

CALIFORNIA HOME RULE AND STATE ECONOMIC REGULATION

*STATE BUILDING AND CONSTRUCTION
TRADES COUNCIL OF CALIFORNIA V. CITY
OF VISTA (The Sequel)*



*STATE BUILDING AND CONSTRUCTION TRADES COUNCIL
OF CALIFORNIA V. CITY OF VISTA, ET AL.*

CHARTER CITIES CAN DETERMINE WHETHER THEY SHOULD FOLLOW STATE
PREVAILING WAGE LAWS WHEN CONTRACTING FOR PUBLIC WORKS PROJECTS PAID
FOR WITH LOCAL FUNDS.

A HISTORICALLY ILL-DEFINED STANDARD

- “MUNICIPAL AFFAIRS” DEFINED AS “LOOSE, INDEFINABLE, WILD WORDS”.
(*BRAUN (1903) 141 CAL. 204, 214*)
- THE *AD HOC* REVIEW PROCESS IS SIGNIFICANTLY DIFFERENT THAN USUAL METHODS OF STATUTORY CONSTRUCTION.

THE LEGISLATURE’S ATTEMPT TO REDEFINE THE STANDARDS IN SB 7

IN 1969, JUSTICE PETERS ARGUED THE “INQUIRY ENDS ONCE THE STATEWIDE CONCERN IS FOUND, AND THERE IS NO NEED TO WEIGH THE STATE AND MUNICIPAL CONCERNS OR TO DETERMINE WHICH SHOULD PREDOMINATE.”

(*BISHOP, DISSENT AT P. 66*)

BISHOP, CAL FED & BRADLEY TEST

- THE COURT MUST FIND IF THE CHARTER CITY'S INTEREST IS A 'MUNICIPAL AFFAIR.'
- THE COURT MUST LOOK TO WHETHER THERE IS AN ACTUAL CONFLICT BETWEEN THE STATE STATUTE AND THE CHARTER CITY'S MEASURE.
- THE INQUIRY IS WHETHER THE STATUTE IN QUESTION QUALIFIES AS 'STATEWIDE CONCERN'
- IF 'STATEWIDE CONCERN' IS BOTH: (A) RELATED TO THE RESOLUTION OF THE CONCERN AND (B) NARROWLY TAILORED, STATE LAW WILL PREVAIL.

FACTUAL OR LEGAL QUESTION

SONOMA COUNTY ORGANIZATION OF PUBLIC EMPLOYEES V. CITY OF SONOMA
(1979) 23 CAL. 3RD 296, 315-317:

"FUNDAMENTALLY, THE QUESTION IS ONE OF CONSTITUTIONAL INTERPRETATION; THE CONTROLLING INQUIRY IS HOW THE STATE CONSTITUTION ALLOCATES GOVERNMENTAL AUTHORITY BETWEEN CHARTER CITIES AND STATE."

VISTA COURT'S FINDINGS

- CONTRACTING FOR PUBLIC WORKS CONSTRUCTION WITH “THE EXPENDITURE OF A CITY’S OWN FUNDS” WAS A ‘MUNICIPAL AFFAIR.’
- PREVAILING WAGE LAWS WERE SUFFICIENTLY IMPORTANT TO BE OF ‘STATEWIDE INTEREST.’
- COURT WEIGHED THE COMPETING INTERESTS AND FOUND THAT THE STATE INTEREST WAS NOT COMPREHENSIVE ENOUGH TO OVERCOME MUNICIPAL INTEREST.

VISTA’S FINDINGS, CONTINUED

- THE PREVAILING WAGE LAW WAS NOT SUFFICIENT OF SCOPE TO BE CONSIDERED A MATTER OF ‘STATEWIDE CONCERN.’
- THE COURT DID NOT HAVE TO REACH THE ISSUES OF WHETHER PREVAILING WAGE LAW WAS “REASONABLY RELATED” TO A STATEWIDE CONCERN OR IF IT WAS “NARROWLY TAILORED” TO MINIMIZE STATE INTRUSION INTO ‘MUNICIPAL AFFAIRS.’

STATEWIDE CONCERN ANALYSIS

“ ...‘THE HINGE OF THE DECISION IS THE IDENTIFICATION OF A CONVINCING BASIS FOR LEGISLATIVE ACTION ORIGINATING IN EXTRAMUNICIPAL CONCERNS, ONE JUSTIFYING LEGISLATIVE SUPERSESSION BASED ON SENSIBLE, PRAGMATIC CONSIDERATIONS.’ ”

(CAL. FED. AT 54 CAL. 3^D AT P. 18)

LOCAL TAX EXPENDITURES

" '[W]E CAN THINK OF NOTHING THAT IS OF GREATER MUNICIPAL CONCERN THAN HOW A CITY'S TAX DOLLARS WILL BE SPENT; NOR ANYTHING WHICH COULD BE OF LESS INTEREST TO TAXPAYERS OF OTHER JURISDICTIONS.' "

(CITING, CALFED, 54 CAL. 3D AT P. 18.)

(VISTA AT P. 13.)

LOCAL TAX EXPENDITURES VERSUS REGIONAL IMPACTS

“THEREFORE, THE UNION HERE CANNOT JUSTIFY STATE REGULATION OF THE SPENDING PRACTICES OF CHARTER CITIES MERELY BY IDENTIFYING SOME INDIRECT EFFECT ON THE REGIONAL AND STATE ECONOMIES.”

(COUNTY OF RIVERSIDE, 30 CAL. 4TH AT P. 296.)

