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REGULATION OF SCHOOLS

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"L'état, c'est moi." —Louis XIV

"Can't we all just get along?" —Rodney King

I. INTRODUCTION

To what extent may a municipality regulate public schools within its jurisdiction? One court has opined that the law in this regard "is a tangle of prohibitions and exceptions, lacking a single, articulable organizing principle." *City of Santa Cruz v. Santa Cruz City Sch. Bd. of Educ.* (1989) 210 Cal.App.3d 1, 11. In general, the current state of the law reflects a continuing effort by the Legislature and the courts to address two sometimes competing, sometimes incompatible, interests: local interest in local control over building and zoning, and the state's interest in regulating public education. The starting point for understanding the dynamic between these interests is that school districts are considered agencies of the state for the local operation of a statewide school system, and therefore entitled to sovereign immunity against local regulation. Cities, therefore, have only limited, statutorily derived authority to regulate public schools within their jurisdiction.

II. DEVELOPMENT AND APPLICATION OF THE LAW

A. State Sovereignty.

The seminal case of *Hall v. City of Taft* (1956) 47 Cal.2d 177, asserted that public schools are "a matter of statewide rather than local or municipal concern," holding that when the state "engages in such sovereign activities, as the construction and maintenance of its buildings…it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." *Taft's* holding that school districts need not comply with local building regulations was soon followed by *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, which, applying *Taft*, held that school districts were exempt from municipal zoning ordinances. Thus, following *Taft* and *Atherton*, school districts were free to disregard local building and zoning regulations under the aegis of state sovereign immunity. This was not to last.

B. "Regulation of Local Agencies by Counties and Cities."

In 1959, the Legislature did indeed give its consent to *limited* local regulation of schools by adopting Article 5, "Regulation of Local Agencies by Counties and Cities," in Chapter 1, Title 5 of the Government Code, Sections 53090 through 53095 (currently through 53097.5) (hereafter, "Local Agency Statute").[1] Section 53091 currently provides in pertinent part: "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in

[1] All statutory references are to the Government Code, unless otherwise noted.

which the territory of the local agency is situated."[2] However, the Local Agency Statute also carves out two exceptions applicable only to school districts (as opposed to other "local agencies").

1. Building ordinance exception.

"[T]his section does not require a school district…when acting under the State Contract Act [Section 10100 *et seq.* of the Public Contract Code]…to comply with the building ordinances of a county or city."[3]

2. Zoning ordinance exception.

"[T]his section does not require a school district to comply with the zoning ordinances of a county or city unless the zoning ordinance makes provision for the location of public schools and unless the city or county has adopted a general plan."[4]

C. Zoning override: Section 53094(b).

Because almost every city zoning ordinance makes provision for the location of public schools, and because every city is required to adopt a general plan, the general zoning ordinance exception of Section 53094(a), above, is virtually meaningless. However, Section 53094, which was originally enacted in 1959, has been subsequently amended, most notably to provide school districts with a mechanism for overriding local zoning.

[2] Section 53090 defines "local agency" as "an agency of the state for the local performance of governmental or proprietary function within limited boundaries." A school district is considered a "local agency." *City of Santa Clara v. Santa Clara Unified Sch. Dist.* (1971) 22 Cal.App.3d 152.
[3] Section 53090(b).
[4] Section 53094(a).

Subdivision (b) provides that, if a school district has complied with Section 65352.2[5] and Public Resources Code Section 21151.2,[6] by a two-thirds vote of its members, the governing board "may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district."

1. Zoning override excludes "nonclassroom facilities."

Subdivision (b) of Section 53094 limits the availability of the zoning override as follows: "The governing board of the school district may not take this action when the proposed use of the property by the school district is for *nonclassroom facilities*, including, but not limited to, warehouses, administrative buildings, and automotive storage and repair buildings." (Emphasis added.)

a. Defining "nonclassroom facilities."

