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November 16, 2012

Mr. Marc J. Nolan
Deputy Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

RE: Request for Comment on Opinion No. 12-902

Dear Mr. Nolan:

I am writing on behalf of the League of California Cities (League), in response to your solicitation of views of interested parties regarding the above-referenced opinion.

The League is an association of 467 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities as well as requests from the Attorney General for views on pending requests for legal opinions. The Committee has requested the League's Post-Redevelopment Working Group, comprised of up to 30 city attorneys who monitor and advise the League on AB X 1 26 and AB 1484 implementation issues, to comment on the request for Opinion No. 12-902. Therefore, below is a discussion, analysis and the League's comments concerning Senator Juan Vargas's requested opinion.

DISCUSSION & ANALYSIS

Senator Juan Vargas has requested Opinion No. 12-902 ("Opinion") from the Attorney General on the following question:

"When a special district appoints one of its own board members or staff to serve on an oversight board for the dissolution of a redevelopment agency, may the special district compensate its appointee for attending meetings notwithstanding Health and Safety Code section 34179(a), which states that "oversight board members shall serve without compensation or reimbursement of expenses"?

First, and by way of clarification, the section that pertains specifically to the compensation of oversight board ("OB") members is not Health and Safety Code (H&SC) Section 34179(a), it is H&SC Section 34179(c), which states:

Mr. Marc J. Nolan
Deputy Attorney General
Department of Justice
November 16, 2012
Page 2

“(c) The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.”

The highlighted statement that prohibits OB members from receiving compensation or reimbursement for expenses has to be read in context. Subsection 34179(c) initially describes what direction an OB may give to its successor agency. Second, it requires the successor agency to pay for all the costs of the OB meetings and permits the successor agency to include the costs in its administrative budget. Lastly, it states that the OB members shall serve without compensation or reimbursement for expenses. Read together, this section describes the relationship between the OB and successor agency and what the successor agency is required to pay for (the cost of the OB meetings), and what it cannot pay for -- compensation to the OB members for their service or reimbursement for expenses.

While it is clear that a successor agency cannot compensate or reimburse the OB members, should that express prohibition be expanded to preclude appointing entities (special districts) from compensating their own employees or board members who serve on an OB? Based on the following analysis, the conclusion is no.

The first step of statutory construction and interpretation is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (People v. Butler, 80 Cal. Rptr. 2d 357 (1998).) In construing the statutory meaning, the statutes are not to be construed in isolation, but read with reference to the entire scheme of law of which they are a part so that the whole may be harmonized and retain effectiveness. (People v. Herrera, 79 Cal.Rptr. 2d 539 (1998).) Further, the legislative purpose in enacting a statute must be taken, regardless of the forms of words, to envisage the obvious consequences which flow from its operation. (In re West Coast Cabinet Works, 342 U.S. 909 (S.D. Cal. 1950).)

Here, the general purpose of H&SC Section 34179 is to establish the OB membership within a defined time frame (May 15, 2012), or have its membership appointed by the Governor, and to describe OB administration, OB responsibilities, and to set forth certain limitations. Subsection 34179(c) must therefore be read within this context, and any consequences that flow from interpreting 34179(c) to prohibit appointing entities from compensating their employees or board members appointed to serve as OB members needs to be examined within this framework.

Given H&SC Section 34179's express directive to seven different appointing entities to fill the OB positions by May 15, 2012 – a deadline that was a short 2 ½ months after redevelopment agencies were dissolved -- it appears inconsistent for the Legislature to mandate completing the OB appointment process so quickly but also require appointing entities to find appointees who agree to give up their employment compensation and benefit packages in order to serve as OB members. Such an interpretation appears counterproductive to the Legislature's deadline to complete appointments. The

consequence of this interpretation would slow down the appointment process because it would require appointing entity employees or board members to volunteer their time to serve – time that arguably occurs during regular business hours when appointing entity employees would otherwise receive compensation. Further, it does not seem reasonable that the Legislature intended to monetarily penalize those OB appointees who are also appointing entity employees or board members. (See Los Angeles Lincoln Place Investors, Ltd. v. City of Los Angeles, 62 Cal.Rptr. 2d 600 (1997).) In interpreting statutes a court is required to select construction that comports most closely with apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute and to avoid an interpretation that would lead to absurd consequences). California Code of Civil Procedure section 1859 reinforces this reading. It states that “[i]n the construction of a statute the intention of the Legislature is to be pursued, if possible, and when a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.” Here, the particular intent of the Legislature was to quickly complete the OB appointment process by May 15, 2012. Therefore, an interpretation of Subsection 34179(c) that slows down or thwarts the appointment process would defeat this purpose.

