

# LAFCo & Health Care Districts

CALAFCO Annual Conference

Monterey, CA

October 4, 2012

Michael G. Colantuono  
Colantuono & Levin, PC

11364 Pleasant Valley Road  
Penn Valley, CA 95946-9000  
(530) 432-7357

[MColantuono@CLLAW.US](mailto:MColantuono@CLLAW.US)

Twitter @MColantuono

# Extra-Territorial Service

- ▶ Express power to act outside District (HSC 32121):
  - Operate a health plan (r)
  - Provide health care facilities & services (j)
  - Own or lease property (c)
  - Ambulance service (l)
- Other powers impliedly limited to District territory, but how significant are these?
- This is a contested issue.

# District Territory

- ▶ Need not be contiguous (HSC 32001)
- ▶ Must exclude territory not benefited (*i.e.*, uninhabited)
- ▶ Annexing territory excluded during formation process due to lack of benefit requires findings (GC 58106)
- ▶ May be multi-county (HSC 32001)
- ▶ No overlapping districts without consent of the first district unless principal act says otherwise (GC 56119)

# Relationship to Other Gov'ts

- ▶ Subject to zoning power of city or county
  - 55 Ops. CA AG 375 (1972)
- ▶ Medical operations subject to regulation by a variety of state health care agencies, such as OSHPOD, Department of Insurance, etc.

# Power to Change their Name

- ▶ HSC 32137 allows a Health Care District to change its name by a resolution filed with the County Clerk
- ▶ Other laws require all government agencies to register with the Secretary of State

# Financial Powers

- ▶ Property taxes (HSC 32200 ff.)
- ▶ Special taxes: 2/3-voter approval (HSC 32240; GC 53730.5 ff)
- ▶ Bonded debt
  - Capital facilities & coinsurance plans (HSC 32300)
  - Revenue bonds (HSC 32315)
  - State bonds (HSC 32350)
- ▶ Appear to lack assessment authority
- ▶ Substantial revenues from fees for service, health plans, third-party payments, etc.

# Formation, Reorganization

- ▶ Governed by principal act (HSC 32200)
  - *In re Valley Health System*, 429 B.R. 692 (Bkcy CD Cal. 2010)
- ▶ But CKH can fill gaps in the principal act (*id.*)
- ▶ If LAFCo receives application to form or reorganize a HCD, it must give notice to state health agencies, one of which no longer exists (GC 56131.5)
- ▶ Dissolution requires voter approval (GC 57103) as does transfer of  $> \frac{1}{2}$  an HCD's assets (HSC 32121(p))

# More on Formation, Reorganization

- ▶ Principal Act refers to the District Organization Law
  - HSC 32002 & GC 58030 ff.
- ▶ Formation process
  - Petition (GC 58030)
  - Board of Supervisors of largest county (by district territory) serves as “supervising authority” (GC 58004(d))
  - Election (GC 58130 ff.)
  - Uniform District Election Law applies (HSC 32002)
  - LAFCo provides impartial analysis (HSC 32002.31)



# Contested Questions

- ▶ Is a HCD subject to LAFCo's power to approve out-of-district service under GC 56133?
  - Broad express powers to act outside district may make this a rare question
  - Where principal act impliedly limits power to within district, the power may be entirely lacking, with or without LAFCo's approval
  - SD LAFCo took the position that it does have this power and affected HCD acquiesced in its position
- ▶ This is a hotly contested issue. Clearly HCDs were intended to compete with private actors, but with each other?

# How Much Power Does LAFCo Have?

- ▶ Certainly has power and duty to approve MSR, SOI & reorganizations.
- ▶ Does not control formation, but may be able to do so in reorganization context.
- ▶ Dissolution or sale of most assets requires voter approval.
- ▶ Difficult role in refereeing disputes between HCDs as to extra-territorial activity

# LAFCo Power Continued

- ▶ LAFCo has a bully pulpit via MSR & SOIs
- ▶ Some HCDs are attracting attention due to competition for scarce property tax dollars and are therefore vulnerable to criticism if LAFCo, grand jury or others conclude they are not serving the public interest.
- ▶ Like all CA governments, HCDs have a need to engage the public they serve and LAFCo can help them do so.

# Questions?