influence an action or decision before the Legislature, other than an action or decision involving a bill described in subdivision (c) of Section 12 of this article, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, "public generally" includes an industry, trade, or profession.

(b) Travel and living expenses for Members of the Legislature in connection with their official duties shall be prescribed by statute passed by rollcall vote entered in the journal, two-thirds of the membership of each house concurring. A Member may not receive travel and living expenses during the times that the Legislature is in recess for more than three calendar days, unless the Member is traveling to or from, or is in attendance at, any meeting of a committee of which he or she is a member, or a meeting, conference, or other legislative function or responsibility as authorized by the rules of the house of which he or she is a member, which is held at a location at least 20 miles from his or her place of residence.

(c) The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of \$600 five hundred dollars (\$600) paid to any member Member of the Legislature unless the member Member receives the greater amount while serving as a member Member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members Members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a member Member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member Member, except that, however, the Legislature may provide that no member Member shall be deprived of a cost of living adjustment based on a monthly salary of \$600 five hundred dollars (\$600) which has accrued prior to the commencement of the 1967 Regular Session of the Legislature.

Fifth—That Section 14 is added to Article V thereof, to read:

SEC. 14. (a) To eliminate any appearance of a conflict with the proper discharge of his or her duties and responsibilities, no state officer may knowingly receive any salary, wages, commissions, or other similar earned income from a lobbyist or lobbying firm, as defined by the Political Reform Act of 1974, or from a person who, during the previous 12 months, has been under a contract with the state agency

under the jurisdiction of the state officer. The Legislature shall enact laws that define earned income. However, earned income does not include any community property interest in the income of a spouse. Any state officer who knowingly receives any salary, wages, commissions, or other similar earned income from a lobbyist employer, as defined by the Political Reform Act of 1974, may not, for a period of one year following its receipt, vote upon or make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on the lobbyist employer and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, "public generally" includes an industry, trade, or profession.

(b) No state officer may accept any honorarium. The Legislature shall enact laws that implement this subdivision.

(c) The Legislature shall enact laws that ban or strictly limit the acceptance of a gift by a state officer from any source if the acceptance of the gift might create a conflict of interest.

(d) No state officer may knowingly accept any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any state government board or agency. If a state officer knowingly accepts any compensation for appearing, agreeing to appear, or taking any other action on behalf of another person before any local government board or agency, the state officer may not, for a period of one year following the acceptance of the compensation, make, participate in making, or in any way attempt to use his or her official position to influence an action or decision before the state agency for which the state officer serves, other than an action or decision involving a bill described in subdivision (c) of Section 12 of Article IV, which he or she knows, or has reason to know, would have a direct and significant financial impact on that person and would not impact the public generally or a significant segment of the public in a similar manner. As used in this subdivision, "public generally" includes an industry, trade, or profession. However, a state officer may engage in activities involving a board or agency which are strictly on his or her own behalf, appear in the capacity of an attorney before any court or the Workers' Compensation Appeals Board, or act as an advocate without compensation or make an inquiry for information on behalf of a person before a board or agency. This subdivision does not prohibit any action of a partnership or firm of which the state officer is a member if the state officer does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from that action.

(e) The Legislature shall enact laws that prohibit a state officer, or a secretary of an agency or director of a department appointed by the Governor, who has not resigned or retired from state service prior to January 7, 1991, from lobbying, for compensation, as governed by the Political Reform Act of 1974, before the executive branch of state government for 12 months after leaving office.

(f) "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, and member of the State Board of Equalization.

Sixth.—That Section 8 is added to Article III thereof, as follows:

SEC. 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 31, 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 31, 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, regardless, 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 to 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 43 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.

Seventh.—That Section 12 of Article V thereof is repealed.

SEC. 12. Compensation of the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Superintendent of Public Instruction, and Treasurer shall be prescribed by statute but may not be increased or decreased during a term.

Eighth.—That subdivision (b) of Section 5 of, and subdivision (c) of Section 7 of, Article IV, and subdivision (h) of Section 14 of Article V, of the California Constitution, as added or amended by this measure, shall become operative on the first day of the 1991-92 Regular Session of the Legislature.

