

Atkinson, Andelson, Loya, Ruud & Romo

MEMORANDUM

TO: Constance J Schwindt

CC: Terry T Tao

FROM: Stephen M. McLoughlin

DATE: December 9, 2009

RE: Del Mar School District
District Offices Outside of District's Boundaries

1. Issue

This memo serves as a brief summary of the legal issues surrounding the District's proposal to acquire property outside of the District's boundaries for use as District offices. Specifically, this memo will review the following issues in respect to this proposal: 1) the Education Code, 2) the Brown Act, 3) the potential reactions of other Districts and 4) Bond funding issues.

2. Education Code

The Education Code addresses the issue of property acquisition outside of school district boundaries in Section 35271. This Section provides: "The governing board of any school district may acquire property, construct buildings, and maintain classes outside its boundaries on sites immediately adjacent to school sites of the district within its boundaries."

In its analysis of this Section, the Office of Attorney General, made it clear that this Section only allows for the acquisition of property outside of a district's boundary if the property is "immediately adjacent" to the District's boundaries: "we conclude that a school district may establish a school within the boundary of another district only if it is located upon a site immediately adjacent to a school site within the district." (81 Ops.Cal.Atty.Gen. 80.) Other sections in the Education Code indicate that the "immediately adjacent" requirement is a strict limitation and an exception will be made only if the boundary and the property are separated by a "natural or artificial barrier or right-of-way." (Education Code Section 17217(f).)

Based on this analysis, Section 35271 seems to limit the District's ability to acquire property outside of its boundaries for use as a District office. Another line of cases further supports this conclusion by suggesting that any power granted by the Education Code also inherently limits the district's power to the specifics of particular section. Since Section 35271 dominates the field regarding school districts and property outside of their boundaries, courts may interpret it to mean that no power may be exercised in excess of the granted authority. (See *Wildlife Alive v.*

Chickering (1976) 18 Cal.3d 190, 196; 85 Ops. Cal. Atty. Gen. 191; 81 Ops. Cal. Atty. Gen. 80, 84.) This conclusion is based on the general principle of statutory interpretation that “legislative articulation of specific statutory authorization in one respect indicates the absence of such authority in related respects.” (*Safer v. Superior Court* (1975) 15 Cal.3d 230, 238.)

It may be possible to argue that the lack of a specific law prohibiting school districts from establishing their District offices outside of its boundaries means that they may do so. When the Education Code does not address an issue directly, some courts look to the general provision of Section 35160. This Section grants school districts vast discretion in the decisions they make:

“In enacting section 35160, it is the intent of the Legislature to give school districts . . . broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district . . . are necessary or desirable in meeting their needs... It is the intent of the Legislature that Section 35160 be liberally construed to affect this objective.” (Education Code Section 31560(b).

Courts have interpreted this section to mean that school districts are authorized to take on any activity as long as it is not precluded or inconsistent with the law. Instead of determining whether an activity is authorized by the law, the courts look to whether the act is precluded by law. (*Fleice v. Chualar Union Elementary School Dist.* (1988) 206 Cal.App.3d 886, 890-891; 73 Ops. Cal. Atty. Gen. 84, 86 (1990).)

However, the plain language of Education Code Section 35271 and the interpretations of it indicate that the District may not purchase property outside of its boundaries unless the property is located directly next to the boundaries of the District. According to our understanding of the current situation, this is not the case. Therefore, Education Code Section 35271 prohibits the District from acquiring this property for this purpose.

2. The Brown Act

The District must also be aware of the regulations that place restrictions on where District meetings can be held by the District’s Board. The Brown Act, incorporated into Government Code, requires regular and special Board meetings to be held within the District’s boundaries unless one of the exceptions articulated in the Code apply. Specifically, Government Code Section 54954(b) provides: “Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following...”

The only exception listed in Section 54954(b) that may allow the District to use property outside of its boundaries for Board meetings is found in Section 54954(b)(4). This exception allows meetings outside of the district’s boundaries if the District “has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.”

In order to meet the exceptions established in Section 54957(b)(4), the District will have to show that: 1) it has no “meeting facility” within its boundaries or 2) the “principal office” of the District is located outside of its boundaries. It may be difficult for the District to show that there are no suitable facilities within its boundaries to hold District meetings. It may also be difficult to show that the offices outside of the District boundary are the District’s principle offices if there are buildings within the District’s boundaries that conduct official District business on a consistent basis. However, if the property is used as the District’s main offices, this exception may apply.

Even if the District is able to meet the requirements of the Brown Act in regards to District meetings, the limitation on acquiring property outside of the District’s boundaries established by the Education Code, will still prohibit the District from using property for its offices.

3. Concerns from other school districts

The District should also be aware that the school district that includes the subject property within its borders may become hostile towards the District’s attempts to purchase property within its jurisdiction. Our firm has dealt with school districts that become threatened and act accordingly when other school districts initiate actions within their boundaries. Some school districts may see this activity as a precursor to a boundary dispute whereby the District claims that its boundaries should include the property surrounding the newly acquired offices. If this happens, the surrounding school districts may attempt to stop the District from obtaining this property. They may use the Education Code to fight the District’s efforts. However, it’s important to note that the adjacent school district will not be held liable for any activities that happen on property within its boundaries.

4. Bond Issue

The District has also expressed concerns about using bond funds to acquire this property. According to Education Code Section 15284(a), the District may use bond funds in any way it sees as long as the language of the bond is broad enough to include the specific purpose. We would need to review the language of the Bond to ensure this use is authorized. However, as long as the language does not include a specific limitation relating to property and District boundaries, the purchase should be authorized.