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To: Executive Committee, League of California Cities Board of Directors
Bill Bogaard, President
Jose Cisneros, First Vice-President
Tony Ferrara, Second Vice-President
Mike Kasperzak, Immediate Past President
Chris McKenzie, Executive Director

From: City Attorneys' Department, League of California Cities

Re: **SB 7 (Steinberg)**

As requested by the Executive Committee, the City Attorneys' Department has prepared the following analysis of SB7 (Steinberg) with respect to current constitutional law as interpreted by the California Supreme Court and the United States Supreme Court. The City Attorneys' Department consists of the city attorney and assistant or deputy to the city attorney for each League Member City. The Officers of the City Attorneys' Department appointed a working group of very experienced and senior city attorneys representing both charter cities and general law cities to assist in drafting this analysis. The result represents a consensus of the working group and has been reviewed and approved by the Department Officers. The Department appreciates the opportunity to assist the League of California Cities in understanding the broader constitutional implications of this important piece of legislation.

Executive Summary

1. The State legislature may condition the award of construction funding to a charter city on compliance with the prevailing wage rate law (PWRL) in the contract for which the state funding is awarded.

2. The State legislature may not condition the award of state construction funding to a charter city to achieve an unconstitutional result.

3. A charter city's expenditure of its own funds to pay the wages of contract workers on public works projects is a municipal affair protected from State legislative interference by Article XI, §5(a) of the California Constitution.[1]

[1] *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547.

4. The State legislature may not condition the award of state construction funding to a charter city on compliance with the PWRL in exclusively city-funded construction contracts because such a condition violates the municipal affairs authority of a charter city. Such a condition is unlawful because it seeks to achieve an unconstitutional result.

5. Those provisions of SB 7 (Steinberg) that condition state funding to a charter city on compliance with the PWRL in exclusively city-funded construction contracts are unconstitutional because they interfere with a charter city's municipal affairs authority.

SB 7 (Steinberg)

The bill adds Labor Code § 1782 to the State's PWRL to provide:

1. A charter city may not receive or use state funding or financial assistance for a *construction project*[2] if the city has a charter provision or ordinance that authorizes a contractor not to comply with the PWRL.

2. A charter city may not receive or use state funding or financial assistance for a *construction project* if the city has awarded within the current or prior two calendar years a public works contract without requiring the contractor to comply with PWRL. This prohibition applies to contracts awarded after January 1, 2014.

3. A charter city may receive or use state funding or financial assistance for a *construction project* if the charter city has adopted a local prevailing wage ordinance that includes requirements that in all respects are equal to or greater than PWRL.

SB 7 (Steinberg) is based upon the following findings:[3]

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[2] Note that although "public works contract" is defined by Labor Code § 1720 (as modified by proposed Section 1782(d)(1)), "construction project" is an undefined term, and potentially a term of broader applicability than "public works contract." The bill seems to prohibit a charter city from receiving state funding for any construction project (even if it is not a "public works project") if the charter city does not comply with PWRL.

[3] "The Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern. A court will exercise its independent judgment as to that issue giving great weight to legislative statements of purpose where they exist" (*Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 63.)

1. It is a matter of statewide concern that California has an available workforce of skilled construction workers. An in-state workforce of skilled construction workers benefits the state's economy. The PWRL promotes the creation of a skilled construction workforce. Payment of prevailing wages encourages contractors to hire the most skilled workers and to invest in their training.

2. Incentives for formal apprenticeship training[4] in state-approved programs provide the financial support and necessary opportunities to train next generation of skilled construction workers. The PWRL provides necessary on-the-job training opportunities for the more than 50,000 apprentices enrolled in state-approved apprenticeship programs.

3. PWRL has substantial benefits that go beyond the limits of the city since many workers do not live in the city where the project is located.

PWRL and Charter Cities

When a statute purportedly applying to charter cities is challenged, the court will apply the following four-step inquiry:

1. Does the city ordinance regulate a "municipal affair?"
2. Is there an actual conflict between local and state law?
3. Does the state law address a "matter of statewide concern?"
4. Is the state law reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance?