ATTACHMENT 2

ATTACHMENT 2

Excerpts from California Government Code relating to salaries, benefits, expenses:

§ 8902. Living expenses; reimbursement

During those times that a Member of the Legislature is required to be in Sacramento to attend a session of the Legislature and during those times that a member is traveling to and from, or is in attendance at, any meeting of a committee of which he or she is a member or is attending to any other legislative function or responsibility as authorized or directed by the rules of the house of which he or she is a member or by the joint rules, he or she shall be entitled to reimbursement of his or her living expenses at a rate established by the California Victim Compensation and Government Claims Board that is not less than the rate provided to federal employees traveling to Sacramento.

§ 8903. Traveling expenses; reimbursement

When traveling to and from a session of the Legislature, or when traveling to and from a meeting of a committee of which he or she is a member, or when traveling pursuant to any other legislative function or responsibility as authorized or directed by the rules of the house of which he or she is a member or by the joint rules, when that travel is by a common carrier of passengers, a Member of the Legislature shall be entitled to reimbursement for the actual costs of travel by the common carrier. If the member travels by other means and common carrier service is available and feasible he or she shall be reimbursed in the amount of the fare of available common carrier service. If common carrier service is unavailable or not feasible, a member shall be reimbursed at a rate not to exceed the rate established by the Department of Personnel Administration for the reimbursement of officers and employees of the state pursuant to Section 19820. No mileage shall be allowed or paid for travel in a conveyance owned or provided by and at the expense of a public agency. As used in this section, "common carrier" means carrier by aircraft, railroad, bus, or vessel. (Note – July 1, 2012, Department of Personnel Administration will be succeeded by newly formed Department of Human Resources; otherwise language unchanged)

§ 11030. Officers and employees on state business; Legislators

All elective constitutional officers, heads of departments, chiefs of divisions, assistants, deputies, agents, experts and other officers and employees of the State when away from their headquarters for purposes of state business and all members of the Legislature when attending regular, special or extraordinary sessions of the Legislature shall receive in addition to their salaries, their actual necessary traveling expenses.

§ 19820. Rules and regulations; adoption; conflict of section with memorandum of understanding

The director (*of Department of Personnel Administration*) shall adopt general rules and regulations doing all of the following:

(a) Limiting the amount, time, and place of expenses and allowances to be paid to officers, employees, experts, and agents of the state while traveling on official state business. The rules and regulations shall provide for reasonable reimbursement to an officer, employee, expert, or agent of the state for expenses incurred by him or her to repair a privately owned vehicle which was damaged through no fault of the officer, employee, expert, or agent, if the damage occurred while the vehicle was used on official state business with the permission or authorization of an employing agency.

As used in this subdivision, "officers and employees of the state" means all officers and employees of the state other than elected state officers, officers and employees of the state provided for in Article VI of the California Constitution, and officers and employees of the California State University. "Officers and employees of the state" is not limited by subdivision (d) of Section 19815.

(b) Governing such matters as are specifically committed to the jurisdiction of the department.

(c) Governing the computation of pay in the case of any employee on a monthly basis salary who is entitled to less than a full month's pay.

If this section is in conflict with a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if any conflicting provision of a memorandum of understanding requires the expenditure of funds, that provision shall not become effective unless approved by the Legislature in the annual Budget Act.

ATTACHMENT 3

Memorandum

CHAIRMAN
MEMBERS OF THE COMMISSION

Date : September 17, 1990

Subject: PROPOSITION 112

CHRISTOPHER W. WADDELL
Chief Counsel

From : Department of Personnel Administration

As you are aware, the California Citizen's Compensation Commission was established as a result of the passage of Proposition 112. The purpose of this memorandum is to provide the Commission with a general overview of Proposition 112 and an analysis of the provisions concerning the scope of the Commission's duties and responsibilities. The first portion of this memorandum will address those aspects of Proposition 112 that are specific to the California Legislature. The second portion will summarize the limitations on activities and income set forth in Proposition 112 that are common to both Members of the Legislature and to state constitutional officers. The final portion will address the creation of the Commission and the parameters within which it is to operate.

I. PROVISIONS SPECIFIC TO THE LEGISLATURE

A. Goals and Objectives of Legislative Session

Proposition 112 requires that at the start of each regular session of the Legislature, the President pro Tempore of the Senate, the Speaker of the Assembly, and the minority leaders of each house report to their respective houses the goals and objectives of that house during that session. At the close of the regular session, reports are to be made on the progress towards meeting the goals and objectives (Cal. Const., Art. IV, § 22).

