Sheriff removal procedures

Overview

Reforming oversight of California's sheriffs recently made the news as part of a broader conversation about rethinking law enforcement. In particular, the Los Angeles board of supervisors is considering options to remove Los Angeles Sheriff Alex Villanueva. As a charter county, Los Angeles has express constitutional power to amend its charter to provide removal procedures for elected county officers like its sheriff. Charter counties have two primary options for removing their sheriffs: recall by the voters and removal by the county governing body. But because the state constitution requires all sheriffs to be elected, a charter county's board of supervisors cannot convert the sheriff into an appointed position. Nor can a board of supervisors interfere with a sheriff's independent investigative function; consequently, a board's direct-removal powers can be exercised only for cause, such as official misconduct.

Analysis

Sheriffs are county officers for removal purposes

Two distinctions are relevant here: between state and local officers, and between charter and general law counties.

Depending on the legal context a California sheriff can be either a state official or a local county officer.[1] The California constitution requires each of the state's 58 counties to have an elected sheriff. Article XI, section 1(a) defines counties as "legal subdivisions of the State," and requires the legislature to "provide for county powers," including "an elected county sheriff." The legislature has done so, and defined a sheriff as one of the "officers of a county,"[2] and required the office of sheriff to be filled by election along with other elective county officers.[3] Consequently, for removal purposes, the sheriff is a county officer, not a state official.

Defining sheriffs as county officers for removal purposes eliminates impeachment as an option. State officers may be removed by impeachment,[4] and state officials are

also subject to recall campaigns.[5] But for purposes of removal a sheriff is a county officer.[6] This means that sheriffs are not subject to impeachment. Article IV, section 18(b) limits impeachment to "state officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts," and Government Code section 3020 is to the same effect. Sheriffs are not state officers elected on a statewide basis, so the constitutional and statutory procedure for impeaching officials does not apply to sheriffs.

But sheriffs are subject to recall, with some distinctions between sheriffs in charter and in general law counties. Article II, section 19 requires the legislature to "provide for recall of local officers," but expressly exempts "cities and counties whose charters provide for recall." This flows from the constitutional distinction between counties that have assumed the mantle of charter powers, versus those counties that are governed by the general law.[7] Consistent with that constitutional distinction, the legislature established a statutory recall procedure for removing local officers that applies only to general law county sheriffs, not chartered counties: it "governs the recall of elective officers of the State of California and of all counties, [but it] does not supersede the provisions of a city charter or county charter, or of ordinances adopted pursuant to a city charter or county charter, relating to recall."[8]

Of California's 58 counties, 44 are general law counties and 14 are charter counties:

- General law counties: Alpine, Amador, Calaveras, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba[9]
- Charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, Tehama

We separately describe the possible charter and general law county removal procedures below.

General law county sheriffs can be recalled under existing law

A general law county sheriff can be recalled under the terms set forth in state law. Article II, section 19 requires the legislature to "provide for recall of local officers." As noted above, the legislature established a statutory recall procedure for recalling sheriffs and other general law county officers.[10] That procedure, beginning at Elections Code section 11000, includes any local elective officer of a county,[11] and the recall procedures specifically for local officers begin at Elections Code section 11200. Accordingly, a board of supervisors in a general law county need take no action to create a recall procedure; indeed, its status as a general law county arguably *requires* it to use only the existing statutory recall procedure.

Charter county sheriff removal options

A charter county has authority to adopt its own procedure to recall its sheriff. The requirement in article II, section 19 that the legislature provide for recalling local officers "does not affect counties and cities whose charters provide for recall." In fact, article XI, section 4 seems to require a county charter to include a removal procedure for local officers such as the sheriff: "County charters shall provide for: . . . (c) An elected sheriff, . . . other officers, their election or appointment, compensation, terms *and removal*." (Emphasis added.) And the election, tenure, compensation, and removal of a charter city or county's local officers are matters of local rather than statewide concern: "It is settled that in cities operating under such charters, recall of officers is a municipal affair, which may be governed by the provisions of the charter, and that the general law in such cases is superseded."[12]

Even a county charter that is silent on local officer removal arguably has an implied removal option. Article II, section 19 only exempts from its ambit counties whose charters provide a recall procedure. When presented with a county charter that contained no unique recall procedure, but instead incorporated the general law recall procedure with some modifications, the California Supreme Court held that "in such a situation the recall proceedings must conform to the general law, as modified by the charter provisos."[13] Thus, a county with a charter that lacks a recall procedure — or especially a county that lacks any removal procedure at all — might employ the general recall procedure for local officers set forth in Elections

Code section 11000.