If the court is persuaded that the subject of the statute is a "matter of statewide concern" and that the statute is reasonably related to its resolution and not unduly broad in its sweep, then the Legislature is not prohibited by Article XI, section 5(a) from addressing the statewide issue.[5]

State Building and Construction Trades Council of California, AFL-CIO v. City of Vista (2012) 54 Cal.4th 547 recently held that:

1. The construction of a city-operated facility for the benefit of a city's inhabitants with city funds (e.g. two fire stations by City of Vista) is quintessentially a municipal affair.

[4] 8 CCR § 230.1 requires contractor on "public works contract" to hire persons in the State's apprenticeship program (unless an exemption for a different type of apprenticeship program is available through Labor Code 1777.5).
[5] *California Federal Savings and Loan v. City of Los Angeles* (1991) 54 Cal.3d 1.

2. The state cannot require a charter city to exercise its purchasing power in the construction market based upon "some indirect effect [of the charter city's purchasing power] on the regional and state economies."

Vista made it clear that the legislature may not require a charter city to comply with the PWRL. In response, SB 7 chose to condition state funding on compliance with the PWRL.

Analysis

SB 7 places two conditions on state funding for charter city construction projects: (1) State funding may not be used if a charter city has a charter provision or ordinance that prohibits payment of prevailing wages on construction contracts[6]; and (2) State funding may not be used for a construction project if a city has awarded a public works project within the prior two years without requiring the contractor to comply with the PWRL.[7]

- **Authority to Impose Conditions on State Funding**

The Legislature may impose conditions upon grants or other financial assistance that dictate how the recipient uses state funding. Therefore, legislation requiring a charter city to comply with the PWRL on a public works contract for which it receives state funding would be lawful. An example of this type of requirement is found in Public Contracts Code § 2502, which requires a charter city to enter into a project labor agreement for public works contracts for which it receives state funding.[8] But this authority to impose conditions may not be used to achieve an unconstitutional result.[9]

Immediately following the approval of Proposition 13, the legislature distributed surplus state funds to local agencies to make up for the reduction of property tax revenues to those agencies. However, the legislature prohibited the distribution of funds to any local agency granting its employees a cost-of-living wage or salary increase for the 1978-1979

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[6] Proposed Section 1782(a) at page 4, lines 10-14.
[7] Proposed Section 1782(b) at page 4, lines 15-24. An exception is provided for a charter city that adopts a local prevailing wage ordinance that includes the requirements equal to the PWRL.
[8] This conclusion was mentioned indirectly in *Vista* when the Court noted that the State could "use its own resources to support wages and vocational training in the State's construction industry." Note, however, that section Public Contracts Code § 2503, enacted one year following the enactment of § 2502, suffers from the same Constitutional infirmity as SB 7 (Steinberg). To be eligible to receive State funding for a public works contract, Public Contracts Code § 2503 requires a charter city to enter into project labor agreements for public works contracts funded exclusively with charter city funds.
[9] *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 319 citing *Western Union Telegraph Co. v. Foster* (1918) 247 U.S. 105, 114; and *Caulfield v. U.S. Department of Agriculture* (5th Cir. 1961) 293 F.2d 217, 221 ("SCOPE".)

fiscal year that exceeded the increase provided for state employees. In addition, the statute declared null and void any agreement by a local agency to pay a cost-of-living increase in excess of that granted to state employees. In *Sonoma County Organization of Public Employees v. County of Sonoma ("SCOPE")*, the Sonoma County Organization of Public Employees argued that these conditions were unconstitutional for two reasons:

- A condition invalidating agreements granting cost-of-living wage increases to local agency public employees is invalid as an impairment of contract in violation of both the state and federal Constitutions.[10]

- A condition limiting the authority of a charter city or charter county to determine the compensation of their employees is an invalid interference with the municipal affairs authority of charter cities and the authority of charter counties to provide for the compensation of their employees in violation of the state Constitution.[11]

The Court acknowledged that the state was not under any obligation to distribute state funds to local agencies to assist them in resolving whatever fiscal problems were contemplated in the wake of Proposition 13. However, having taken on the obligation, the State must respect the Constitution. The Court invalidated the conditions because they violated the contracts clauses of the United States and Californian Constitution and because they interfered with the rights of chartered cities and counties to determine the compensation of their employees. The Court explained:

> It is too well established to require extensive citation of authority that, while the state may impose conditions upon the granting of a privilege, including restrictions upon the expenditure of funds distributed by it to other governmental bodies (citations omitted), 'constitutional power cannot be used by way of condition to attain an unconstitutional result' (*Western Union Telegraph Co. v. Foster* (1918) 247 U.S. 105, 114).[12]

Acts generally lawful, such as imposing conditions on state funding, may become unlawful when done to accomplish an unlawful end.[13]

The payment of contract workers on public works projects by a charter city exclusively with its own funds is a municipal affair. The legislature cannot adopt a statute that requires a charter city to comply with the PWRL because such a requirement would be an unconstitutional interference with the municipal affairs authority of a charter city. SB 7 (Steinberg) conditions the receipt of state funds on a charter city's compliance with the

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[10] U.S. Const., art. I, § 10; Cal. Const. art. I, § 9.
[11] Cal. Const. art. XI, § §4 and 5.
[12] *SCOPE* at p. 319.
[13] *Western Union Telegraph Co. v Foster* (1918) 247 U.S. 105, 114.

PWRL on public works contracts that are funded exclusively with charter city funds. The legislature cannot use its constitutional power to impose a condition on state funding to attain the unconstitutional result of overriding the municipal affairs authority of a charter city.

- **Authority to Impose Conditions on Federal Funding**

Much like the municipal affairs doctrine protects charter cities from unlawful state interference into their affairs, the 10th Amendment to the United States Constitution protects States from unlawful federal interference into their affairs.[14]

Congress may use its authority under the Spending Clause[15] to grant federal funds to the States and may condition such grants upon the States taking certain actions that Congress could not otherwise require them to take. The conditions imposed by Congress ensure that the funds are used by the States to provide for the general welfare in the manner Congress intended.[16] At the same time, the courts recognize limits on Congress's power under the Spending Clause: Congress cannot condition the use of federal funds to require the States to govern according to Congress' instructions. If it could, Congress would be using the Spending Clause to implement federal policy that it could not impose directly under its enumerated powers.[17]

Under the federal Patient Protection and Affordable Care Act, a State that opted out of the Act's expansion in health care coverage stood to lose all existing federal Medicaid funding. In their challenge to the Act, the States argued that this provision crossed the line distinguishing encouragement from coercion in the way the funding was structured. Instead of simply refusing to grant the new funds to the States that will not accept the new conditions, Congress also threatened to withhold those States' existing Medicaid funds. The States claimed that this threat served no purpose other than to force unwilling States to sign up for the expansion in health care coverage effected by the Act. The United States Supreme Court agreed.

Congress may condition the receipt of federal funds on the States' complying with restrictions on the use of those funds because that is the means by which Congress ensures that the funds are spent according to its view of the general welfare. But conditions that do not govern the use of the funds cannot be justified on that basis. The Court concluded that "when…such conditions take the form of threats to terminate other

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[14] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." U.S. Const. Amendment X.
[15] U.S. Const., Art. I, § 8, cl.1.
[16] *New York v. United States* (1992) 505 U.S. 144, 166.
[17] *National Federation of Independent Business v. Sebelius* (2012) 132 S.Ct. 2566, 2603.

significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes."[18]

Congress cannot override the States' protection under the 10th Amendment by coercing States into conduct by conditions imposed on grants of federal money. Likewise, the State legislature cannot override charter cities' protection under the municipal affairs doctrine by coercing charter cities into conduct by conditions imposed on grants of state funds.

Conclusion

The *Vista* decision made it clear that the State legislature may not enact a statute requiring a charter city to comply with the State's Prevailing Wage Rate Law. This is because the expenditure of city funds by a charter city to pay contract workers on a public works project is a municipal affair. The State Constitution protects charter cities from legislative interference into municipal affairs.

In order to receive state funds for a public works contract, SB 7 (Steinberg) requires a charter city to comply with the State's Prevailing Wage Rate Law on all of its public works contracts, even those that are funded exclusively with charter city funds.

The Legislature cannot accomplish indirectly what it is unable to accomplish directly.

c: Patrick Whitnell, General Counsel

[18] *Id.*