B. Conflict of Interest

Proposition 112 strengthens the existing provisions of Article IV, section 5 by requiring that the Legislature enact new laws and strengthen the enforcement of existing laws governing conflict of interest.

C. Open Meetings Provisions

Proposition 112 requires that the procedures of each house and committees of the Legislature be open to the public.

Closed sessions are authorized only in the following matters: 1) personnel; 2) security; 3) conferring with counsel on pending or reasonably anticipated litigation; and 4) a caucus of Members of the same political party. Notice of the closed session and its purpose must be given to the public.

II. PROVISIONS APPLICABLE TO BOTH MEMBERS OF THE LEGISLATURE AND CONSTITUTIONAL OFFICERS

A. Limitations on Outside Income and Gifts

Proposition 112 flatly prohibits the receipt of honoraria by Members of the Legislature and constitutional officers (Cal.Const., Art. IV, § 5(b); Art. V, § 14(b)). The acceptance of gifts is to be prohibited or strictly limited pursuant to laws to be enacted by the Legislature (Cal.Const., Art. IV, § 5(c); Art. V, § 14(c)). A total ban is placed upon the receipt of income for lobbying state boards or agencies (Cal.Const., Art. IV, § 5(d); Art. V, § 14(d)). If compensation is received for lobbying local government entities, the Member or Officer is generally prohibited for one year from acting on matters that would substantially impact their client. Limited exceptions exist in areas such as appearing on one's own behalf or as counsel before the courts. (Id.)

In addition, Members of the Legislature and constitutional officers are prohibited from receiving earned income in any form from a lobbyist or lobbying firm; or, in the case of Members, from a person under contract with the Legislature during the last 12 months; or, in the case of a constitutional officer, from a person under contract with an agency under the officer's jurisdiction during the last 12 months (Cal.Const., Art. IV, § 4(a); Art. V, § 14(a)).

B. Limitation on "Revolving Door" Lobbying

Under Proposition 112, the Legislature is required to enact laws prohibiting a Member of the Legislature whose term of office commences on or after December 3, 1990 and from lobbying the Legislature within 12 months after leaving office (Cal.Const., Art. IV, § 5(e)). The Legislature is further directed to enact laws that prohibit a constitutional officer, agency secretary or department director who has not left state service prior to January 7, 1991 from lobbying before the executive branch of state government for 12 months after leaving office (Cal.Const., Art. V, § 14(e)).

CHAIRMAN
MEMBERS OF THE COMMISSION
September 17, 1990
Page 4

While the Commission is explicitly required to consider all of the above enumerated factors, there is no requirement that the Commission consider only these factors. Thus, the Commission is free to consider whatever additional factors it may deem to be appropriate.

No further definition or explanation of these criteria is provided by Proposition 112. For an analysis of these criteria as they relate to the salary setting function, the Commission can refer to Section 10 of the agenda materials.

While Proposition 112 vests the Commission with the authority to set salaries and most benefits for legislators and constitutional officers, there are two benefit areas that are not subject to Commission action. The first is in the area of retirement benefits for both legislators and constitutional officers. The second concerns legislative session per diem for Members of the Legislature. While Proposition 112 codifies existing limitations on the receipt of per diem, which we understand to have previously been provided for by legislative rule, the Legislature remains vested with the authority to provide for per diem by statute. The Legislature has passed a statute authorizing the State Board of Control to set the per diem rate, at a level not less than the rate provided to federal employees traveling to Sacramento (Cal.Gov. Code, § 8902). The current rate is \$88.00 per day.

If the Commission has any further questions concerning the interpretation or application of Proposition 112, I will be available to answer them today or at future meetings.

CWW:ph

ATTACHMENT 4



MEMORANDUM



DATE: June 15, 2009
TO: Bill Curtis, Chief Counsel
Linda Mayhew, Assistant Chief Counsel
FROM: David Villalba
Legal Counsel
Legal Division
(916) 324-9416
(916) 323-4723 FAX

SUBJECT: ***The California Citizens Compensation Commission's Authority to Adjust Benefits of State Officers***

ISSUE

- I. What benefits does the California Citizens Compensation Commission ("Commission") have the authority to adjust under Article III, Section 8 of the California Constitution?

