

Reading CKH Like a Lawyer

CALAFCO University
December 8, 2014
Sacramento, CA

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Island Annexations

- GC 56375.3(a): LAFCO must approve annexations of islands
- GC 56375.3(b):
 - 150 acres or less
 - 1 or more whole islands
 - Surrounded by City, County border, Pacific Ocean
 - Substantially developed or developing

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Island Annexations (cont.)

- Substantially developed or developing means:
 - Available public services
 - Presence of public improvements
 - Physical improvements of land
- Not prime ag. land
- Territory will benefit from annexation
- GC 56375.4: Doesn't apply to island created after 1/1/14

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Island Annexations (Cont.)

- What is the whole island?
- What is an island?
 - Objective criteria (% of border)
 - Subjective criteria
 - Communities of interest
 - Land use "edges"
 - Environmental impact

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Taxes Following Annexation

- CKH tax provisions

- R&T 99
- GC 56886 terms & conditions:
 - (b) fund property acquisition
 - (c) assign bonds, contracts and other obligations
 - (e) establish improvement districts
 - (f) authorize or require issuance of new debt
 - (g) new bond issuance
 - (s) new assessments, fees and taxes
 - (t) continued charges, fees, assessments and taxes
 - (u) transfer of authority over special tax and assessment districts
 - (v) any others necessary or incident to specified terms and conditions

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Taxes Following Annexation (Cont.)

- Approval of new taxes, assessments, and property related fees

- Taxes require 50% (general) or 2/3 (special) voter approval under Props. 13, 62, and 218
- Assessments require 50% property owner approval under Prop. 218
- Property related fees require majority protest proceeding and – but for water, sewer and trash fees – 50% property owner or 2/3 voter approval under Prop. 218
- Most fees limited to cost of service by Prop. 26

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Taxes Following Annexation (Cont.)

- *Citizens Ass'n of Sunset Beach v. Orange County LAFCO* (2012) 209 Cal.App.4th 1182

- Annexation of Sunset Beach to Huntington Beach did not require voter approval of extension of Huntington Beach's taxes into Sunset Beach
- Prop. 218 not intended to halt annexations
- Might not work if the sole purpose of the annexation was to extend the reach of a tax

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Disadvantaged Unincorporated Communities

- What's a DUC?
 - GC 56033.5: inhabited territory which is all or part of a community which has an annual median income of less than 80% of state average
 - "inhabited" means 12 or more registered voters unless LAFCO provides otherwise by policy
 - LAFCO has substantial power to define DUCs
 - Statutory focus is on sewer, water and structural fire protection services

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DUCs & SOIs

- GC 56425(e)(5) requires SOI update of city or district that provides sewer, water or structural fire protection services to make written determinations re: "the present and probable need for those public facilities and services of any [DUCs] within the existing [SOI]."

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DUCs & MSRs

- GC 56430(a)(2): MSR must include written statement of determinations re: "[t]he location and characteristics of any [DUCs] within or contiguous to the [SOI]."

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DUCs and Annexation

- GC 36375(a)(8)(A): LAFCO cannot approve an annexation of 10 acres+ (or such other size as LAFCO determines by policy) if a DUC is contiguous to the annexation territory "unless an application to annex the [DUC] to the subject city has been filed with the [EO]."
- GC 36375(a)(8)(B): Unless prior application for that DUC within 5 years and LAFCO determines "based upon written evidence" that majority of voters in DUC oppose annexation

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Open Questions re DUCs

- What's a DUC?
 - What's a "community"?
 - What is the "whole community"?
 - What data sources are available?
 - US Census
 - CA DOF
 - General Plans, especially housing elements

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Open Questions re DUCs (cont.)

- Must LAFCO approve annexation of DUC that accompanies a contiguous annexation?
 - Statute suggests City must apply, but doesn't say LAFCO must approve
- How do we pay for it? The underlying issue is a lack of public facilities to serve DUCs. Financing these will not be easy and will require political will that may be lacking.

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Reading CKH Like a Lawyer

- The law provides “canons of constructions” – effectively, rules for interpreting rules.
- While a good lawyer can usually argue both sides of any significant question, the canons do help reduce the number of interpretative problems.
- We’ll look at some CKH examples and then at some of the more commonly used canons.

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Co. of Fresno v. Malaga CWD (2002)

- 100 Cal.Ap.4th 937: CWD could propose incorporation even though CKH provided for merger of special districts of limited powers as subsidiary districts.
- Canons applied:
 - Interpret to effectuate legislative intent, especially as to choice of competing interpretations
 - Use every word
 - Harmonize multiple statutes

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Modesto Irrigation Dist. v. PG&E (2004)

- 309 F. Supp. 2d 1156 (ND Cal.): GC 56133 could be harmonized with provision of MID’s principal act allowing it to sell power outside its boundaries
- Canons applied:
 - Use ordinary meanings unless statute says otherwise
 - Avoid implied repeal of potentially conflicting statutes

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Hofman Ranch v. Yuba LAFCO (2009)

- Contract EO was “employee” for purposes of Brown Act closed session authority even though his contract said he was an independent contractor
- Canons applied:
 - Attorney General opinion did not bind DCA
 - “day to day business” of LAFCO not defined by CKH but meaning could be inferred from other provisions of Act.

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Hofman Ranch (Cont.)

- Cites “Growth Within Bounds” for its observation that small counties might not need a full-time EO
- Cites it as legislative history of CKH
 - Because statute says it is
 - Because provision of statute was potentially ambiguous

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Placer LAFCO v. Nevada LAFCO (2006)

- 135 Cal.App.4th 793: principal county controls annexations, MSR and SOI of a multi-county district, even as to annexations entirely outside that county
- Canons cited:
 - Give statutory language its usual and ordinary meaning
 - If there is no ambiguity, the plain meaning controls

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Placer v. Nevada LAFCO (Cont.)

- More canons
 - Ambiguity allows court to look to extrinsic sources
 - Ostensible object to be obtained by statute
 - Legislative history
 - Should choose an interpretation which serves legislative intent and promotes rather than frustrates legislative purpose
 - Harmonize all related provisions / no implied repeals (failure to mention MSR or SOI in definition was not reason to exclude them)

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Placer v. Nevada LAFCO (Cont.)

- Still more canons:
 - Definitions do not abrogate operative provision
 - Because GC 56010 says definitions apply unless a provision or context otherwise requires
 - Because of the harmonization rule
 - Courts defer to administrative interpretation of statutes
 - OPR Guidelines
 - LAFCO's own policies

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Placer v. Nevada LAFCO (Cont.)

- Also cites "Growth Within Bounds"

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More Useful Canons

- Presumption of validity (constitutionality, non-preemption)
- Omitted case was intentionally omitted
- To say one thing is to exclude another
- Unintelligible text is inoperative
- Last antecedent / nearest reasonable referent
- Whole text

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Still More Useful Canons

- Consistent Usage
- Surplusage
- General vs. specific provisions
- Associated words (“noscitur a sociis”)
- General words following a specific list (“ejusdem generis”)
- Non-retroactivity

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Questions?

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