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LEGAL ADVOCACY REPORT
November 25, 2014

The League of California Cities® Legal Advocacy Committee considered the following appellate cases for amicus support, and requests for views from the Attorney General, from **July 1, 2014 through November 3, 2014.** League amicus filings are available at www.cacities.org/recentfilings. To submit a request for amicus assistance, go to www.cacities.org/requestamicus. For more information about the Legal Advocacy Program, go to the Legal Advocacy Center at http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys or contact the League's Legal Department staff:

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We gratefully acknowledge and thank all of the attorneys identified below who volunteered their time, effort and expertise to assist the League in advocating on behalf of California cities. We also thank their associated public agencies and law firms for the generous support.

Attorney General Requests for Views

AG Opinion 14-302
Pending Court: State Administrative Proceeding

Case Number: 14-302

Citation: None

The Attorney General received a request from Assembly member Donald P. Wagner for an opinion on the following question: Under the open meeting requirements of the Ralph M. Brown Act, may a community college district's governing board meet in closed session to discuss its negotiations of a project labor agreement with union representatives of workers employed by contractors that the district retains to complete a construction project?

Approved Action: Monitor the request for an opinion.

AG Opinion 14-403
Pending Court: State Administrative Proceeding

Case Number: 14-403

Citation: None

The Attorney General received a request from the Acting Mendocino County Counsel for an opinion on the following questions:

1. If a city owns real property located in an unincorporated part of a county, is the property exempt from the county's building and zoning ordinances?
2. If the city leases this property to a private party, may any immunity provided to the city under Government Code sections 53090 and 53091 be extended to the lessee, and does the potential extension of such immunity require that the leased property be used for a public purpose?
3. Are the answers to Questions 1 and 2 affected if the city's building and zoning codes do not apply outside the city's geographical boundaries – including to any city-owned property located outside the city's geographical boundaries?

Approved Action: Monitor the request for an opinion.

AG Opinion 14-603
Pending Court: State Administrative Proceeding

Case Number: 14-603

Citation: None

The Attorney General received a request from David E. Tranberg, Fortuna City Attorney, for an opinion on the following questions:

1. Does state law authorize cities to adopt a program requiring the licensing of dogs within the city and charging license fees to cover the cost of the program?
2. Does Food and Agriculture Code section 30951 or any other state law prevent a city from enforcing its dog licensing program or exempt a dog owner from complying with its licensing requirements?

Approved Action: Monitor the request for an opinion.

Brown Act

Castaic Lake Water Agency (Castaic) vs. Newhall County Water District (Newhall)
Pending Court: 2nd District Court of Appeal

Case Number: B254639

Citation: Not applicable

Newhall noticed a closed session under the Brown Act "to discuss potential litigation" as part of a regular board meeting. The closed session notice mistakenly referenced Government Code section 54956.9(c) instead of section 54956.9(d)(4), following the Legislature's renumbering of the statute. The Newhall board met in closed session, authorized the initiation of litigation against Castaic to challenge that agency's approval of new water rates, and later filed the lawsuit. Castaic then claimed the Newhall board violated the Brown Act by referencing the wrong subsection in the closed session notice for the meeting. Castaic demanded that Newhall "cure and correct" the Brown Act violations by dismissing the lawsuit. The Newhall board thereafter, at a noticed public meeting, "ratified" the earlier decision to initiate the lawsuit. Castaic then filed this action, seeking to nullify Newhall's decision to initiate the lawsuit. The trial court dismissed the action, finding Newhall "properly cured and corrected" the Brown Act violations from the earlier meeting when the board later publicly ratified the decision to sue Castaic. Castaic has appealed the ruling.

Approved Action: File an amicus brief with the Court of Appeal, supporting Newhall on the merits.

Status of Filing: The League will file the brief shortly.

Brief Writers: The League thanks Michael Jenkins and Christi Hogin, with Jenkins & Hogin LLP, for agreeing to write the brief.

CEQA

Center for Biological Diversity, et al. v. California Department of Fish and Wildlife (Fish & Wildlife) (Newhall Land and Farming Co., Real Party in Interest)
Pending Court: California Supreme Court

Case No: S217763

Citation: Not applicable.