BRIEF ANSWER

- I. The Commission may only adjust those benefits that are similar in nature to insurance-based benefits, that is, benefits for which the employee or employer pays a premium in exchange for a guarantee against loss. All other benefits, including travel expenses, are not within the Commission's adjustment power.

INTRODUCTION

The Commission was created in 1990 by Proposition 112. The Commission is empowered by the California Constitution to alter the salaries and certain benefits of state officers. The Commission derives the entirety of its authority from Section 8 of Article III of the California Constitution (hereinafter "Section 8").

ANALYSIS

A. Benefits Within the Scope of the Commission's Adjustment Power

Under the established principle of statutory interpretation, *ejusdem generis*, "a general term or category [used in a statute] is 'restricted to those things that are similar to those which are enumerated specifically.'" (*Int'l Federation of Professional & Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319, 342). This principle presumes that if the drafter of statute or constitutional provision "intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be mere surplusage." (*Ibid.*)

Section 8 states in relevant part, "[T]he commission shall . . . adjust the medical, dental, insurance, and other similar benefits of state officers." (Cal. Const. art. III, § 8 subd. (g)). Under the above principle of statutory interpretation, the Commission's power to adjust the general "benefits" of state officers is restricted to items similar in nature to those specifically enumerated, that is, "medical," "dental" and "insurance" benefits.

Medical, dental, and insurance benefits all share common characteristics. They all involve the payment of a premium in exchange for a guarantee against loss or damage caused by a specified contingency. Medical and dental benefits provide health care in the event an employee requires those services, in exchange for a monthly premium. Other forms of insurance include disability benefits, in which an employee pays a monthly premium in exchange for guaranteed compensation in the event of a disabling condition or injury; legal services, in which employees pay a premium for the benefit of legal representation; and employee assistance, in which employees pay a premium for counseling services.

All of these benefits clearly fall within the Commission's adjustment power because they have the general characteristics of insurance.

B. Benefits Beyond the Scope of the Commission's Adjustment Power

The corollary to the above conclusion is that any benefit that does not share the characteristics of insurance falls outside the Commission's adjustment power. For example, travel expenses, employee housing, moving and relocation expenses, vacation, and holidays are all advantages of employment that are categorically different from those items specifically enumerated in Section 8. Therefore, they are not benefits the Commission is empowered to adjust.

1. Travel Expenses (Per Diem, Lodging, Meals, & Mileage)

The Commission is not authorized to adjust travel expenses because they are categorically different from the insurance benefits specifically enumerated in Section 8. Generally, travel expenses are only allowed for necessary expenses incurred by a state employee because of travel for work. (2 Cal. Code Regs. § 599.615; see Cal. Const. Art. IV, § 2, subd. (c)). By contrast, medical, dental, and insurance benefits are paid regardless of the requirements of an employee's job. Also, the employee gives no premium in exchange for the payment of travel expenses. Thus, travel expenses are categorically different from the types of insurance benefits specifically enumerated in Section 8.

In addition, travel expenses are handled under a separate section of the Constitution. Article IV, Section 4 of the California Constitution states:

Travel and living expenses for Members of the Legislature in connection with their official duties *shall be prescribed by statute*

(Cal. Const. Art. IV, § 4 subd. (b), emphasis added). Under existing law, the California Victim Compensation and Government Claims Board is charged with setting the rate at which travel expenses for members of the Legislature are paid. (Gov. Code § 8902).

Courts do not presume that a new law nullifies or overthrows existing provisions of law, unless such intention is clearly expressed or necessarily implied. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1325 [citing *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199]). Because the method outlined in Section 4 and Government Code section 8902 for

determining legislators' travel and living expenses already existed prior to the enactment of Section 8, and because Section 8 does not expressly overturn those provisions, the legislative intent was clearly not to give the Commission the power to adjust legislators' travel expenses.

Of course, in some circumstances travel expenses can be misappropriated for personal gain, in which case they begin to seem more like "benefits" than necessary requirements for work. For example, an employee could bill the employer for staying at a lavish hotel while on travel for work. But, just because an employee may abuse an advantage of employment for personal gain, does not transform the item into a "benefit" which the Commission has power to grant or deny. To allow such a construction would impermissibly expand the power of the Commission beyond that which was originally intended, in effect allowing the Commission to determine what advantages of employment are necessary to perform one's job and which are not. This is not one of the factors the Commission is allowed to consider under subdivision (h) of Section 8 and therefore, would not fall within its adjustment power.

