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Another Appellate Court Upholds Noncompetitive Bidding for Lease-Leaseback Contracts

On May 2, 2017, the First District Court of Appeal (Court) weighed in on the question of lease-leaseback contracts and whether they can be entered into without competitive bidding—an issue that has been before the courts numerous times in the last several years. In *California Taxpayers Action Network v. Taber Construction, Inc., et al.*, the Court agreed with the Second District Court of Appeal’s decision in *McGee v. Balfour Beatty Construction, LLC, et al. (McGee)*, finding that competitive bidding is not a requirement of a lease-leaseback contract.

As with *McGee*, the Court rejected the Fifth District Court of Appeal decision in *Davis v. Fresno Unified School District (Davis)* that found that competitive bidding was indeed required unless three elements are present (see “[Recent Court Opinion Regarding Lease-Leaseback May Impact School Districts](#)” in the June 12, 2015, *Community College Update* for more detail). The Court instead based its decision on the plain language of the statute, requiring only that 1) the real property belong to the school district; 2) the lease be for construction purposes; and 3) title be vested in the district at the end of the lease term. Again, as with both *McGee* and *Davis*, the Court also addressed a conflict of interest issue and allowed that issue to proceed to trial.

Unlike *McGee* and *Davis*, however, **the Court elected not to publish its decision**, which means it cannot be cited as legal precedent by other courts. This leaves school districts with a patchwork of legal decisions to navigate as the *Davis* decision is law in the Fifth District, *McGee* in the Second District, and other appellate districts have the option of applying one or the other. For school districts entering into lease-leaseback contracts after January 1, 2017, the issues litigated in these cases have been addressed as, in response to the *Davis* decision, the legislature enacted [Assembly Bill \(AB\) 2316](#) (Chapter 521, 2016), which made changes to the lease-leaseback Education Code Section 17406. The law now requires school districts to use a comprehensive best value process when selecting a lease-leaseback contractor. The new provisions also permit a lease-leaseback contractor to provide preconstruction services—removing the conflict of interest issue.

For community college districts, keep in mind that while noncompetitive bidding is not an option due to the differences in the Education Code sections governing school districts and community college districts, the conflict of interest issue addressed by the various courts is something that should be of interest. The changes made by AB 2316 did not affect community college districts, therefore, there is still the potential for conflicts of interest. All three cases referenced sent this issue back down to the trial courts, so there will be more to come.

We continue to advise both school and community college districts to consult with their attorneys before proceeding with lease-leaseback contracts to ensure that all requirements are being met.