

Opinion No. 15-1202 (12/30/2016)

KAMALA D. HARRIS Attorney General
LAWRENCE M. DANIELS Deputy Attorney General
AGO 15-1202
No. 15-1202
California Attorney General Opinions
Office of the Attorney General State of California
December 30, 2016

THE HONORABLE MEGAN STEDTFELD, COUNTY COUNSEL, COUNTY OF CALAVERAS, has requested an opinion on the following questions:

1. When the office of county sheriff becomes vacant because of the sheriff's death, must the next election to fill the office coincide with the next state gubernatorial election, or may the board of supervisors call a special election to fill the office earlier
2. When the office of county sheriff becomes vacant because of the sheriff's death, must the county board of supervisors appoint a person to fill the office, or may the board, by not appointing a successor sheriff, allow the person temporarily performing the sheriff's duties under Government Code section 24105 to continue to perform those duties until the election
3. When a county board of supervisors appoints someone to fill a vacancy in the office of county sheriff, must the appointee meet all of the qualifications of the elected position, including county residency. If so, does the board have the authority to waive those requirements

CONCLUSIONS

1. When the office of county sheriff becomes vacant because of the sheriff's death, the next election to fill the office of

sheriff must coincide with the next state gubernatorial election. The board of supervisors may not call a special election to fill the office before that time.

2. When the office of county sheriff becomes vacant because of the sheriff's death, the county board of supervisors must, within a reasonable time, appoint a person to fill out the remainder of the incumbent sheriff's term. The board may not, through inaction, allow the person temporarily performing the sheriff's duties under Government Code section 24105 to continue performing those duties for a protracted period.

3. When a county board of supervisors appoints someone to fill a vacancy in the office of county sheriff, the appointee must meet all the qualifications of the elected position, including county residency. The board does not have the authority to waive those requirements.

ANALYSIS

In 2014, the voters of the County of Calaveras, a general law county, re-elected the county's sheriff to a four-year term. In October 2015, the sheriff died, leaving a vacancy in the office. Pursuant to the county's succession of command, and in accord with state statute, the county's operations bureau commander took over on a temporary basis as the acting sheriff.^[1] The questions presented here arose from the county's deliberations on how to fill the vacancy permanently. Our analysis follows.

Question 1

We first consider when the next election to fill the office of sheriff should be held. For a time, the county considered calling a special election to fill the sheriff's office, to occur during the 2016 statewide general (and presidential) election. Ultimately, however, the county decided that the next sheriff's election must take place at the next

gubernatorial election in 2018.^[2] We agree with the county's decision.

Sheriffs are elected county officers.^[3] Elected county officers are regularly chosen by the people every four years, at the same time as governors, except as otherwise provided in the Government Code.^[4] Government Code section 25304 directs that when a person is appointed to fill a vacancy in an elected county office, he or she "shall hold office for the unexpired term or until the first Monday after January 1st succeeding the next general election."^[5]

In the leading case of *People v. Col*,^[6] the California Supreme Court determined that the term "next general election," as used in the then-existing statute that became Government Code section 25304,^[7] meant the next "general election for filling the particular office to which the person is appointed, or, in other words, to the general election provided for as to all the county officers"^[8] That is, "the phrase 'next general election' does not refer to the general election immediately following the vacancy but to the first ensuing general election *at which the particular office is normally filled for the full term.*"^[9]

Applying *People v. Col*, we concluded in 1974 that Government Code section 25304 prohibited a county board of supervisors from calling a special election to fill the office of a county law-enforcement official—a constable who had resigned during his term—rather than appointing someone to fill the vacancy for the constable's unexpired term.^[10] A sheriff, like a constable, is a county law-enforcement *official*.^[11] Thus, we agree with the county's determination that, under Government Code section 25304, the next election for county sheriff must coincide with the next gubernatorial election to be held in

2018.

