

When LAFCo Opinions Collide



Two Case Studies from Nevada LAFCo

June 26, 2017

A Tale of Two LAFCOs

Case Study 1

Placer LAFCO vs Nevada LAFCo

Placer LAFCO vs Nevada LAFCo

The Setting: Nine special districts include territory in both Placer and Nevada counties:

Nevada County is Principal County

- Truckee Sanitary District
- Truckee Donner Public Utility District
- Truckee Fire District
- Truckee Donner Recreation District
- Nevada Irrigation District
- Donner Summit Public Utility District

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Placer County is Principal County:

- Tahoe Forest Hospital District
- Tahoe Truckee Sanitation Agency
- Truckee Tahoe Airport District

Placer LAFCO vs Nevada LAFCo

The Problem:

Which LAFCo should make Sphere and MSR decisions regarding the shared multi-county districts?

Placer LAFCO vs Nevada LAFCo

The Statutory Framework:

- Section 56123 vests exclusive jurisdiction for changes of organization and reorganizations with the LAFCO of the Principal County.
- Section 56066 “Principal county” means the county having the greater portion of the entire assessed value of the district
- Section 56124 allows the Principal County LAFCo to transfer jurisdiction for proposed change of organization or reorganization to the Affected County LAFCo.
- Section 56387 states the Principal County LAFCo has exclusive jurisdiction over the matters authorized and required by “this part.”

Placer LAFCO vs Nevada LAFCo

The Statutory Framework: (Continued)

- Section 56425 requires LAFCo to determine the sphere of each city and special district “within the county”.
- Section 56430 requires the commission to prepare service reviews within the county or other appropriate area designated by the Commission.

Placer LAFCO vs Nevada LAFCo

The Initial Cooperative Approach

In 1993 Placer and Nevada LAFCo's Entered Into JPA establishing procedure for transfer of jurisdiction on some proposals and joint decision-making on others where the impacts significantly affected the other county.

The two Commission successfully cooperated on two joint decision making processes adopting updates of the spheres of influence for the Donner Summit Public Utility District, and the Truckee Fire Protection District in 1999

Placer LAFCO vs Nevada LAFCo

Cooperation Breaks Down

- The JPA was terminated by Placer LAFCo in 2002 ostensibly due to a concern by Placer LAFCo about its legality under the holding in *Alameda County Land Use Association v. City of Hayward* (1995) 38 Cal. App. 4th 1716.
- In 2002 Nevada LAFCo initiated the TSD Sphere Update.
- TSD's preferred sphere conflicts with the sphere of another district, Northstar CSD, located entirely within Placer county.

Placer LAFCO vs Nevada LAFCo

Cooperation Breaks Down

(continued)

- 2002: The two LAFCOs disagree about which LAFCo has authority to update the portion of the Placer portion of the TSD sphere.
- Placer LAFCo wants to Adopt the TSD Sphere for Placer County and Protect the Northstar CSD from encroachment by TSD. It threatens to sue if Nevada LAFCo proceeds.
- TSD Wants Nevada LAFCo to Adopt its Entire Sphere
- **What Should Nevada LAFCo Do?**

Placer LAFCO vs Nevada LAFCo

WHAT WE DID

- Rather than have Nevada LAFCo proceed with the TSD Sphere and Placer LAFCo challenge that decision, Nevada LAFCo agrees to hold off on the TSD Placer County sphere, and the parties agree to submit the matter to the court for declaratory relief.
- 2002: Placer files complaint for declaratory relief. TSD and Northstar CSD each sign on as intervenors in the case.
- Judge Bill Pangman from Sierra County assigned to case
- 2004: Superior Court decision: the LAFCo of the principal county has authority to update the entire sphere of a multi-county district.

Placer LAFCO vs Nevada LAFCo

WHAT WE DID

(continued)

- 2005: Placer LAFCo appeals the Superior Court decision
- 2006: Court of Appeal affirms Superior Court Decision (*Placer LAFCo v Nevada LAFCo*, (2006) 135 Cal.App.4th 793)
- Court of Appeal says that the Legislature intended that the principal county have jurisdiction to establish the sphere of influence and conduct service reviews for a multicounty district

Placer LAFCO vs Nevada LAFCo

Court of Appeal Ruling:

- The function of LAFCo is to review and approve, conditionally approve or deny changes of organization.
- The primary purpose of a sphere is to prepare the way for change of organization.
- Therefore, the legislature's intention with regard to establishing the authority of the principal county LAFCo over changes of organization would appear to also extend to spheres of influence.
- Nothing prevents an Affected County LAFCo from conducting a Municipal Service Review on a multi-county district.