This conclusion is further reinforced by a literal reading of H&SC section 34179. There is no language in H&SC section 34179 that precludes appointing entities from compensating existing employees or board members they select to serve on the OB. In fact, section 34179(a)(7) recognizes that OB members (who are employees of the successor agency) are employees of their respective appointing authority, and therefore presumably receive compensation and benefits as employees of their appointing authorities. Specifically, 34179(a)(7) states that “. . . a member appointed pursuant to this paragraph shall not be deemed to be interested in the contract *by virtue of being an employee of the successor agency or community for purposes of section 1090 of the Government Code.*” (Emphasis added). This provision recognizes that there are certain OB members who are serving dual roles as both appointing entity employees and OB members. Subsection 34179(g) states that “[e]ach member of an oversight board shall serve at the pleasure of the entity that appointed such member.” This section also does not state that OB members should serve *without compensation from the entity that appointed them*. Had the Legislature desired to prohibit the appointing entities from compensating their employees or board members who also serve as OB members it could and should have stated that limitation. It does not. To the contrary, Subsection 34179(g) arguably gives the appointing authority the discretion to compensate or not compensate their OB appointee.

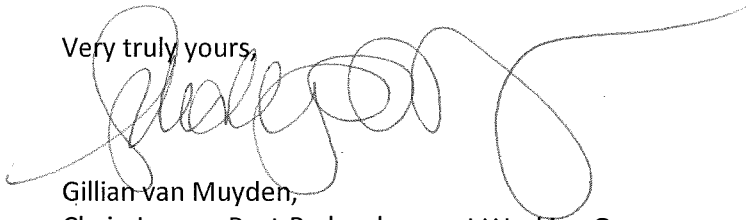
Further, Subsection 34179(i) allows OB members to serve on up to five OBs, notwithstanding Section 1099 of the Government Code, or any other law, and to hold an office in a city, county, city and county, special district, school district, or community college district. This subsection explicitly recognizes that OB members are allowed to hold offices, but it does not state that such office holders cannot be compensated as office holders if they are also OB members. Again, if the Legislature wished to preclude office holders from receiving compensation or reimbursement for their expenses as office holders it could have so stated. The statute is silent concerning whether an office holder should receive compensation from his or her appointing authority.

Mr. Marc J. Nolan
Deputy Attorney General
Department of Justice
November 16, 2012
Page 4

Read together, and based on the principals of statutory construction, it does not appear that section 34179 expresses the Legislature's intent to preclude appointing entities from compensating their employees or board members during those times such employees may also serve as OB members. Although H&SC section 34179 contains several instances, cited above, where such a prohibition could have been stated or reinforced, such a prohibition is neither stated, nor does the statute require appointing entities employees to volunteer their time outside of their employment in order to serve as OB members. Moreover, as discussed above, to conclude that Subsection 34179(c) prohibits appointing entities from compensating their employees or board members runs counter to the Legislature's directive to complete the appointment process within a specified time frame. Most OBs meet during regular business hours. Therefore, requiring appointing entity employees to volunteer their time "off the clock" would significantly interfere with existing employment relationships between appointing entities and their appointed employees, and would likely result in those employees declining to serve in such positions – a result that cannot reasonably be believed the Legislature intended.

Based on the foregoing, it is the League's conclusion that H&SC Subsection 34179(c) should not be interpreted to preclude a special district or other appointing entity that appoints one of its own board members or staff to serve on an OB from compensating the appointee for attending meetings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gillian van Muyden", with a long, sweeping horizontal line extending to the right.

Gillian van Muyden,
Chair, League Post-Redevelopment Working Group
Chief Assistant City Attorney, City of Glendale