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JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 85-301
	:	
of	:	<u>JULY 30, 1985</u>
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JOHN K. VAN DE KAMP	:	
Attorney General	:	
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CLAYTON P. ROCHE	:	
Deputy Attorney General	:	
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THE HONORABLE MICHAEL H. KRAUSNICK, COUNTY COUNSEL,
STANISLAUS COUNTY, has requested an opinion on the following questions:

1. Where a city, pursuant to section 51243.5 of the Government Code, has filed a protest to a Williamson Act contract, but the Local Agency Formation Commission does not hold a hearing on such protest before the execution of the contract by the board of supervisors, may the commission thereafter properly hold a hearing on and uphold the city's protest?

2. What would be the legal effect of a Local Agency Formation Commission upholding the city's protest after the Williamson Act contract has been executed by the board of supervisors?

CONCLUSIONS

1. Where a city, pursuant to section 51243.5 of the Government Code, has filed a protest to a Williamson Act contract, but the Local Agency Formation Commission does not hold a hearing on such protest before the execution of the contract by the board of supervisors, the commission may still thereafter properly hold a hearing on and uphold the city's protest.

2. The legal effect of the Local Agency Formation Commission upholding the city's protest after the Williamson Act contract has been executed is the same as if it had been upheld before execution thereof.

ANALYSIS

The California Land Conservation Act of 1965, also known as the Williamson Act, is found in section 51200 et seq. of the Government Code.¹ It was enacted, *inter alia*, to ensure "preservation of a maximum amount of the limited supply of agricultural land" of this state and to discourage the "premature and unnecessary conversion of agricultural land to urban uses." (§ 51220.) Accordingly, cities and counties may establish "agricultural preserves." (§ 51230.) Thereafter, the city or county as appropriate may contract with landowners within the "agricultural preserve" to restrict the uses of that land to agricultural uses. (§§ 51240-51243.)

With respect to these contracts, known as Williamson Act contracts, the initial term must be for at least ten years. (§ 51244.) Unless before the anniversary date of the contract the city or county or the landowner serves a notice of nonrenewal upon the opposite party, such contracts are automatically renewed on an annual basis for an additional year. (§§ 51244.5-51246.) Provisions are also made in the law for mutual rescission or cancellation of the contracts. (See, §§ 51254-51255; 51280 et seq.)

The primary benefit to the landowner in entering into a Williamson Act contract is the tax benefit derived. Essentially, land subject to such a contract is assessed according to its agricultural use instead of according to its highest and best use. (See Rev. & Tax Code, § 402.1; 421 et seq.) Accordingly, the landowner will normally pay substantially less in property taxes than he would otherwise pay.

This opinion focuses upon one facet of the Williamson Act. It involves land within an "agricultural preserve" in unincorporated territory. Thus, the board of supervisors would be the governmental body which would execute such

¹ All section references are to the Government Code unless otherwise indicated.

contracts. However, it also involves land which is within one mile of a city, hence within its "zone of influence," and potentially annexable by the city. With respect to such land, section 51243 provides in part:

" . . . On the annexation by a city of any land under contract with a county, the city shall succeed to all rights, duties and powers of the county under such contract, unless the land being annexed was within one mile of such city at the time the contract was initially executed, the city has filed and the local agency formation commission has approved a protest to the contract pursuant to Section 51243.5, and the city states its intent not to succeed in its resolution of intention to annex. If the city does not exercise its option to succeed, the contract becomes null and void as to the land actually being annexed on the date of annexation"

Section 51243.5, setting forth the "protest procedure", and the section which we will construe herein, states:

"The clerk of the board of supervisors shall give written notice to any city within the county of its intention to consider a contract which includes land within one mile of the exterior boundaries of that city. Such notice shall be given at least 30 days prior to the time the board of supervisors intends to consider the execution of such a contract. If such city files with the local agency formation commission a resolution protesting the execution of a contract which includes land within one mile of the exterior boundaries of the city, and the commission, following a hearing, upholds the protest upon a finding that the contract is inconsistent with the publicly desirable future use and control of the land in question, then, should the board of supervisors execute such a contract, the city shall have the option provided for in subdivision (b) of Section 51243 of not succeeding to the contract upon annexation of the land to the city."