Environmental groups brought this CEQA challenge to Fish & Wildlife's certification of the final EIR and related approvals of the resource management and development plan, conservation

plan, streambed alteration agreement, and two incidental take permits for the previously-approved Newhall Ranch Specific Plan Project. The Court of Appeal generally upheld the EIR and related findings. The opinion was published, except for the climate change analysis in which the court upheld the EIR's application of the "business as usual" (BAU) baseline standard approach for assessing the impacts of the project's greenhouse gas (GHG) emissions. The analysis also reaffirmed a lead agency's discretion to analyze and mitigate GHG emissions using a CEQA significance threshold based on consistency with AB 32's GHG reduction targets. The Supreme Court thereafter granted the plaintiffs' petition for review.

Approved Action: File a neutral amicus brief with the Supreme Court, in support of neither party, on the merits of each question accepted for review. Argue the following:

(1) The California Endangered Species Act should be harmonized with other Fish and Game statutes regulating fully protected species, allowing the take of a fully protected species when incidental to an approved CEQA mitigation plan;

(2) The general exhaustion doctrine under CEQA must be preserved and should not be expanded; and

(3) AB 32's GHG reduction targets provide acceptable thresholds of significance for lead agencies. Further, a lead agency's discretion to use the BAU baseline approach -- when appropriate for a local project -- should be preserved to retain local control and flexibility in assessing the environmental impacts of the project.

Status of Filing: The League will file the brief shortly.

Brief Writer: The League thanks Kevin D. Siegel, with Burke, Williams & Sorensen, for agreeing to prepare the brief.

Elections

Chula Vista Citizens for Jobs and Fair Competition v. Norris
Pending Court: Ninth Circuit Court of Appeals

Case Number: 12-55726

Citation: 2014 WL 2695532

Two associations sought to place a local initiative on the ballot in the City of Chula Vista. The State Elections Code and the City Charter require initiative proponents to be electors rather than entities (Elector Requirement) and also require disclosure of the proponents' identities on the face of the initiative petitions (Disclosure Requirement). Two local voters ultimately agreed to serve as the proponents, but they failed to disclose their identities on the initiative petitions. Their second attempt complied with all requirements, the measure appeared on the ballot, and it

was approved. In the meantime, the associations and proponents sued the City, challenging both the Elector Requirement and the Disclosure Requirement as violating the First Amendment. The State intervened to defend the related Elections Code provisions. The Ninth Circuit upheld the Elector Requirement but struck down the Disclosure Requirement, finding it violates the First Amendment right to speak anonymously. The Attorney General sought rehearing en banc.

Approved Action: If the 9th Circuit grants rehearing en banc, file a brief in support of Chula Vista and the State on the merits of the Disclosure Requirement and the Elector Requirement.

Status of Filing: The 9th Circuit granted rehearing, the League filed the brief, and the matter is pending.

Brief Writer: The League thanks Andrew N. Shen, Deputy City Attorney with the San Francisco City Attorney's Office, for writing the brief.

First Amendment and RLUIPA

Harbor Missionary Church (Harbor) v. City of San Buenaventura (City)
Pending Court: Ninth Circuit Court of Appeals

Case Number: 14-56137

Citation: None

Harbor operates a church subject to a conditional use permit (CUP) allowing religious services and a day care center. The church began providing homeless services not covered by the CUP and residents complained about serious negative secondary impacts in the residential neighborhood. The city ultimately denied a new CUP for the homeless program based on the adverse impacts and Harbor's mismanagement of the operation plus its resistance to mitigate the impacts. Harbor filed this action, claiming violation of the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found Harbor had failed to establish that the City's denial of the new CUP imposed a "substantial burden" on Harbor's religious exercise under the First Amendment or RLUIPA. Further, the City had established that the CUP denial constituted the "least restrictive means of advancing the City's compelling interest in protecting the health, safety and welfare" of the neighborhood residents. Harbor appealed the ruling.

Approved Action: File an amicus brief with the 9th Circuit supporting the City, arguing in favor of local land use authority and against a categorical rule that denial of a CUP always constitutes a substantial burden on religious exercise under the First Amendment and RLUIPA. Further, a CUP denial may be the least restrictive means of furthering a compelling government interest and the courts should consistently apply ripeness principles.

Status of Filing: The League filed the brief and the matter is pending.

Brief Writers: The League thanks Nora Frimann and Elisa Tolentino, with the San Jose City Attorney's Office, for writing the brief.