Question 2

The second question asks whether, when a vacancy occurs in the office of county sheriff, the county board of supervisors must appoint a successor to fill that vacancy pending a proper election, or whether it may allow the person temporarily performing the sheriff's duties under Government Code section 24105 to continue to perform those duties until the election. We conclude that the county board of supervisors must fill such a vacancy by appointing a new *sheriff*.^[12]

When a county sheriff dies in the middle of a term, the death creates a vacancy by operation of law.^[13] Government Code section 25304 provides that the board "shall" appoint someone to fill a vacancy in a county office. In the Government Code, absent contrary indicia, the word "shall" conveys a mandatory *command*.^[14] As nothing in Government Code section 25304 indicates otherwise, the board is required to appoint a person to fill a vacancy in the office of sheriff.

But how long does the board have to appoint a sheriff after a vacancy occurs? The applicable statute, Government Code section 25304, simply states that the county "board of supervisors shall fill by appointment all vacancies that occur in any office filled by . . . elective county officers"^[15] Accordingly, we must confront the fact that Government Code section 25304 does not specify a precise time limit, or even provide a standard for making this determination individually. Further, California appellate courts apparently have had no cause to decide when an official, or official body, must carry out a duty under a statute that is silent as to timing.

Historically, other states' courts as well as this office have concluded that, where a statute does not specify the time in

which an official must perform an act, a reasonable time is *implied*.^[16] What constitutes a reasonable time depends on the nature and purpose of the act to be performed, as well as on the particular facts involved.^[17]

We are also asked whether, in lieu of appointing a successor sheriff, the board of supervisors may permit the person performing the sheriff's duties under Government Code section 24105—in this instance, the operations bureau commander—to continue acting as sheriff until after the next sheriff's election. We think that the board may not refrain from appointing a person to fill the vacancy. Government Code section 24105 directs that when a vacancy occurs in the office of county sheriff, the sheriff's duties of office are to "be temporarily discharged . . . *until the vacancy in the office is filled in the manner provided by law . . .* by the undersheriff, or if that position is vacant, by the assistant sheriff, or if that position is also vacant, by the chief deputy next in line of authority."^[18] The manner provided by law for filling a vacant sheriff's office is appointment by the board of supervisors.^[19] As noted, this appointment is mandatory and must be performed within a reasonable time. Inaction is not authorized by the governing statute.

Question 3

To be elected sheriff, a person must be a registered voter in the county, which ordinarily requires being a county resident,^[20] and must possess one of five combinations of education and law-enforcement experience.^[21] We are asked whether these eligibility requirements also apply to appointed sheriffs. We conclude that they do.

A person appointed to an elective county office must be "qualified" in order to hold the office.^[22] Government Code section 24001 generally requires that persons elected or

appointed to county office be registered voters of the county,^[23] which in turn generally requires that they be residents of the county.^[24] This statute provides that “a person is not eligible to a county or district office, unless he or she is a registered voter of the county or district in which the duties of the office are to be exercised at the time that nomination papers are issued to the person *or at the time of the appointment of the person.*”^[25] Given this express language, we conclude that the voter registration requirement, which includes a county residence requirement, applies to an appointed sheriff.

Somewhat more complex is the issue whether the statutory qualifications for elected sheriffs set forth in Government Code section 24004.3 were intended to apply to appointed sheriffs.^[26] Subdivision (a) of this statute specifies that “[n]o person is eligible to become a candidate for the office of sheriff in any county unless, at the time of the final filing date for election, he or she meets one of the following criteria” relating to education and law enforcement experience.^[27] Taken in isolation, this provision might be read as applying only to elections, not to appointments. The passage marks “the final filing date for election” as the point of determining eligibility—and a “filing date” appears germane only to a voter election.^[28]

But we must examine Government Code section 24004.3 in its statutory context, not in isolation.^[29] Doing so, we conclude that the term “candidate” denotes both a candidate for election and a candidate for appointment. We note that dictionaries define the term “candidate” broadly enough to cover both voter elections and board appointments.^[30] A candidate is “[o]ne who offers himself, or is put forward by others, as a suitable person or an aspirant or contestant for

an office, privilege, or honor,”^[31] or “a person being considered for a job, nomination, *or appointment.*”^[32]

Government Code section 24004.3 conforms to this inclusive meaning of the term “candidate.” In a grandfather clause, subdivision (b) states, “All persons holding the office of sheriff on January 1, 1989 shall be deemed to have met all qualifications required for candidates seeking election *or appointment* to the office of sheriff.”^[33] This provision plainly associates the requirements of section 24004.3 with both candidates for appointment as well as candidates for election.^[34]

