Newsletter | Summer 2019

COLANTUONO HIGHSMITH WHATLEY, PC

Update on Public Law

Local Governments Can Require State Agencies to Collect Taxes

By Michael G. Colantuono

The California Supreme Court recently decided an important local government finance case in which CH&W provided an *amicus curiae* ("friend of the court") brief for the League of California Cities.

City and County of San Francisco v. The Regents of the University of California concerned San Francisco's effort to compel UCSF, CSU San Francisco and the UC Hastings School of Law to collect (but not to pay) the City's parking tax. All three operated parking lots open to the public as well as their students, faculty, patients, and other guests. The universities refused, claiming immunity as state agencies even though earlier cases have required special districts (also, technically, state agencies) to collect utility user taxes (UUTs). San Francisco sued to compel the universities to collect the tax, agreeing to bear their costs to do so. The lower courts ruled for the universities, although an appellate Justice dissented, describing the law as in "disarray." The Court of Appeal majority relied on a distinction between "governmental" activities of public agencies and their "proprietary" activities — i.e., those that private parties engage in, too — to rule for the universities, concluding that providing campus parking was "governmental." Our brief for the League of California Cities argued the governmental / proprietary distinction is outdated and suggested the Court either extend the UUT / special district cases to the universities or apply the analysis of the Court's home rule cases, which balance the home rule power of charter cities with the State's power to regulate matters of statewide concern.

The Supreme Court did not reject the governmental / proprietary distinction, but did adopt our suggestion to apply charter city home rule cases. Instead of a bright-line rule that taxes are or are not municipal concerns or that operation of universities is a matter for the State, the Court balanced the interests of the parties. It found little burden on the

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CH&W in Leadership Roles

All four CH&W shareholders have been elected to leadership roles in organizations serving California.

Michael Colantuono is now the Secretary / Treasurer of the California Academy of Appellate Lawyers, a prestigious association of fewer than 100 of California's most respected appellate advocates. He will rise through the leadership ranks and serve as President in 2022.

Holly Whatley is now President of the City Attorneys Association of Los Angeles County, the largest network of city attorneys short of the League of Cities' City Attorneys Department.

Terri Highsmith now Chairs the Executive Committee of the Legal Advocacy Committee of the City Attorneys Department of the League. This group manages the League's *amicus curiae* brief program supporting cities on important questions in

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SCOTUS Allows Federal Litigation of Takings

By Jennifer L. Pancake

The highly anticipated U.S. Supreme Court decision in *Knick v. Township of Scott* is here, and with it the demise of one of local agencies' most effective defenses to federal regulatory takings claims. In a 5–4 decision, the Court overruled a 34-year old ripeness requirement of *Williamson County Regional Planning Commission v. Hamilton Bank*, which established two ripeness hurdles for federal takings claims: the would-be plaintiff had to (i) obtain a final decision from the defendant agency and (ii) sue in state court for a remedy under state law before suing in federal court.

Knick overrules only the second ripeness requirement. Plaintiffs must still obtain a final decision from the regulatory body as to how the regulation will be applied them. This typically means seeking a variance before challenging zoning or proposing a revised project before challenging an initial denial.

Scott Township required property owners to allow daytime access from the nearest public road to any cemetery. Mrs. Knick refused to comply and sued, claiming the ordinance was a taking (and it likely is). Lower federal courts dismissed her case (brought by a conservative public interest group) as unripe under *Williamson*, requiring her to sue in state court. By virtue of the Supreme Court decision, this is no longer required.

Knick will certainly lead to more takings suits in federal courts where many state-law defenses will be unavailable. Property-rights lawyers have long claimed federal courts are friendlier to takings claims than California courts. Yet, federal courts cannot be expected to welcome a wave of disputes under complex state land use and other laws. Thus, we also expect renewed use of abstention doctrines by which federal judges require parties to bring state claims in state court. Moreover, it typically takes a long time to try a federal case in California, especially in the over-burdened Eastern District serving inland counties from Inyo and Kern to Oregon.

The case is nevertheless a reminder to land use regulators to respect the constitutional rights of property owners such as the right to reasonable economic use of private property and the rule that dedication requirements and other exactions must be logically related to impacts of development and be no more than roughly proportionate to the extent of those impacts — the so-called *Nollan* and *Dolan* tests.

Further developments in this area are likely, so stay tuned!

For more information on this subject, contact Jenni at JPancake@chwlaw.us or (213) 542-5708.

State Agencies to Collect Taxes (cont.)

universities, especially as San Francisco agreed to pay their costs to implement its tax, and found a lot at stake for San Francisco — both its power to fund municipal services and the need to avoid an imbalanced market in which most parking lots collect the City's tax, but the universities sell parking either at a lower price or at the same total cost, pocketing the amount of the City tax. The case is an important win for local revenue power.