Government Claims Act

City of Pasadena (City) v. Superior Court (Mercury Casualty Company (Mercury))
Pending Court: 2nd District Court of Appeal

Case Number: B254800

Citation: 2014 WL 3956750

During a windstorm that damaged more than 5,500 trees, a City-owned street tree fell and damaged a private residence. Mercury paid benefits to the owner under his homeowner's insurance policy and then sued the City for subrogation based on inverse condemnation, dangerous condition of public property, and nuisance claims. Mercury later dismissed the dangerous condition claim. The City argued the tree was not a "public improvement" subject to an inverse condemnation action, and there was no evidence the City had negligently maintained the tree to support the nuisance claim. The Court of Appeal held the street tree could be a public improvement because cataloging and pruning City-owned trees as part of a "forestry program" constitutes "deliberate government action" serving a public purpose. The City sought Supreme Court review of the inverse condemnation issue and requested depublication of the decision.

Approved Action: File a letter with the Supreme Court supporting the City's petition for review on the merits. Also file a letter requesting depublication of the decision.

Status of Filing: The League filed the amicus letters but the court denied review and also denied the request for depublication.

Letter Writers: The League thanks Manuela Albuquerque and Stephen A. McEwen, with Burke, Williams & Sorensen, LLP, for writing both letters.

Klug v. City of Laguna Beach (City)
Pending Court: 4th District Court of Appeal, Div. 3

Case Number: G048554

Citation: 2014 Cal. App. Unpub. LEXIS 5234

The plaintiffs submitted claims against the City in 2012 for personal injury and real property damage. They claimed they suffered health problems and diminution in their home value due to the diesel exhaust fumes from the City-owned fire station located next door. The fire station had been in continuous operation since 1953 and the plaintiffs had moved into their residence in 2004. The city denied the claims and the trial court denied the plaintiffs' petition for relief to file

late claims. The court found the "delayed discovery doctrine" did not toll accrual of the claims and the Court of Appeal affirmed. The court also rejected the plaintiffs' argument that the City should be estopped from asserting the statute of limitations to block the claims because City employees allegedly made "material misrepresentations" about the danger of the exhaust fumes. In addition, the plaintiffs failed to show they had a right to late claim relief for the real property claims because "only claims for personal injury or personal property damages are eligible."

Approved Action: File an amicus letter with the Court of Appeal requesting publication of the opinion.

Status of Filing: The League filed the letter but the court denied the request.

Letter Writer: The League thanks Daniel P. Barer, with Pollak, Vida & Fisher, for writing the letter.

Home Rule Doctrine and Senate Bill 7 Challenge

City of El Centro, et al. v. David Lanier, et al.
Pending Court: 4th District Court of Appeal, Div. 1

Case Number: D066755

Citation: None

Six charter cities (El Centro, Carlsbad, El Cajon, Fresno, Oceanside and Vista, collectively the Cities) challenged Senate Bill (SB) 7 as an unconstitutional violation of the home rule authority of charter cities over municipal affairs. The action also challenged SB 7 as a violation of Proposition 22 and the Constitution's prohibition against special legislation. The League and 17 cities, plus an additional coalition of Central Valley cities, provided funding support for the litigation under a related Joint Defense and Common Interest Agreement. The court denied the Cities' writ petition, concluding SB 7 was not in "actual conflict" with any charter provision or city ordinance and therefore the State could attach conditions on the receipt of discretionary State funding. The Cities have appealed the ruling.

Approved Action: File an amicus brief with the Court of Appeal supporting the Cities, focusing on the threat to charter city home rule authority if the court finds SB 7 to be constitutional.

Brief Writers: The League thanks Jonathan V. Holtzman and Randy E. Riddle, with Renne, Sloan, Holtzman & Sakai LLP, for agreeing to write the brief.

Propositions 26 & 218 and Franchise Fees

Jacks v. City of Santa Barbara (City)
Pending Court: 2nd District Court of Appeal

Case Number: B253474

Citation: None

Under a new franchise agreement, the City increased the franchise fee charged to Southern California Edison (SCE) for electricity sales in the City. The increase was contingent on SCE obtaining CPUC approval to add a surcharge to the electricity bills so that SCE could pass through the franchise fee increase to its customers. Following CPUC approval, SCE added the surcharge to the bills. The plaintiffs later filed this class action, challenging the surcharge and claiming the franchise fee increase was actually a utility users tax imposed on the customers without compliance with Proposition 218's voter approval requirements. The trial court held the franchise fee increase was not a tax under Proposition 218, but found it was a tax under Proposition 26. However, Proposition 26 does not apply retroactively so it did not apply to the increase. The plaintiffs appealed the ruling.

