Colantuono & Levin, PC

C&L Newsletter

Update on Public Law

Los Angeles • Nevada County

Winter 2014

Lobbying LAFCO: Follow the Money

By David J. Ruderman & Jon R. di Christina

Before January 1, 2014, it was unclear if a committee formed to oppose an annexation proposal initiated by a city was required to report campaign expenditures and contributions to the Fair Political Practices Commission (FPPC). The Political Reform Act (PRA) appeared to apply only to annexations initiated by petition rather than by government resolution. The FPPC has adopted a new regulation, Section 18417, to clarify this and two other points.

Section 18417 first clarifies the scope of campaign disclosure requirements. The PRA's prior disclosure requirements did not mention committees formed in response to agency-initiated LAFCO proposals—but required disclosure only "from the time circulation of a petition begins." The new regulation clarifies that the disclosure is required whether a proposal is initiated by petition or resolution of a local government.

The second point relates to when the reporting duty is triggered. Reporting is now required "from the date that a petition, application or resolution of application is filed until a measure is placed on the ballot." This changes the triggering event for petitions. Before gathering signatures on a petition for a change of organization, proponents must file a Notice of Intent to Circulate Petition with LAFCO. After proponents obtain the requisite signatures, they file the signed petitions with LAFCO's executive officer, who forwards them to the county elections official for verification. It seems campaign reporting requirements should apply when proponent file their notice of intent, as is the rule for initiative campaigns. However, under Section 18417, reporting requirements do not apply until the signed petitions are filed.

The third point codifies FPPC advisory rulings regarding costs that need not be reported. The following are viewed as not incurred for political purposes and therefore need not be reported:

(1) "Payments made for the cost, including staff time, if applicable, of preparing reports, studies or analyses, including environmental impact reports, feasibility studies, and fiscal analyses"; and

(2) Processing and similar fees paid to a LAFCO." Thus, the ordinary —and commonly, government—costs to pursue LAFCO proposals do not trigger reporting requirements; only activities designed to persuade voters to sign petitions, support or oppose proposals, vote, etc. are reportable campaign contributions.

LAFCOs may find it useful to review campaign reports filed with the FPPC to identify potential conflicts of interest for commissioners and to ensure transparency.

Although the rule refinements are fairly minor, the larger principle is important: it is vital that those who fund efforts to support or kill proposed changes of reorganization be known to ensure a well-informed public and to combat conflicts of interest, influence peddling, or worse. Efforts to control money in politics are perennial, of course. Developments are sure to continue and we will keep you up to date as they occur!

♦♦♦

For more information on this topic, contact David at DRuderman@CLLAW.US or Jon at JdiCristina@CLLAW.US.

Supreme Court takes Eminent Domain Case

By Jennifer L. Pancake

Public agencies often take land for a public project that is also subject to an independent dedication requirement as a condition of development. A very common example is a frontage dedication for streets. In this situation, two issues bear on what the taking agency must pay for the land:

(1) the likelihood the dedication requirement will be imposed, and if so,

(2) whether the dedication requirement is itself an uncompensated taking in violation of the Constitution.

The California Supreme Court has granted review of a case to examine who should decide these issues—the judge or the jury. In *City of Perris v. Stamper*, the City condemned land to realign a truck route. Although the property was zoned for light-industrial use, it had never been used for anything but agriculture. The City claimed it would not approve any future development of the property without requiring dedication of the very land it wished to take. The property owners claimed the dedication requirement should not affect the price of the land to be taken because it was not reasonably probable the City would impose it and, if it did, the dedication requirement would be unconstitutional.

At trial, the judge—not the jury—decided both issues. The Riverside Court of Appeal reversed, holding both dedication issues were essential to the determination of "just compensation," and should be decided by the jury.

The Court of Appeal held that whether it was reasonably probable the City would impose the dedication requirement was a question of fact for the jury, with the judge playing his or her ordinary evidentiary gatekeeper role under the Evidence Code. The Court also held the jury should decide whether a dedication condition is "roughly proportionate" to the impacts of development of the property so as to satisfy the constitutional test of *Dolan v. City of Tigard*. The Court noted that the rough proportionality analysis should not be based on the City's promises of future benefits or development concessions to the owner.

On the one hand, the Court of Appeal's opinion can be viewed as an extension of the jury's role to determine factual questions of reasonable probability, established by *Metropolitan Water District v. Campus Crusade for Christ, Inc.* On the other, allowing a jury to determine whether a dedication requirement is a taking conflicts with settled inverse condemnation and regulatory takings law that these are questions for the judge, with the jury deciding only damages if the judge finds a taking.

There are other issues before the Supreme Court in this case:

(1) whether evidence of the dedication requirement can be excluded from the determination of fair market value because it is attributable to the project for which the property is taken rather than to the property per se;

(2) whether City employees not designated as experts may testify about the reasonable probability the City would impose the dedication condition, the connection ("nexus" in legal jargon) between the dedication condition and the impact that would flow from development of the property; and,

(3) whether the dedication condition was roughly proportionate to the impacts caused by development of the property.