An inclusive interpretation also aligns with the evident legislative purpose of Government Code section 24004.3, which bespeaks an intent for all sheriffs to meet certain minimum standards of education and peace-officer experience.^[35] The need and justification for such requirements pertain equally to both elected and appointed sheriffs.^[36]

Elections Code section 13.5 lends further support to our conclusion that an appointed sheriff must possess the qualifications set out in Government Code section 24004.3.^[37] Elections Code section 13.5, subdivision (a) provides that a candidate’s election filings must demonstrate “each qualification established for service in that office by the provision referenced in subdivision (b).”^[38] Subdivision (b) in turn refers to “section 24004.3 of the Government Code” for the office of sheriff.^[39]

In sum, we are firmly persuaded that the qualifications set forth in Government Code section 24004.3 apply to appointed as well as to elected sheriffs.

A final consideration is whether a board of supervisors may

waive these qualification requirements for an appointed sheriff. We find no authority for the board to do so. It is true, regarding the voter-registration requirements of Government Code section 24001, that the statute provides that “[t]he board of supervisors or any other legally constituted appointing authority in a county or district may, if it finds that the best interests of the county or district will be served, waive the requirements of this section for an *appointed* county or district office.”^[40] However, as we have explained, the phrase “appointed county or district office” as used in section 24001 refers to an office that is *purely* appointed, not to a vacant elected office that may be filled by appointment for the remainder of the term.^[41] Consequently, we conclude that the board may not waive the requirements of Government Code section 24004.3 in appointing a sheriff.

Footnotes:

^[1] Government Code section 24105 provides that in the event of a vacancy in the office of county sheriff, the duties of office are to “be temporarily discharged . . . until the vacancy in the office is filled in the manner provided by law . . . by the undersheriff, or if that position is vacant, by the assistant sheriff, or if that position is also vacant, by the chief deputy next in line of authority.” In Calaveras County, there is no undersheriff or assistant sheriff; the chief deputy next in line of authority to the sheriff is the operations bureau commander.

^[2] See Cal. Const., art. V, § 2 (governors are elected every four years); Elec. Code, § 1001 (“Elections held in June and November of each even-numbered year are statewide elections and the dates of those elections are statewide election dates”).

^[3] Gov. Code, §§ 24000, subd. (b), 24009, subd. (a).

^[4] Elec. Code, § 1300; Gov. Code, § 24200; see Gov. Code, §§ 24202 & 24203 (county supervisors serve for four years but their elections are conducted at staggered two-year intervals).

^[5] Gov. Code, § 25304. A “general election” is “[a]n election that occurs at a regular interval of time.” (Black’s Law Dict. (10th ed. 2014) p. 630, col. 2.) In California, a “general election” occurs “throughout the state on the first Tuesday after the first Monday of November in each even-numbered year.” (Elec. Code, § 324, subd. (a)(1); accord, Elec. Code, § 1200.) “[S]tatutes often employ the phrase [general election] in a generic sense, so that it embraces the entire elective process, including the June primary.” (28 Ops.Cal.Atty.Gen. 17, 18 (1956); see Elec. Code, §§ 324, subd. (a)(2), 1000, subd. (c).)

^[6] *People v. Col* (1901) 132 Cal. 334.

^[7] In 1959, we concluded that “[a]lthough the statute has been codified and re-codified since [*Col*], there has been no significant change in its terms.” (33 Ops.Cal.Atty.Gen. 60, 61 (1959); accord, 57 Ops.Cal.Atty.Gen. 149, 150 (1974); see generally Gov. Code, § 2 [“The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments”].) Government Code section 25304 was last amended in 1951. (Stats. 1951, ch. 1553, § 40, amending Stats. 1947, ch. 424, § 1.)

^[8] *People v. Col*, *supra*, 132 Cal. at pp. 334-336, 339 (invalidating special election for new auditor held before deceased auditor’s term expired); accord, *People ex rel. Richardson v. Cobb* (1901) 133 Cal. 74, 75-77 (same as to justice of the peace).