It is thus seen that if a city is to avail itself of the option not to succeed to the county's rights and duties under a Williamson Act contract, the law both presupposes *and requires* a hearing, not by the board of supervisors, but by the local agency formation commission of the county (LAFCO).²

² Local Agency Formation Commissions are established pursuant to the Knox-Nisbet Act, § 54773 et seq. That act was enacted in 1965 to discourage urban sprawl and encourage the orderly development of local agencies. (§ 54774.) Generally speaking, the commission under that act must pass upon the propriety of incorporation of new cities, the

Several factual situations have given rise to this opinion request. The first is where a city filed a protest to a Williamson Act contract in 1976. Through inadvertence, LAFCO took no action on the protest to either uphold or deny it. We are asked whether LAFCO may now properly hold a hearing on the protest and conceivably uphold it to give the city the benefit of section 51243, *supra*. The second is where LAFCO held the hearing and upheld a city's protest after the execution of the Williamson Act contract. We are asked the legal effect of such an action.

With respect to the first situation, we conclude that LAFCO may still hold a hearing and uphold the city's protest despite the "inadvertence". Accordingly, it follows that in the second situation where a hearing has been held and the protest upheld, the legal effect is the same as if all that had been done prior to the execution of the contract. We reach these conclusions by construing section 51243.5.

In construing section 51243.5, we, as the courts, are guided by certain fundamental rules of statutory construction. As stated recently by the California Supreme Court in *Steketee v. Lintz, William & Rothberg* (1985) 38 Cal.3d 46, 51-52:

" . . . In this task, the court is guided by certain principles of statutory construction. (2) First among these principles is "'the fundamental rule that a court' should ascertain the intent of the Legislature so as to effectuate the purpose of the law.' [Citation.] In determining such intent '[t]he court turns first to the words themselves for the answer.' [Citations.]" (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658 [147 Cal.Rptr. 359, 580 P.2d 1155].) (3) The court is required to give effect to statutes "'according to the usual, ordinary import of the language employed in framing them.' [Citations.] 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose['] [citation]; 'a construction making some words surplusage is to be avoided.' [Citation.] 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.]" (*Id.*, at pp. 658-659.)

formation of special districts, the annexation of territory to local agencies, the consolidation of cities, the exclusion of territory from cities, and the disincorporation of a city. (§ 54790).

The commission's composition may vary somewhat from county to county. It, however, will in all cases have two members of the board of supervisors, city officers, public members, and sometimes representatives from special districts. (See, §§ 54780-54782.6.)

The law may give these commissions other duties than those set forth in the Knox-Nisbet Act. We deal herein with such an ancillary duty.

"(4) Finally, "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" (*Id.*, at pp. 658-659.) . . ."

In our examination of the wording of section 51243.5, and in our application of these rules of statutory construction, the first matter which strikes us as highly significant is the complete lack of procedural detail as to the hearing on a city's protest as might be expected.³ Thus, it is seen that the code section:

1. Does not state affirmatively that LAFCO shall hold a hearing and rule upon the city's protest;
2. Does not provide for any notice of hearing to be given to the affected city, county or landowner;
3. Does not provide for any specific time-frame within which to hold the hearing;
4. Does not provide that LAFCO must even notify the parties of its action; and finally
5. Does not state that the board of supervisors must await action by LAFCO before it enters into the contract. (Compare the detailed procedure provided for holding hearings on cancellation of Williamson Act contracts, including protests thereto in sections 51284-51285.)