REVENGE OF THE LEGISLATURE - SENATE BILL NO. 7 (2013)

- IN THE LAST LEGISLATIVE SESSION, THE LEGISLATURE PASSED AND THE GOVERNOR SIGNED A BILL THAT ADOPTED LABOR CODE SECTION 1782.
- THIS BILL LIMITS THE ELIGIBILITY OF CHARTER CITIES TO APPLY FOR ANY STATE CONSTRUCTION GRANTS TO THOSE CITIES THAT PAY PREVAILING WAGES IN EVERY CONSTRUCTION PROJECT VALUED AT OVER \$25,000 (\$15,000 REPAIR AND MAINTENANCE TYPE WORK).

- AS OF JANUARY 1, 2015 (AWARD DATE), ELIGIBILITY FOR STATE FUNDING FOR ANY “CONSTRUCTION CONTRACTS” WILL REQUIRE CHARTER CITIES TO COMPLY.
- NO LOCAL LAW CAN CONFLICT WITH THIS REQUIREMENT OR THE CHARTER CITY IS INELIGIBLE FOR CONSTRUCTION FUNDING FOR A TWO-YEAR PERIOD.
- THE DEPARTMENT OF INDUSTRIAL RELATIONS WILL KEEP A LIST OF COMPLIANT CHARTER CITIES.

SELF-CERTIFICATION WITH SB 7

- IN MARCH, 2014, THE DEPARTMENT OF INDUSTRIAL RELATIONS (“DIR”) SENT OUT LETTERS TO CHARTER CITIES ASKING THEM TO SEND IN ORDINANCES OR OTHER PROPOSED LAWS THEY INTEND TO ADOPT TO COMPLY WITH SB 7.
- NO REGULATIONS HAVE BEEN PROPOSED TO ASSIST CITIES IN DETERMINING HOW TO COMPLY.
- SELF-CERTIFICATION LEAVES OPEN THE DOOR TO CHALLENGES AT DIR BY THE CENTER FOR CONTRACT COMPLIANCE.

SB 7 CHALLENGE

- EL CENTRO, CARLSBAD, EL CAJON, FRESNO, OCEANSIDE AND VISTA HAVE FILED A CHALLENGE TO SB 7.
- *EL CENTRO ET AL. ,V. LANIER, ET. AL.*, (SAN DIEGO SUPERIOR COURT CASE No. 37-2014-00003824-CU-WM-CTL, FILED FEBRUARY 20, 2014).
- THE CASE IS SUPPORTED BY THE LEAGUE OF CALIFORNIA CITIES AND APPROXIMATELY 12 CHARTER CITIES WHO PARTICIPATE IN GENERAL GUIDANCE ON THE CASE.

BASIS OF CONSTITUTIONAL CLAIMS

- *STATE BUILDING AND CONSTRUCTION TRADES COUNCIL OF CALIFORNIA V. CITY OF VISTA, ET AL.* (MUNICIPAL AFFAIR)
- *SONOMA COUNTY ORGANIZATION OF PUBLIC EMPLOYEES V. CITY OF SONOMA* 1979) 23 CAL. 3RD 296, 319. (NO WITHHOLDING OF FUNDS TO ACHIEVE AN UNCONSTITUTIONAL RESULT.)

CALIFORNIA CONSTITUTION, ART. XI, § 5(A)

IT SHALL BE COMPETENT IN ANY CITY CHARTER TO PROVIDE THAT THE CITY GOVERNED THEREUNDER MAY MAKE AND ENFORCE ALL ORDINANCES AND REGULATIONS IN RESPECT TO MUNICIPAL AFFAIRS, SUBJECT ONLY TO RESTRICTIONS AND LIMITATIONS PROVIDED IN THEIR SEVERAL CHARTERS AND IN RESPECT TO OTHER MATTER THEY SHALL BE SUBJECT TO GENERAL LAWS. CITY CHARTERS ADOPTED PURSUANT TO THE CONSTITUTION SHALL SUPERSEDE ANY EXISTING CHARTER, AND WITH RESPECT TO MUNICIPAL AFFAIRS SHALL SUPERSEDE ALL LAWS INCONSISTENT THEREWITH.

CALIFORNIA CONSTITUTION ART. XIII, §24(B)

THE LEGISLATURE MAY NOT REALLOCATE, TRANSFER, BORROW, APPROPRIATE, RESTRICT THE USE OF, OR OTHERWISE USE THE PROCEEDS OF ANY TAX IMPOSED OR LEVIED BY A LOCAL GOVERNMENT SOLELY FOR THE LOCAL GOVERNMENT'S PURPOSES.

CALIFORNIA CONSTITUTION ART. IV, § 1 LEGISLATIVE

THE LEGISLATIVE POWER OF THIS STATE IS VESTED IN THE CALIFORNIA LEGISLATURE WHICH CONSISTS OF THE SENATE AND ASSEMBLY, BUT THE PEOPLE RESERVE TO THEMSELVES THE POWERS OF INITIATIVE AND REFERENDUM.

CALIFORNIA CONSTITUTION ART. II, § 10 (C)

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CALIFORNIA CONSTITUTION ART. IV, § 16

- (A) ALL LAWS OF A GENERAL NATURE HAVE UNIFORM OPERATION.
- (B) A LOCAL OR SPECIAL STATUTE IS INVALID IN ANY CASE IF A GENERAL STATUTE CAN BE MADE APPLICABLE.

LONG TERM IMPLICATIONS OF SB 7 (IT'S NOT JUST A PREVAILING WAGE CASE)

IF THE LEGISLATURE CAN CUT OFF ACCESS TO STATE BOND FUNDS ON THE BASIS OF HOW A CHARTER CITY CONDUCTS MUNICIPAL AFFAIRS, WE LOSE CONSTITUTIONAL SOVEREIGNTY.

THE SAME RESTRICTIONS COULD BE APPLIED TO ALL CITIES' EXERCISE OF POLICE POWER UNDER CAL. CONST. ART. XI, SECTION 7.