Approved Action: File an amicus brief with the Court of Appeal supporting the city on the merits, arguing that franchise fees are not taxes. Further, franchise fees are widely used and a ruling that they are taxes under Proposition 218 or 26 would be highly disruptive for cities.

Status of Filing: The League filed the brief and the matter is pending.

Brief Writers: The League thanks Michael G. Colantuono and Ryan T. Dunn, with Colantuono, Highsmith & Whatley, PC, for writing the brief.

Redevelopment Dissolution

City of Brentwood (City) v. California Department of Finance (DOF)
Pending Court: 3rd District Court of Appeal

Case Number: C076343

Citation: None

The City undertook construction of five public projects based on its former redevelopment agency's (RDA) express funding commitments, as restated in early 2011 through Public Improvement Agreements between the City and the RDA. Before redevelopment dissolution, the RDA paid $19.6 million to the City for the projects and construction commenced. Following the RDA's dissolution, the Successor Agency continued making payments to the City for the projects as approved Enforceable Obligations. Through the Due Diligence Review process, DOF

disallowed the original $19.6 million payment and ordered the City to remit $15.5 million to the County Auditor-Controller for distribution to the other taxing entities. The City challenged DOF's intended "clawback" of the funds in this action, arguing DOF violated Proposition 22 by impermissibly reallocating tax revenue among the other taxing entities. The trial court concluded there was no Proposition 22 violation and the City appealed.

Approved Action: File an amicus brief with the Court of Appeal supporting the city on the merits, arguing that DOF violated Proposition 22 with the intended clawback.

Status of Filing: The League filed the brief and the matter is pending.

Brief Writer: The League thanks William H. Ihrke, with Rutan & Tucker, LLP, for writing the brief.

Revenue & Taxes

City of San Diego v. Shapiro
Pending Court: 4th District Court of Appeal, Div. 1

Case Number: D063997

Citation: 2014 WL 3795956

The City adopted an ordinance under its charter to form a Convention Center Facilities District (CCFD) to help finance expansion of the City Convention Center by imposing a special tax. Although the CCFD comprised the entire City, only hotels were subject to the tax. The City modeled the ordinance on the Mello-Roos Community Facilities Act but defined the qualified electors as hotel landowners and lessees of hotel real property owned by the government. Over 92 percent of the hotel owners and lessees approved the tax in a special election and the City then initiated this validation action. A citizens group responded, contending the tax was invalid because it had not been approved by the City's registered voters. The Court of Appeal agreed, concluding the special tax was invalid under the Constitution because it was not approved by a two-thirds vote of either the City's "qualified electors" (under Proposition 13) or the "electorate" (under Proposition 218). The court also found the tax invalid under the charter, which similarly requires approval by a two-thirds vote of the City's registered voters as the qualified electors.

Approved Action: File a letter with the Supreme Court requesting depublication of the opinion.

Status of Filing: The League filed the letter but the court denied the request for depublication.

Letter Writer: The League thanks Patrick Whitnell, the League's General Counsel, for writing the letter.

Wheatherford v. City of San Rafael (City)
Pending Court: California Supreme Court

Case Number: S219567

Citation: Not available.

Even though the City never impounded her vehicle, the plaintiff filed a taxpayer suit under Code of Civil Procedure section 526a to challenge the City's vehicle impoundment procedures. The plaintiff conceded she does not pay any property taxes, but argued she has taxpayer status to sue the City because she pays sales tax, gasoline tax, and water and sewage fees in the City. The Court of Appeal ruled in the City's favor, agreeing with established case law that payment of assessed property tax is required for standing to pursue a taxpayer action. The Supreme Court thereafter granted the plaintiff's petition for review of the following question: What type of taxes must a plaintiff pay, or be liable to pay, to have taxpayer standing under section 526a?

Approved Action: File an amicus brief with the Supreme Court supporting the City, arguing against broadening the definition of taxpayer under section 526a.

Status of Filing: The League will file the brief shortly.

Brief Writers: The League thanks Thomas B. Brown and Matthew D. Visick, with Burke Williams and Sorensen, LLP, for agreeing to write the brief.