2. Vacation & Holidays

Similarly, the Commission is not authorized to adjust the vacation or holidays of legislators because these benefits are categorically different from insurance benefits. Vacation and holidays, like travel expenses, do not share any of the characteristics of insurance—no premium is paid for the benefit, nor is the happening of any contingency necessary for in order to take advantage of the benefit. Therefore, the Commission is not authorized to adjust these benefits.

3. Employee Housing and Relocation Expenses

Employee housing and relocation expenses are not within the Commission's adjustment power because they, too, are significantly different from insurance benefits. No premium is paid for these benefits, they are provided regardless of any contingency, and generally they are provided because they are necessary to the performance of the employee's job. As such, they do not fall within the scope of benefits the Commission is authorized to adjust.

4. Retirement Benefits

With respect to Legislators, the Commission is not authorized to adjust their retirement benefits because in 1990 voters approved Proposition 140, which deprived legislators of the right to state retirement benefits. (See Cal. Const., Art. IV § 4.5).

With respect to other state officers, whose retirement benefits are not specifically precluded under the Constitution, the Commission is authorized to adjust those benefits. Retirement benefits fall within the range of benefits outlined in Section 8 since they are similar to insurance benefits. Retirement benefits are provided in exchange for the payment of a premium, and the benefits are paid upon the happening of a specified contingency (i.e., reaching a certain age).

However, because pension benefits are vested rights under the California Constitution, the Commission's power to adjust them is limited. (See *Miller v. State* (1977) 18 Cal.3d 808, 815). Any changes the Commission makes to the retirement benefits of active employees: (1) must be reasonable; (2) must bear a material relationship to the pension system; and (3) when resulting in a disadvantage to employees, must be accompanied by comparable new advantages. (*Allen v. Bd. of Admin.* (1983) 34 Cal.3d 114, 120) With respect to retired employees, the scope of the Commission's power is even more restricted, "the retiree being entitled to the fulfillment without detrimental modification of the contract which he already has performed." (*Id.*)

5. Sick Leave

By contrast, sick leave, it may be argued, falls within the Commission's adjustment power because it is similar to some types of disability insurance. Although no premium is paid, for sick leave, employees must generally work a certain amount of time to earn sick days. As with disability insurance, the employee only receives the benefit (compensation) upon the happening of a specific contingency (becoming sick). Thus, an argument could be made that sick leave is similar to the types of benefits listed in Section 8 and therefore may be adjusted by the Commission.

CONCLUSION

The Commission may only adjust those benefits that are similar in nature to insurance-based benefits, that is, benefits for which the employee or employer pays a premium in exchange for a guarantee against loss. All other benefits, including travel expenses, are not within the Commission's adjustment power.

ATTACHMENT 5



MEMORANDUM



DATE: April 6, 2011

TO: Joan Markoff, Chief Counsel
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Debbie Baldwin, Executive Compensation

FROM: David Villalba, Labor Relations Counsel
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SUBJECT: *Commission's Authority to Adjust the Travel and Living Expenses of the Legislature*

ISSUE

- I. Does the California Citizens Compensation Commission (Commission) have authority to adjust travel and living expenses of the Legislature, in particular the provision of a state-owned car to conduct official business?

BRIEF ANSWER

- I. No, the Commission does not have authority over the travel and living expenses of the Legislature, including their use of state-owned cars for official business.

ANALYSIS

The legal authority for determining Legislators' travel and living expenses is separate and independent of the Commission's authority to adjust salaries and benefits. Article IV, Section 4 of the California Constitution states:

Travel and living expenses for Members of the Legislature in connection with their official duties *shall be prescribed by statute* passed by rollcall vote entered in the Journal, two-thirds of the membership of each house concurring. (Cal. Const. Art. IV, § 4 subd. (b), emphasis added).

This provision states the Legislature, by a rollcall vote, determines extent and nature of the travel and living expenses of its members, not the Commission.

Article III, section 8 of the California Constitution, from which the Commission derives the entirety of its authority, limits the type of benefits the Commission is authorized to adjust. Section 8 states in relevant part, "[T]he commission shall . . . adjust the medical, dental, insurance, and other similar benefits of state officers." (Cal. Const. art. III, § 8 subd. (g)).