Cities and counties with substantial state presence should evaluate their tax portfolios and consider whether they can better enforce their taxes by enlisting state agency aid.

For more information on this subject, contact Michael at MColantuono@chwlaw.us or (530) 432-7359.

Courts Clarify Brown Act Agenda Requirement

By Ryan A. Reed

A trio of recent cases recently helpfully interpreted the Brown Act, California's open-meeting law for local governments. In *Olson v. Hornbrook Community Services District*, the plaintiff challenged agendas for three meetings. At the first, an agenda item described payment of a specific sum of money, but the Board approved a different amount. At the second, the agenda described four bills, but the Board approved five. At the third, the agenda called for approval of all bills received in a specified date range. The plaintiff sought to set aside these approvals for failure to comply with the Brown Act's requirement that every action taken be reasonably described on the agenda.

The Court of Appeal concluded the second agenda would allow approval of four bills, but not five. The first and second agenda were insufficient because the Board approved items other than those listed. The third agenda was sufficient.

In *TransparentGov Novato v. City of Novato*, the City Council discussed two non-agendized projects at length. The Council voted not to put one on a future agenda, and to form a subcommittee to study the other. The plaintiff advocacy group demanded the City commit not to repeat these violations — discussing and acting on off-agenda items. The City agreed not to establish further subcommittees without agendizing doing so and adopted a policy precluding Council from adopting agenda items for future meetings. Because the City promised that it would not violate the Brown Act in a new written policy, it complied with the Brown Act provision allowing such a response to a demand for cure, and left the Court nothing to consider.

Finally, in *Preven v. City of Los Angeles*, the plaintiff spoke at a Council subcommittee meeting. The following day, the full Council held a special meeting on the same subject. The Council did not allow plaintiff to speak again, citing the Brown Act's "committee exception" — there is no right to public comment at the full Council on a topic previously addressed in committee. The Court of Appeal concluded the committee exception only applies to regular meetings.

These cases offer three lessons: First, public agencies must strike a balance when preparing agenda descriptions. Too specific an agenda description denies the legislative body flexibility. Second, public agencies can avoid liability by an appropriate response to a demand for a cure of an alleged Brown Act violation. Finally, the "committee exception" does not limit public comment at special meetings, only at regular meetings.

The Brown Act is often disputed and can be a moving target. As always, we will keep you posted!

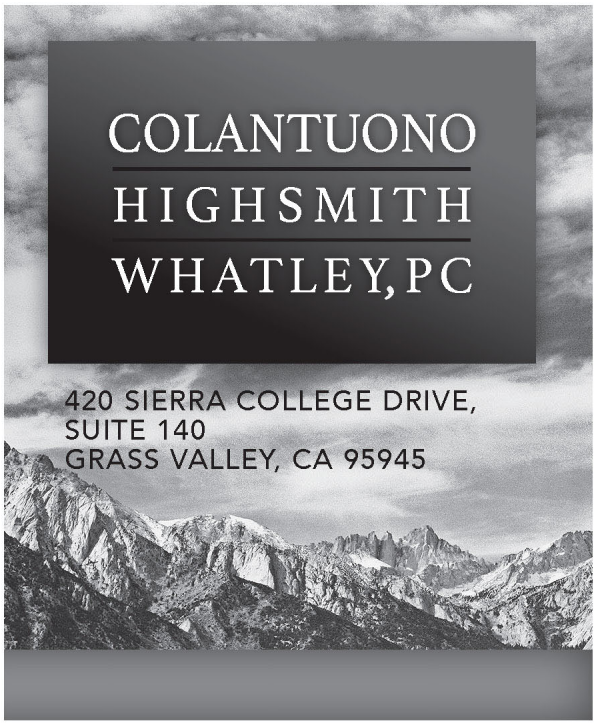
For more information on this subject, contact Ryan at RReed@chwlaw.us or (530) 270-9490.

Leadership (cont.)

state and federal courts. The committee is important, its work interesting, and it is an honor to serve. Senior Counsel **Matt Summers** has also been appointed to the Committee to represent cities in Santa Barbara, San Luis Obispo and Ventura Counties.

Gary Bell has been appointed to the Advisory Committee to the Legislative Committee of the California Association of LAFCOs. This committee drafts, negotiates and lobbies for laws that help LAFCOs achieve their mission to avoid sprawl and promote efficient local government.

All our shareholders serve their clients each workday, but serve all local governments via their volunteer efforts, too. Kudos to all!



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