^[9] 57 Ops.Cal.Atty.Gen., *supra*, at p. 150, italics added, citing *People v. Col*, *supra*, 132 Cal. 334; see 64 Ops.Cal.Atty.Gen. 561, 564 (1981); 33 Ops.Cal.Atty.Gen., *supra*, at p. 60; 32 Ops.Cal.Atty.Gen. 108, 112 (1958).

^[10] 57 Ops.Cal.Atty.Gen., *supra*, at p. 150; see also 33 Ops.Cal.Atty.Gen., *supra*, at pp. 60-61 (same as to treasurer-tax collector).

[11] See 66 Ops.Cal.Atty.Gen. 229, 230, fn. 1 (1983) (“A marshal performs essentially the same services in a municipal court as a sheriff performs in a superior court and a constable performs in a justice court”). The office of constable was eliminated by the consolidation of justice and municipal courts in 1994. (Cal. Law Revision Com., Memo. 2001-46, Statutes Made Obsolete by Trial Court Restructuring: Sheriffs, Marshals, and Constables (May 7, 2001) pp. 1, 3.)

[12] Gov. Code, §§ 24009, subd. (a), 25304.

[13] Gov. Code, §§ 1770, subd. (a), 24000, subd. (b).

[14] Gov. Code, §§ 5, 14; *Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614; 62 Ops.Cal.Atty.Gen. 175, 177-178 (1979); see, e.g., 64 Ops.Cal.Atty.Gen., *supra*, at pp. 563-564 (duty of undersheriff to temporarily perform duties of sheriff under Government Code section 24105 was mandatory because “shall” is mandatory).

[15] In its entirety, Government Code section 25304 states: “The board of supervisors shall fill by appointment all vacancies that occur in any office filled by the appointment of the board and elective county officers, except judge of the superior court and supervisors. The appointee shall hold office for the unexpired term or until the first Monday after January 1st succeeding the next general election.”

[16] 63C *Am.Jur.2d* (Sept. 2016 update) Public Officers and Employees, § 232; 2B Sutherland, *Statutory Construction* (7th ed. rev. Apr. 2014) Standards for Determining What Should Be Implied, § 55:3; *Hartley v. Vitiello* (Conn. 1931) 154 A. 255, 257; *Escher v. Carroll County* (Iowa 1913) 141 N.W. 38, 40; *State ex rel. Laurisch v. Pohl* (Minn. 1943) 8 N.W.2d 227, 231; *Dearborn v. Milford* (N.H. 1980) 411 A.2d 1132, 1134; *Brink v. Curless* (N.D. 1973) 209 N.W.2d 758, 769, overruled on another ground in *Bismarck v. Muhlhauser* (N.D. 1975) 234 N.W.2d 1, 5; 36 Ops.Cal.Atty.Gen. 73, 76 (1960); see also Civ. Code, § 1657 (in contracts, “[i]f no time is specified for the performance of an act required to be performed, a reasonable time is allowed”) *Chapin v. Super. Court* (1965) 234 Cal.App.2d 571, 575 (case dismissed where prosecution failed to pursue action for five years after

stipulation that trial might be set for indefinite date in future because five years unreasonably long).

^[17] *Hartley v. Vitiello*, *supra*, 154 A. at pp. 257-258; *Escher v. Carroll County*, *supra*, 141 N.W. at pp. 40-43; 36 Ops.Cal.Atty.Gen., *supra*, at p. 76; see *Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 30.

^[18] Gov. Code, § 24105, italics added; see 64 Ops.Cal.Atty.Gen., *supra*, at p. 564.

^[19] Gov. Code, §§ 24009, subd. (a), 24205, subd. (a), 25304; see 64 Ops.Cal.Atty.Gen., *supra*, at p. 564.

^[20] Elec. Code, §§ 321, subd. (a), 359; Gov. Code, § 24201.

^[21] Gov. Code, § 24004.3.

^[22] Gov. Code, § 24201 (“All officers elected pursuant to this chapter shall hold office until their successors are elected or appointed and qualified”); see Elec. Code, § 314; Gov. Code, § 24000, subd. (b).

