

Memorandum 94-6

Trial Court Unification: Geographical Districts

Existing Law

The California Constitution requires the Legislature to provide for the organization of municipal and justice courts, but is silent on the organization of superior courts. Cal. Const. Art. VI, §§ 4, 5.

The Legislature has generally delegated municipal and justice court districting to the counties. Gov't Code § 74021.

With respect to superior courts, the Legislature has enacted general requirements for branch courts, and delegated to the courts, with approval of the county boards of supervisors, authority to establish additional branches. Gov't Code §§ 69742-69752. In Los Angeles County this approach is reversed—superior court districts are established by the Board of Supervisors, with approval of the court. Gov't Code §§ 69640-69650.

Despite the constitutional silence on the organization of the superior courts, the Legislature's assumption of authority to control branches and geographical districts appears proper. See discussion in Memorandum 93-70.

SCA 3

SCA would make the Legislature's authority over districting in the unified court explicit. "The Legislature may divide the district court into one or more branches." Proposed Cal. Const. Art. VI, § 4. This proposal may contemplate that a branch will be more than just another courthouse where sessions remote from the county seat are held. It may envision legislative establishment of geographic districts, including venue rules and, in particular, election of judges by district. Proposed Cal. Const. Art. VI, § 16(b) ("Judges of [district] courts shall be elected in their districts or branches at general elections.")

Tentative Recommendation

The Law Revision Commission has tentatively concluded that the status quo should not be disturbed as a result of trial court unification. Thus the existing

constitutional silence as to the superior courts would be preserved, as well as the existing statutes governing superior court branches and districts. Whether any changes in statutes may be necessitated as a result of unification would be considered in the statutory revision.

It should be noted, however, that the draft constitutional revision also embraces a county-based structure for the unified courts, and states that elections of unified court judges should be countywide. This is the current situation for superior courts, but not for municipal and justice courts. The proposed constitutional language could be construed to preclude the possibility of formation of operational geographic districts within the county and election by district, as envisioned by SCA 3.

Discussion

If election of unified court judges is by county, as the Commission's tentative recommendation proposes, would that preclude the Legislature from later determining that countywide elections in a county such as Los Angeles have become too unwieldy, and that court operations should be broken down into districts with judicial elections by district?

The staff raises this issue after a review of the transcript of the interim hearing on SCA 3 conducted jointly by the Senate and Assembly Judiciary Committees. The concern of the legislators is evident that court unification in Los Angeles County may make countywide court operations and particularly countywide judicial elections unworkable. There was particular concern about the potential impact of countywide elections on the ability of minority communities to obtain election of a representative judiciary.

The Commission has tentatively concluded that countywide operations and elections would not cause the feared problems. But ought we to embed that conclusion in the Constitution, thereby precluding statutory adjustment in cases where another approach appears preferable?

A dominant and consistent theme of remarks by legislators at the interim hearing is the need to avoid locking a particular point of view into the constitution, which should allow flexibility, particularly with regard to geographical districts and voting rights. Senator Lockyer makes the point strongly on a number of occasions that the Constitution should be simple and

flexible, and should not take a fixed position on matters that are potentially controversial. For example:

I just want to make it clear that it seems to me that the electoral district discussion is an extraordinarily complicated one. And to freeze one particular viewpoint into the state constitution, I'm persuaded at least, tentatively persuaded, is a bad idea. We ought to maintain some flexibility to deal with that in a statutory context rather than in the state constitution.

Transcript at 9.

The staff thought has basically been that the Constitution should be as flexible as possible and that these matters are more appropriately done by statute. And that's what I would rather than having an automatic county-wide electoral base or something of that sort written into the State Constitution which is what's been urged on us and the one which I am personally uncomfortable with.

Transcript at 25.

I'm still trying to stay with the sort of very simple, basic constitutional provision that would confer greater flexibility and let the debate continue.

Transcript at 39.

We're not going to have all of these questions answered. Voting Rights Act is just one example of enormously complicated legal and practical questions. If we wait for the answers to those questions, we'll never do anything. And so in my mind the issue is, do we start the process of moving forward or not. I think we should. We should do it in as simple and basic and clear a way as possible and trust the people in all three branches of government to continue to refine and work out that basic idea over time.