Since the Legislature declined to define "nonclassroom facilities," but merely provided three general examples (warehouses, administrative buildings, and automotive storage and repair buildings), not surprisingly, the meaning of "nonclassroom facilities" has been one of the primary focal points of dispute--and litigation--between cities arguing that a proposed use is a "nonclassroom" facility and therefore subject to local zoning, and school districts arguing the opposite so that the override provision of Section 53094 may be invoked to avoid local zoning control. The meaning of "nonclassroom facilities" has been interpreted in two published decisions, and more recently in an unpublished appellate opinion.

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[5] Section 65352.2 provides, in pertinent part: "At least 45 days prior to completion of a school facility needs analysis pursuant to Section 65995.6 of the Education Code, a master plan pursuant to Sections 16011 and 16322 of the Education Code, or other long range plan, that relates to the potential expansion of existing school sites or the necessity to acquire additional school sites, the governing board of any school district shall notify and provide copies of any relevant and available information, master plan, or other long range plan, including, if available, any proposed school facility needs analysis, that relates to the potential expansion of existing school sites or the necessity to acquire additional school sites, to the planning commission or agency of the city or county with land use jurisdiction within the school districts."

[6] Public Resources Code Section 21151.2 requires that before acquiring title to property for a new school site or for an addition to a present school site, the governing board of the school district must give the planning commission having jurisdiction written notice of the proposed acquisition. The planning commission must then investigate the proposed site "and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site." The school district may not acquire title until *after* it receives the planning commission's report, and if the report does not favor the proposed acquisition, it may not acquire title until 30 days after the report is received.

i. Field lighting not "nonclassroom facility."

City of Santa Cruz v. Santa Cruz City Schools Bd. of Educ. (1989) 210 Cal.App.3d 1, is the seminal case in this regard. In *Santa Cruz,* the school district sought to replace lights on a high school athletic field ("11 incandescent lights on wooden poles approximately 60 feet high") with "four 90-foot aluminum poles with metal halide lights." *Id.*, at 2. The court interpreted "nonclassroom facilities" to mean "those not directly used for or related to student instruction." *Id.,* at 7. The court held that the athletic field was "directly used for student instruction," and therefore upheld the school district's action to exempt the school lights from local zoning through a Section 53094 override. *Id.,* at 8-9.

ii. Third party swap meet a "nonclassroom facility."

In *People ex rel. Edward J. Cooper v. Rancho Santiago College* (1990) 226 Cal.App.3d 1281, the court, following *Santa Cruz*, held that a swap meet operated by a third party on the College's property fell within the ambit of "nonclassroom facilities" because the swap meet was not "part of the educational process at the school," even though a portion of the proceeds from the swap meet funded instructional programs. *Id.,* at 1286.

iii. Athletic stadium a "nonclassroom facility."

In an unpublished opinion, *City of Saratoga v. West Valley-Mission Community College Dist.*, 2002 Cal. App. Unpub. LEXIS 1506, the court held that a proposed athletic stadium was a "nonclassroom facility," based on evidence in the legislative record of a 1976 amendment to Section 53094 (City of Saratoga sponsored SB 1714), that the legislature "intended to preclude the District from exempting its proposed 'athletic stadium' from the City's zoning ordinance." *Id.,* at 28. Although unpublished, *Saratoga*'s explication of the legislative history of Section 53094 may be instructive for a city confronted with a similar proposed stadium facility.

2. Notice requirement for zoning override.

Subdivision (c) of Section 53094 requires the governing board of a school district to notify the city or county concerned of any action taken invoke the override provision, within 10 days of taking such action.

3. Standard of review: "arbitrary and capricious."

Once a school district has taken action to override applicability of a local zoning ordinance to a proposed use (and has provided notice as required), the local government whose ordinance has been overridden may seek judicial review to determine whether the action was "arbitrary and capricious." In *City of Santa Clara v. Santa Clara Unified Sch. Dist.* (1971) 22 Cal.App.3d 152, the City challenged the school district's Section 53094 resolution to render the City's zoning ordinance inapplicable to the construction of a continuation high school within the City. The court held that the school district's action was not "arbitrary and capricious," noting that the record reflected a "reasoned and considered" decision by the school district, which included evaluation of alternative sites, comprehensive evaluation of the selected site, and repeated attempts to work cooperatively with the City.