Under the established principle of statutory interpretation, *ejusdem generis*, "a general term or category [used in a statute] is 'restricted to those things that are similar to those which are enumerated specifically.'" (*Int'l Federation of Professional & Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319, 342.)

Accordingly, the Commission's power to adjust the general "benefits" of state officers is restricted to items similar in nature to those specifically enumerated, that is, "medical," "dental" and "insurance" benefits. Medical, dental, and insurance benefits all share common characteristics. They all involve the payment of a premium in exchange for a guarantee against loss or damage caused by a specified contingency. Medical and dental benefits provide health care in the event an employee requires those services, in exchange for a monthly premium. Other forms of insurance benefits might include disability benefits, in which an employee pays a monthly premium in exchange for guaranteed compensation in the event of a disabling condition or injury; or legal services, in which employees pay a premium for the benefit of legal representation. All of these benefits clearly fall within the Commission's adjustment power because they have the general characteristics of insurance. Travel and living expenses are not similar to these insurance-type benefits, and therefore, are outside the Commission's adjustment power.

Nor is there any merit to the argument that Article III, section 8, supersedes or overturns Article IV, section 4. First, as many courts many courts have observed, "interpretations that render statutory terms meaningless as surplusage are to be avoided." (*People v. Hudson* (2006) 38 Cal.4th 1002, 1010.) Any interpretation that the Commission has authority to adjust travel and living expenses in spite of the express language of Article IV, section 4, would render that provision mere surplusage.

Secondly, Courts assume that, when enacting legislation, the framer of the law was aware of existing, related laws and intended to maintain a consistent body of rules. (See, e.g., *Bd. of Supervisors v. Superior Court (Comer)* (1989) 207 Cal.App.3d 552, 559). Consequently, legal authorities covering the same subject, although in apparent conflict, "are construed to be in harmony if reasonably possible." (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 926 [citing *People v. Acosta* (2002) 29 Cal.4th 105, 134].) Here, the voters of California who enacted Article III, section 8 of the Constitution, through Proposition 112, were certainly aware of that Article IV, section 4 gave the Legislature authority to determine its salary. Yet, they chose not to overturn it. In fact, Proposition 112 modified the language of Article IV, section 4 so that the Legislature retained this power. (See Attachment A.) This legislative history shows a clear intent to leave the determination of travel and living expenses within the Legislature's control.

Further, the separate treatment of travel and living expenses is supported by the substantial body of statutes, regulations, rules, and policies which purport to set the level and character of legislative travel and living expenses irrespective of the Commission's adjustment authority. Government Code section 8902, states that the California Victim Compensation and Government Claims Board is charged with setting the rate at which living expenses for members of the Legislature are paid. Government Code section 8903 determines how Legislators are reimbursed for their travel expenses, and states that the rate of reimbursement is tied to regulations adopted by the Department of Personnel Department. (See Cal. Code Regs., tit. 2, §§ 599.615 – 599.639.1).

In addition, the Rules Committees of the Senate and Assembly have each adopted several legislative rules governing travel and living expenses, apparently pursuant to the constitutional and statutory authority above. The Rules Committees for the respective houses are authorized to adopt rules limiting the amount, time, and place of expenses and allowances to be paid to committee employees and to approve all expenditures. (See Assembly Rules 14 and 20; Senate Rules 13 and 13.1.) Although these legislative rules do not specifically refer to the right to a state-owned car; the provision of this option is governed by policy set forth by the Rule Committee of each house. State-owned vehicles are provided to the members of the Legislature instead of reimbursing members for mileage accrued in driving a private car. Thus, this benefit falls within the general category of travel expenses within the control of the Legislature pursuant to Article IV, section 4.

The separate and discrete body of statutes, rules, and policies governing legislative travel and living expenses is consistent with the clear constitutional mandate in Article IV, section 4, which gives the Legislature exclusive control over these types of benefits.

CONCLUSION

Article IV, Section 4 of the California Constitution expressly gives the Legislature the exclusive authority to determine the nature and level of the travel and living expenses of its members. The Commission's authority to adjust benefits does not include those items covered by Article IV, section 4, but rather is limited by the express terms of Article III, section 8 to insurance-type benefits. The legislative history of Proposition 112, demonstrates that the voters, in creating the Commission, intentionally crafted the language so that the Legislature retained authority over its travel and living expenses. Consequently, these benefits, including use of state-owned vehicles for business-related travel, are outside the Commission's control.