Transcript at 45.

Senator Lockyer's feeling was echoed by other legislators at the hearing who expressed the concern that the constitution be kept simple and flexible and that the debate be limited to the extent possible to the statutory arena. For example:

And I think that one of the things that I'd like to see as this concept progresses is the ability for the regions to have some flexibility, and that does support what Senator Lockyer is talking about, as far as keeping the Constitution a little bit less encumbered with the details, for example, the concept with branch courts within a district. If we had a very rigid set of where the branch courts would be and it's established in the Constitutional Amendment

itself, we would limit the ability to the San Diego County, for example, to maintain branches in various areas in a little bit different scenario administratively. I think there needs to be built into there some flexibility.

Assemblyman Goldsmith, Transcript at p. 73.

The Commission has agreed in principle with this position. The tentative recommendation states that to the extent issues can be dealt with by statute rather than in the Constitution, the Commission recommends that this be done. “The Constitution should set out only the basic structure of the judicial system and the details should be left to implementing legislation. This will help focus the election debate over the constitutional amendment on the overall merits of unification rather than on incidental details.” Tent. Rec. at 9.

However, the discussion at the interim hearing serves to highlight the fact that in the area of geographic districts and judicial elections, the specific proposals of the Commission may be unduly restrictive. The staff believes the Commission should revisit these matters.

Staff Conclusion

On the question of geographic districts, the Commission has proposed to preserve in the Constitution the existing language relating to superior courts, under which the Legislature has acted to address the matter of branches and, in Los Angeles County, districts.

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is ex officio clerk of the superior court in the county.~~

Tent. Rec. at 47-48.

The staff believes this approach is satisfactory. There is a potential challenge to statutes specifying branches and districts based on separation of powers doctrine—if the Constitution is silent on a matter concerning the judicial branch, the matter may be solely within the control of the courts. The staff is not overly concerned about this argument in light of the historical exercise of authority by the Legislature in this area and case law indicating that legislation is permissible.

The intent of the constitutional provision will be bolstered by language in the Comment that:

Section 4 is silent concerning location of superior court facilities in the county. This continues existing law as it applies to superior courts and supersedes provisions of former Section 5 that applied to municipal and justice courts. As an initial matter, the existing superior court, municipal court, and justice court locations are retained. Section 23 (transitional provision). It is intended that location of superior court facilities in the future, and operation of branch or district facilities or sessions, be determined as it is under current practice—by a combination of judicial branch decision-making, statutes, and limitations imposed by funding sources.

On the issue of judicial elections, however, the tentative recommendation may be unduly restrictive. It provides that judges of superior courts will be elected in their counties except as otherwise provided by the Legislature to cure Voting Rights Act violations.

Judges of ~~other~~ superior courts shall be elected in their counties ~~or districts at general elections except as otherwise required to comply with federal law, in which case the Legislature may provide for election by the system prescribed in subdivision (d) or by other arrangement~~ . The Legislature may provide that an unopposed incumbent's name not appear on the ballot.
Tent. Rec. at 52-53.

If we were to be consistent in our intent to keep the Constitution general and permissive and to address specific issues at the statutory level, we would need to revise the constitutional proposal to recognize the possibility of elections by district. We would make the case for countywide elections in our statutory recommendations to the Legislature.

The staff would revise the tentative recommendation concerning Section 16(b) to restore the words “or districts”. The Comment would be revised to state:

The mention in subdivision (b) of election by districts no longer refers to municipal or justice court districts but to the possibility of superior court districts established pursuant to Section 4. Subdivision (b) is revised to authorize the Legislature to provide for alternate voting arrangements, if mandated by federal law. See, e.g., Voting Rights Act, 42 U.S.C. § 1973 *et seq.* Other arrangements may include retention elections—a system of selection prescribed in subdivision (d). The Legislature may provide the remedy directly

or by delegation, for example, to the board of supervisors of an affected county in an appropriate case.

Respectfully submitted,

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