

Memorandum 93-74

Trial Court Unification: Urgency Measure Issues

The trial court unification materials we have been considering anticipate that, if SCA 3 is adopted at the June 1994 primary election, implementing legislation will be enacted thereafter to become operative on the July 1, 1995, operative date of SCA 3. In all likelihood, it will not be possible to draft the implementing legislation in time to obtain enactment during the 1994 legislative session. The implementing legislation will have to be urgency legislation enacted early in the 1995 session, operative July 1, 1995.

California Constitution Article IV, Section 8(d), provides in relevant part that:

An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest.

This provision presents potentially serious problems for the trial court unification time table, since it might be construed to mean that implementing legislation affecting court officers and employees, and their salaries and functions, cannot be accomplished by urgency legislation.

This provision has been narrowly construed. Most litigation under it occurred during the 1930's and 1940's, and even then the courts were reluctant to use it to strike down urgency legislation. A number of cases hold, for example, that urgency legislation affecting duties of officers does not constitute a "change" in the duties of the office within the meaning of the Constitution to the extent the legislation does not affect the primary duties of the office. See, e.g., *Martin v. Riley*, 20 Cal. 2d 28, 123 P.2d 488 (1942). This distinction is adhered to in more recent, though rare, cases interpreting the provision. Other cases narrowly construe what is meant by the constitutional reference to an "office" or to a "vested right or interest".

Nonetheless, there are cases applying the provision, and the staff cannot conclude that it would have no application to massive urgency legislation affecting an "office" such as that of a judge, commissioner, county clerk, or

sheriff, or the salary, term, or duties of the office, or affecting vested rights or interests of court employees generally.

The staff recommends that language be added to SCA 3 making the urgency clause limitation inapplicable to transitional legislation implementing trial court unification.

SEC. 23. The purpose of the repeal of Section 5, and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16, of this article and to Section 16 of Article I, adopted at the June 1994 primary election is to convert each superior, municipal, and justice court to a unified superior court. The Legislature may provide for implementation of, and orderly transition under, this measure. Notwithstanding Section 8 of Article IV, implementation of, and orderly transition under, this measure may include urgency statutes that create or abolish offices or change the salaries, terms, or duties of offices, or grant franchises or special privileges, or create vested rights or interests.

Comment. Section 23 is added to implement unification of the superior courts, municipal courts, and justice courts in a single trial level system of superior courts. See Section 4 (superior court) and former Section 5 (municipal court and justice court). The operative date of this section is July 1, 1995. This section is transitional only and is repealed by its own terms on July 1, 2001.

The first paragraph grants express authority to the Legislature to provide for implementation of trial court unification. The Legislature may prescribe implementing provisions directly by statute or may delegate authority, for example to a committee of presiding judges and others in each unified superior court. Implementing legislation may be by urgency statute, and may affect matters otherwise precluded under Article IV, Section 8(d) (limitation on subject of urgency statute). Implementing legislation must be consistent with the Constitution, but it should be noted that the transitional matters outlined in the third paragraph govern only absent contrary action pursuant to statute.

Respectfully submitted,

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Executive Secretary