Los Angeles can amend its charter to create removal procedures

Los Angeles is a charter county. Its charter provides that "All elective County officers shall hold office until their successors are elected and qualified."[14] But Article XI of its charter says that "The provisions of State law applicable to the recall of County officers shall apply to the recall of elected County officers." Consistent with our suggestion above that a charter county like Los Angeles might use the general statutory recall procedure, the the general recall procedure for local officers in Elections Code section 11000 applies to the Los Angeles county sheriff. And Los Angeles may amend its charter to adopt a specific sheriff removal procedure. One California court held that charter counties are required to have removal procedures: a "county has the legal right and *duty* to decide removal procedures for the sheriff. . . . The California Constitution requires that a county charter shall provide for an elected sheriff. [Article XI, section 4] also requires the charter to provide for the 'compensation, terms and removal' of the sheriff."[16]

Los Angeles County is not limited to employing the recall as its sole procedure for removing its sheriff — nothing about the constitutional requirement for providing a removal procedure requires using one particular method, or only one method. For example, the county governing body could be given the power to remove the sheriff by a four-fifths vote. San Bernardino County did just that in 2002, relying on its charter county powers and the California Attorney General's opinion that "A county charter may grant the board of supervisors the authority to remove for cause by a four-fifths vote the sheriff, district attorney, and other county officers upon due notice and opportunity to be heard."[17] Rejecting the San Bernardino sheriff's challenge to the ordinance, the Court of Appeal held that the removal procedure was "specifically authorized by article XI, section 4 of the Constitution, subdivision (c)."[18] The court also noted that it was "authorized by and consistent with Government Code section 25303," which permits a board of supervisors to "supervise the official conduct of all county officers."[19]

Finally, note that while a charter county board of supervisors might have powers to remove a sheriff for official misconduct, Government Code section 25303 expressly

bars the local governing body from obstructing the sheriff's investigative functions.[20] While the board of supervisors in a charter county could secure authority to remove a sheriff for cause (such as official misconduct), it could not exercise that power to interfere with the sheriff's investigative functions.

Conclusion

Any California county can remove its sheriff. For charter counties, removal may be done by recall, either by charter provisions or charter amendment, or potentially under existing statutory law. As an alternative to a recall, a charter county may empower its governing body to remove the sheriff for official misconduct. But a county is not necessarily limited to just one procedure for removing a sheriff: it may provide for recall, governing-body removal, or both — or still another procedure. Multiple means of removing a sheriff are not conflicting, or mutually exclusive.[21] So while general law counties must use the state's existing recall procedure (and are probably limited to that remedy), charter counties like Los Angeles have far greater flexibility, to use the recall or some other removal procedure. The bottom line is that California sheriffs are not exempt from removal before their term expires.

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[1] *Penrod v. County of San Bernardino (2005)* at 190 (noting that when performing law enforcement functions a sheriff is a state actor and immune for 42 U.S.C. § 1983 liability purposes. See *Venegas v. County of Los Angeles (2004).* The same state/local status issue applies to a few other officers. A district attorney is an elected local officer that for some purposes is a state official. See *Pitts v. County of Kern (1998)* at 345 (district attorney represents the state, not the county, when preparing to prosecute and when prosecuting crimes). And for recall purposes Court of Appeal justices are deemed state officers, whereas "judges of trial courts shall be considered county officers." Elec. Code § 11001; *Persky v. Bushey (2018)* at 820.

[2] Gov. Code § 24000(b).

[3] Gov. Code § 24009(a); 24205(a). Section 24009(b) provides an optional procedure to make some elected county officers into appointed positions, but it expressly exempts "those officers named in subdivision (b) of Section 1 of Article XI of the California Constitution" — which includes sheriffs. Accordingly, a county sheriff cannot be converted into appointed position. Gov. Code § 24009.

[4] Gov. Code § 3020: "State officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts are subject to impeachment for misconduct in office."

[5] Cal. Const., art. II, §§ 13–18.

[6] The statutory recall procedure applies to all elected county officials, which includes sheriffs. Elec. Code § 11004: "For the purposes of this division, a 'local officer' is an elective officer of a . . . county."

[7] General law counties possess only those powers expressly conferred upon them by the California constitution and the legislature. *Younger v. Board of Supervisors (1979)* at 870. Charter counties hold "all the powers that are provided by this Constitution or by statute for [general law] counties." *Dibb v. County of San Diego (1994)* at 1208. The *Dibb* opinion at 1206–08 describes in detail the differences between charter and general law counties, and between charter counties and charter cities.

[8] Elec. Code § 11000.

[9] Cal. State Assn. of Counties, *County Structure & Powers*.

[10] Elec. Code § 11000.

[11] Elec. Code § 11004.

[12] *Muehleisen v. Forward (1935)* at 19; see also *Dimon v. County of Los Angeles (2008)* at 1281; *Curphey v. Superior Court (1959)* at 265 (manner of appointment or removal of a county officer is not a matter of statewide concern but of local concern, the county has control over it under its charter); *Becker v. Council of City of Albany (1941)* at 705.

[13] *Muehleisen* at 20.

[14] Los Angeles County Charter, art. IV, § 13.

[15] Even our suggestion above that a charter county that, like Los Angeles, might use the general statutory recall procedure, does not apply to Los Angeles, because its express and specific charter requirement that county officers hold office until their successors are elected probably rules out recourse to the general statutory recall procedure.

[16] *Penrod* at 190 (emphasis added).

[17] 84 Ops.Cal.Atty.Gen. 88 (2001).

[18] *Penrod* at 191.

[19] *Ibid.*

[20] See *Penrod* at 192–93.

[21] *Harby v. City of Los Angeles (1944)* at 913 (concerning removal procedures in the Los Angeles City Charter: "There is no conflict between the provisions of the city charter and the Code provisions. There is nothing in the charter that, by the application of any rule of construction, indicates an intention to make its provisions exclusive.").