^[23] Gov. Code, § 24001 (enumerating exceptions for a few county offices but not sheriff); see also Elec. Code, § 201 (“Unless otherwise specifically provided, no person is eligible to be elected or appointed to an elective office unless that person is a registered voter and otherwise qualified to vote for that office at the time that nomination papers are issued to the person or at the time of the person’s appointment”), held unconstitutional as applied to congressional elections in *Schaefer v. Townsend* (9th Cir. 2000) 215 F.3d 1031, 1039.

^[24] Elec. Code, §§ 321, subd. (a), 359; see Elec. Code, §§ 300, subd. (b) & 321, subd. (b) (making an exception to the residence requirement for certain absent military or overseas voters).

^[25] Gov. Code, § 24001, italics added.

[26] Government Code section 24004.3 provides:

(a) No person is eligible to become a candidate for the office of sheriff in any county unless, at the time of the final filing date for election, he or she meets one of the following criteria:

(1) An active or inactive advanced certificate issued by the Commission on Peace Officer Standards and Training.

(2) One year of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a master's degree from an accredited college or university.

(3) Two years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a bachelor's degree from an accredited college or university.

(4) Three years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses an associate in arts or associate in science degree, or the equivalent, from an accredited college.

(5) Four years of full-time, salaried law enforcement experience within the provisions of Section 830.1 or 830.2 of the Penal Code at least a portion of which shall have been accomplished within five years prior to the date of filing, and possesses a high school diploma or the equivalent.

(b) All persons holding the office of sheriff on January 1, 1989 shall be deemed to have met all qualifications required for candidates seeking

election or appointment to the office of sheriff.

[27] Gov. Code, § 24004.3, subd. (a).

[28] See Elec. Code, §§ 13.5, 8104, 8403.

[29] We consider the provisions of the statute in the context of the entire statutory framework so as to determine the statute's scope and purpose and to harmonize all parts of the law. (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186.) To discover the Legislature's intent, we "must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.) "[A] statute must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity." (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992, internal quotation marks omitted.)

[30] See *Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 30 (words in statutes are generally given "their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary").

[31] Webster's New Internat. Dict. (2d ed. 1959) p. 390, col. 1; see also Merriam-Webster online, at <http://www.merriam-webster.com/dictionary/candidate> (candidate is "one that aspires to or is nominated or qualified for an office, membership, or award").

[32] Black's Law Dict. (10th ed. 2014) p. 247, col. 2, italics added.

[33] Gov. Code, § 24004.3, subd. (b), italics added.

[34] Gov. Code, § 24004.3, subd. (a)(1)-(a)(5); see Legis. Counsel's Dig.,

Sen. Bill 1356 (1987–1988 Reg. Sess.) Summary Dig., p. 23 (after stating that the bill requires “one of various specified combinations of education and experience,” noting that it “would, however, exempt persons holding office as sheriff on the effective date of the bill from *these* requirements,” *italics added*).

[35] See Gov. Code, § 24004.3, subds. (a)(1) (requiring an advanced certificate from the Commission on Peace Officer Standards and Training (“POST”)), (a)(2)-(a)(4) (requiring a master’s, bachelor’s, or associate degree from an accredited college or university), (a)(2)-(a)(5) (requiring specific years of law enforcement experience within the meaning of Penal Code sections 830.1 and 830.2, which describe peace officers); POST Admin. Manual, § B, Reg. 1011, subds. (a)(3)(B), (a)(4)(B), (a)(8) (an advanced POST certificate may be awarded only to college-educated, full-time peace officers).

[36] See Gov. Code, § 1777 (“any person elected or appointed to fill a vacancy possesses all the rights and powers and is subject to all the liabilities, duties, and obligations of the officer whose vacancy he [or she] fills”).

[37] *MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083-1084 & fn. 5 (extrinsic aids available to assist in statutory interpretation include “other statutes dealing with the same subject matter”).

[38] Elec. Code, § 13.5, subd. (a)(1).

[39] Elec. Code, § 13.5, subd. (b)(3).

[40] Gov. Code, § 24001, *italics added*.

[41] 80 Ops.Cal.Atty.Gen. 331, 332 (1997) (section 24001 waiver proviso does not apply to elected county officers).