D. Local regulations apply to drainage, road conditions and grading.

Section 53097, added in 1984, operates as an additional exception to the override provision of Section 53094. Section 53097 provides, in pertinent part:

> Notwithstanding any other provisions of this article, the governing board of a school district shall comply with any city or county ordinance (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as these ordinance provisions relate to the design and construction of onsite improvements which affect drainage, road conditions, or grading, and shall give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements.

Section 53097 affords some immunity to local governments for injuries or damages to third parties with respect to school district non-compliance relating to offsite improvements. Section 53097 provides that if a school district "elects not to comply with the requirements of city or county ordinances relating to the design and construction of *offsite* improvements, the city or county shall not be liable for any injuries or for any damage to property caused by the failure of the school district to comply with those ordinances." (Emphasis added.) Implicit in this language is the suggestion that a school district may simply elect not to comply with Section 53097.

E. Charter schools.

As charter schools have emerged on the scene, so have issues as to whether a charter school must comply with local building and zoning regulations, as well as

questions as to whether a charter school may invoke the override provisions of Section 53094, even though Section 53094 refers only to a "school district" as having the authority to do so.[7] A posting on the State Department of Education's website, posted December 12, 2001, opined: "Generally, charter school facilities would be an issue of local jurisdiction between the charter school, its authorizing entity and local building, fire and safety authorities."[8] This question of whether a charter school may avail itself of the override provision of Section 53094, appears to be largely resolved by the adoption, in 2002, of Section 53097.3,[9] which provides:

> Notwithstanding any other provision of this article, no *school district* may render a city or county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district. (Emphasis added.)

Implicitly, only a school district, not a charter school itself, may use the override provision.

F. Community Colleges.

Education Code Section 81951[10] provides in pertinent part: "The board shall comply with all applicable county and city zoning, building, and health regulations."

G. Inspection of school buildings permitted.

Section 53097.5 allows for limited local inspection of school buildings:

> A county or city may inspect school buildings, as defined in Section 39141 of the Education Code, pursuant to Section 16500 of the Health and Safety Code or pursuant to any local ordinance regulating substandard conditions in buildings used for human habitation. The results of the inspections shall be forwarded to the office of the State Architect.[11]

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[7] Education Code Section 47610 generally exempts charter schools from laws governing school districts, including the provisions of the Field Act, which govern school district facilities.

[8] See, http://www.cde.ca.gov/charter/ganda/section9.html.

[9] Stats. 2002, ch 935, section 17 (AB 14).

[10] Part of the Community College Revenue Bond Act of 1961, Education Code Sections 81900 et seq.

[11] Section 39141 of the Education Code, cited in this Section, was repealed in 1998, and replaced by Education Code Section 17283, which defines "school buildings" as "any building used, or designed to be used, for elementary or secondary school purposes and constructed, reconstructed, altered, or added to, but the state or by any city or city and county, or by any political subdivision, or by any school district of any kind within the state, or by any regional

III. CONCLUSION

Although the laws governing municipal regulation of public schools may still appear to be "a tangle of prohibitions and exceptions," in most circumstances the law is fairly well settled, and methodical analysis and consideration of the applicable prohibitions and exceptions should lead to a sound legal conclusion as to whether or not a particular issue is subject to municipal regulation. However, even if careful legal analysis leads to a conclusion that a school district is subject to municipal authority in a given situation, there is much to be said for exercising this authority with consideration and restraint. Compromise and cooperation are always available, regardless of how and why the Legislature delegates authority between jurisdictions. Regardless of who is in charge of what, the importance of maintaining good relations between neighboring governing agencies should always remain in the forefront of any interchange between a municipality and a school district (or other government agency) within its jurisdiction.

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occupational center or program created by or authorized to act by an agreement under joint exercise of power, or by the United States government, or any agency thereof."