

Court of Appeal Confirms that Lease-Leaseback Agreements for K-12 Construction Procurements Are Exempt from Competitive Bidding Requirements

October 31, 2014

The Los Alamitos Unified School District filed an action to validate a lease-leaseback agreement for improvements to the track and athletic field of the District's high school. The District entered into the agreement with Byrom-Davey, Inc. Another construction company, Howard Contracting, Inc. ("Howard"), sought to challenge the agreement. Howard claimed the agreement was unconstitutional, illegal, and invalid because the District did not obtain competitive bids for the project. Howard also argued that the District impermissibly began construction of the project before judgment was entered in the validation action.

The Education Code allows school and community college districts to enter into a "lease-leaseback" agreement for construction projects on district property. (Educ. Code, sections 17406, 81334.) Such agreements allow a Board to lease its property, for a minimum of \$1 per year, to a company, person, or firm, to provide construction on the property (the "lease"). As part of the arrangement, the company, person, or firm leases back the property to the district for use of the building during the term of the agreement (the "lease-back"). After the agreement expires, title to the property vests in the district, though the parties may arrange for an earlier vesting time. Under Education Code section 17406 ("Section 17406"), school districts can enter into a lease-leaseback arrangement "without advertising for bids." It was under this provision that the Los Alamitos Unified School District entered into a lease-leaseback agreement for improvements on the track and field.

In challenging the District's action, Howard argued that despite the language of Section 17406, the State's public contract law requiring competitive bidding applied – making the District's lease-leaseback agreement illegal. The trial court disagreed and entered judgment in favor of the District. On appeal, the Court of Appeal determined that the trial court properly granted judgment in favor of the District. The appellate court held that under Section 17406, the District was permitted to engage in the "type of transaction at issue here 'without advertising for bids.'" The court also found that the District was not required to file the underlying validation action, and was not required to wait until the conclusion of the validation action before beginning work on the project.

The Court of Appeal's decision confirms that Section 17406 exempts school districts from obtaining competitive bids when entering into "lease-leaseback" agreements to improve school property. It also confirms that a public agency (including a school district) may, but is not

required to, commence a validation action. "If no validation action is commenced by a public agency, its decision self-validates after 60 days, unless an interested person commences his or her own action." An interested person may bring an action to determine the validity of the matter, but they must do so within 60 days. (Code of Civil Procedure, sections 863, 860.) If no interested person commences an action, an agency may "indirectly but effectively 'validate' its action *by doing nothing to validate it.*" If no person or entity files an action within the 60-day period, the agency's action becomes immune from attack.

Los Alamitos Unified School District v. Howard Contracting, Inc. (2014) 229 Cal.App.4th 1222.