In short, the statutory scheme in no way makes a ruling upon a city's protest by LAFCO a condition precedent to action by the board of supervisors on the Williamson Act contract. The statutory scheme contemplates independent action by two independent actors, that is, LAFCO and the board of supervisors, whose action will have independent significance.⁴ LAFCO rules upon the city's protest which means that, if upheld, and the city annexes the subject property, it can elect to disavow a Williamson Act contract. The board of supervisors determines whether to enter into a Williamson Act contract which means that, if it does, the landowner reaps certain tax benefits. Stated otherwise, the

³ Nor does the Knox-Nisbet Act aid in this regard. The procedural matters with respect to notice and hearing contained in that act apply to "proceedings" upon "proposals" under that act.

⁴ In this respect we note that LAFCO is not a part of the county nor its agent. (See, e.g., 67 Ops.Cal.Atty.Gen. 206 (1984); 50 Ops.Cal.Atty.Gen. 87, 90 (1967); 45 Ops.Cal.Atty.Gen. 82 (1965).)

actions of the two bodies, though having some relationship, are not interrelated or interdependent.

We note several arguments which could be advanced to reach an opposite conclusion. The first is that by the use of the word "then" in section 51243.5, the Legislature intended to imply that LAFCO's action was to precede that of the board of supervisors with respect to the contract. Accordingly, if no hearing was held before the board took action on the contract, it is now too late to hold such hearing. The wording of section 51243.5 is that if "the commission, following a hearing, upholds the protest . . . *then*, should the board of supervisors execute such a contract, the city shall have the option provided for in subdivision (b) of Section 51243 . . ." (Emphasis added.) "*Then*" as used therein would place the hearing before the execution of a contract, or so goes the argument.

In response thereto, we believe the word "then" as used in section 51243.5 is not used in its "time" sense, but is used in its "consequential" sense, that is, to mean "as a consequence thereof."⁵ Accordingly, the section provides that if LAFCO upholds a city's protest, as a consequence thereof (then) "the city shall have the option" to disavow the contract.

A second argument which might be advanced to reach an opposite conclusion than that reached herein is that to permit a protest to be upheld after the contract is executed would deprive the landowner of the benefit of his bargain, and accordingly would violate the Contract Clauses of both the state and federal constitutions. This argument is answered by the basic principle of law that the parties to a contract take it subject to all existing law. (See, e.g., *Western Contracting Corp. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 341, 350-354.) A landowner who enters into a Williamson Act contract takes subject to and is charged with notice of the provisions of section 51243 and 51243.5 that, if a city's protest is upheld by LAFCO, the contract may be terminated by operation of law at the city's instance.

Accordingly, since no time is provided for in the law for ruling upon a city's protest to a Williamson Act contract, we conclude that when a city, pursuant to section 51243.5 of the Government Code, has filed a protest to a Williamson Act contract, but LAFCO does not hold a hearing on such protest before the execution of the contract by the board of supervisors, LAFCO may still thereafter properly hold a hearing on and uphold the city's protest.

⁵ See Randomhouse Dictionary of the English Language Unabridged Edition (1966) "Then" . . . 7. in that case; as a consequence; in those circumstances"

The legal effect of upholding the city's protest after execution of a contract is the same as if it had been upheld before its execution.

In reaching these conclusions, we do not intend to suggest that a city may file its protest at any time, even after the execution of the contract. We believe that section 51243.5 insofar as it requires the county to give certain cities 30 days notice of proposed contracts, evidences an intent on the part of the Legislature that the protests should be filed before the contract is executed. In that way, a landowner may also check to see if any protests have been filed, and thus make a decision with full knowledge of possible consequences.

Furthermore, the conclusions reached herein do not mean that the failure on the part of LAFCO to act upon a protest means that a landowner must wait until the city is ready to annex the property in question before learning of LAFCO's determination. In our view, section 51243.5 places a mandatory duty on LAFCO to hear and determine any protests. Such duty could be enforced through a petition for writ of mandate, if necessary, filed pursuant to section 1085 of the Code of Civil Procedure.⁶

⁶ We would also note that this opinion request suggests the need for legislation setting forth a definite procedure for hearing protests which are filed pursuant to section 51243.5.