Decision is likely in late 2014 or 2015 and will provide guidance on issues that arise when governments take land for public projects. We will update you when the case is decided. Stay tuned!

♦♦♦

For more information on this topic, contact Jenni at 213/542-5708 or JPancake@CLLAW.US.

Welcome Jenni Pancake!

C&L welcomes Jenni Pancake as Senior Counsel. She brings substantial expertise in eminent domain and inverse condemnation to the firm.

Jenni's 24 years' experience covers a wide variety of condemnation issues. She has represented governments, property owners, tenants and business owners on all aspects of condemnation including acquisition, valuation, loss of business goodwill, severance damages, right-to-take challenges, pre-condemnation damages and relocation benefits. Her experience includes litigation, appeals, settlement and mediation. Welcome, Jenni!

Active Year Ahead for Public Finance Litigation

By Michael G. Colantuono

This looks to be an active year for finance litigation, as the Supreme Court has granted review of a mandates case, two important decisions of the Court of Appeal have recently issued, and issues involving water rates, drought, groundwater charges and hotel bed taxes continue to percolate.

First, the Supreme Court. As all city and county officials know, the cost of clean-water mandates is high and rising. It is difficult to fund expensive mandates as installing filters on catch basins because Prop. 218 requires property-owner or voter approval of fees to fund such programs unless they supply water or dispose of wastewater. LA County sought reimbursement under the provision of the 1979 Gann Limit measure requiring the State to reimburse local governments for unfunded state mandates. The Department of Finance argued regional water boards impose these mandates under federal rather state laws and therefore the mandates need not be reimbursed.

The Commission ruled for the County and the Department of Finance sued. Late last year, the Los Angeles Court of Appeal affirmed a trial court ruling for the State. LA County petitioned the Supreme Court to review the case, with support from the League of California Cities and individual cities. In late January, the Supreme Court granted review. The case, titled *Dept. of Finance v. Comm'n on State Mandates*, might be decided late this year.

In our last issue, we reported on *Griffith v. Pajaro Valley Water Management Agency*, in which C&L successfully defended charges imposed to fund recharge of groundwater relied on by the City of Watsonville, farmers, and rural residents. The case clarifies many of Prop. 218's property related fee provisions. The plaintiffs petitioned the California Supreme Court for review and the Howard Jarvis Taxpayers Association sought depublication. In late January, the Supreme Court denied both requests, and the case remains good authority. A good result for local government!

Clovis v. County of Fresno was decided in January by the Fresno Court of Appeal. It is a companion to *Alhambra v. County of Los Angeles*, which C&L won for cities in the California Supreme Court, striking down a method many counties used to calculate property tax administration fees (PTAF) and requiring significant refunds to cities. *Clovis* was on hold pending decision of *Alhambra*. When that was decided, Fresno County pressed its appeal, testing the interest due on refunds. Immediately before argument, the Court of Appeal requested additional briefing on AB 743 (Eggman, D-Stockton). That law lowered the interest on tax- and fee-refund judgments against local governments from 7% pre-judgment and 10% post-judgment to the Treasury bill rate and that rate plus 2%. C&L was co-counsel for the League of California Cities and Michael G. Colantuono argued alongside Clovis' counsel. The Court of Appeal ruled for cities, holding interest was payable and that AB 743 lowers interest after January 1st, but does not reduce interest accrued since excess PTAF was first withheld in 2006. This is a big win for cities in PTAF cases, but will concern local governments defending other tax- and fee-refund claims that predate AB 743. The decision is not yet final and Supreme Court review is possible.

Other 2014 developments are likely, too. Bed taxes paid by internet resellers like Priceline.com are the subject of suits in San Francisco and San Diego. An Orange County case involving conservation water rates and recycled water funding is now before the Court of Appeal, as are groundwater charges in Santa Clara and Ventura Counties. Finally, the drought will require water-rate increases and penalty rates for many utilities. Revenues fall with water sales during drought, but operating costs do not. These will likely spark controversies, too.

Plainly, 2014 will be a busy year in government finance litigation. As always, we will keep you posted!

♦♦♦

For more information on this subject, contact Michael at 530/432-7357 or MColantuono@CLLAW.US.

Colantuono & Levin, PC
11364 Pleasant Valley Road
Penn Valley, CA 95946

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
MAIL MASTERS

Are you on our list? To subscribe to our newsletter or to update your information, complete the form below and fax it to 530/432-7356. You can also call Martha Farmer at 530/432-7357 or subscribe via our Web site at **WWW.CLLAW.US**.

Name: ____________________ Title: ____________________

Affiliation: ____________________

Address: ____________________

____

City: ____________________ State: ______ Zip Code: __________

Phone: ____________________ Fax: ____________________

E-mail: ____________________

Our newsletter is available as a printed document sent by US Mail and as a PDF file sent by e-mail. Please let us know how you would like to receive your copy.

☐Mail ☐E-Mail ☐Both