Placer LAFCO vs Nevada LAFCo

What Ultimately Happened With the TSD Sphere in Placer County

- 2003: Nevada LAFCo completed the MSR
- 2011-2013*: Nevada LAFCo updated the sphere for TSD. The Placer County portion of the sphere is coterminous with TSD's boundaries and does not include the Northstar CSD territory

* Note: Completion of the Sphere Update in 2011 was delayed due to litigation against Nevada LAFCo initiated by a neighboring district in Nevada County. But that's a story for another day.

Can a Man Serve Three Masters?

Case Study 2 Incompatible Offices

Incompatible Offices

The Setting:

- The Fire Chief of the City of Grass Valley is a resident of Penn Valley. He is appointed to serve on the Board of Directors of the Penn Valley Fire District.
- He is nominated by his Board and then elected by the District Selection Committee to serve on LAFCo as a special district Member.
- The Chief is a respected official and has strong support of other LAFCo Commissioners

The Question: Can a District Board Member who is a City Fire Chief Serve on the LAFCo Commission as a District Member?

Incompatible Offices



The Question:

Can a District Board Member who is a City Fire Chief Also Serve on the LAFCo Commission?

Incompatible Offices

The Resolution Process

- January 2000: District Selection Committee process initiated.
- February 2000: The City Fire Chief is nominated to LAFCO by the Penn Valley Board
- The LAFCo EO asks LAFCo Legal Counsel whether there is a problem with the City Fire Chief also serving on LAFCo. Counsel advises her that there could be a problem.
- EO consults with the LAFCo Chair and he requests a written opinion from LAFCo Counsel on the subject
- March 2000, LAFCo Counsel issues his opinion that an incompatibility of office would exist if the Fire Chief is elected to LAFCo

Incompatible Offices

The Resolution Process (continued)

- March 2000: LAFCo Counsel informed the Commission of his opinion of a potential incompatibility of office. The Commission chose to take no action on the matter.
- May 2000: The Fire Chief was elected to serve on LAFCo as District Member.
- 2000: County Counsel filed a request for an AG opinion on the matter.
- July 2001: California Attorney General opines that the matter represents an incompatibility of office.

Incompatible Offices

The Issues:

LAFCo Counsel's opinion makes the following points:

Incompatibility of Office relies upon two elements:

1. The official in question must hold two public offices simultaneously
 - The positions of City Fire Chief and LAFCo commissioner are both public offices because created by statute
2. There must be a potential conflict or overlap in the functions or responsibilities of the two offices
 - Some of LAFCo's functions may conflict with the interests of the city (and its fire department)

Therefore the two offices are incompatible.

Incompatible Offices

The Attorney General's Opinion

- Each of the three positions (City Fire Chief, District Board Member and LAFCo Commissioner) is an 'office' for the purpose of the incompatible offices doctrine.
- The offices of Fire Chief and Fire District Board Member are not necessarily incompatible, given the City's territory does not overlap with the District's.
- The offices of Fire District Board Member and LAFCo Commissioner are not incompatible, given that the legislature authorizes the dual positions.
- However, a Fire Chief who is also a District Member may be subject to a significant clash of duties and loyalties, including determination of whether to extend City fire services into areas served by a fire district.
- The AG concluded that the offices of City Fire Chief and LAFCo Commissioner are incompatible public offices.

Incompatible Offices

THE UPSHOT

- After the AG issued his opinion, the Fire Chief resigned from the LAFCo Commission.
- He subsequently retired as City Fire Chief, and was then chosen in 2005 by the District Selection Committee to be District Member on LAFCo.
- In 2006, he was elected to the County Board of Supervisors
- The Board appointed him to LAFCo to serve as County member in 2007. He has served as Chair of Nevada LAFCo for a most of that time, and has done an outstanding job.

CONCLUSION FROM THESE CASES

- Disagreement is inevitable but can be contained
- Make sure you have good legal advice on the disagreement
- Listen to your Legal Counsel's advice