

Education Matters, February 2015

Court Affirms That Lease-Leaseback Agreements Do Not Require Competitive Bids.

The Torrance Unified School District approved several construction contracts with Balfour Beatty Construction for improvements to three schools within the District. For each school, the District and Balfour signed three agreements: (1) a site lease (leasing land from the District to Balfour), (2) a sublease (leasing land from Balfour back to the District), and (3) a construction agreement. Under the terms of the agreements, Balfour would lease the land from the District and the District then leases back the land. Payments of the leasebacks cover the cost of the construction projects.

A taxpayer, James McGee, filed an action to invalidate the agreements. McGee claimed the District failed to follow the competitive bid process McGee believed was required prior to awarding the contracts. McGee asked the court to consider newspaper articles and opinions that promoted competitive bidding to prevent fraud, favoritism, and corruption in the expenditure of school construction bond proceeds. The District and Balfour, on the other hand, argued that the competitive bid process was not required because the contracts, in the form of lease-leaseback transactions, were exempt from the competitive bid process under Education Code section 17406. Education Code section 17406 (“Section 17406”) states that school districts can enter into a lease-leaseback arrangement “without advertising for bids.”

The trial court agreed with the District and Balfour and dismissed McGee’s lawsuit. On appeal, the Court of Appeal determined that the trial court properly dismissed McGee’s claim that competitive bidding was required to enter into the lease-leaseback agreements. In doing so, the Court relied on the reasoning and result in the recent case *Los Alamitos Unified School District v. Howard Contracting, Inc.* (2014) 229 Cal.App.4th 1222, which held that the “plain language” of Section 17406 exempts it from the competitive bid requirements.

The Court’s decision affirms that as currently written, Section 17406 exempts school districts from obtaining competitive bids when entering into “lease-leaseback” agreements to improve school property. The Court, however, invited the Legislature to amend the language of Section 17406 to require competitive bidding if that is what the Legislature intended. “If the Legislature shares McGee’s view that the competitive bid process is superior, it may amend section 17406 to specify that it requires a school district to obtain competitive bids.” *McGee v. Torrance Unified School District* (Jan. 23, 2015, B252570) [non-published opinion] [2015 WL 301918].

Note:

This is an unpublished case, and we cannot rely on it for precedent. The case does provide some insight as to how a court might interpret a similar challenge to Education Code section 17406, or the analogous provision applying to community college districts, Education Code section 81335.