

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 08/18/2011

TIME: 03:21:00 PM

DEPT: C31

JUDICIAL OFFICER PRESIDING: Frederick P. Horn

CLERK: Margarita Marquez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2010-00431832-CU-WM-CJC** CASE INIT.DATE: 12/09/2010

CASE TITLE: **Citizen's Association of Sunset Beach vs. Orange County Local Agency Formation Commission**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 71301056

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

This matter having been taken under submission on 8/11/11, the Court now rules as follows:

The Petition of Citizens' Association of Sunset Beach for a Writ of Mandate requiring Respondent City of Huntington Beach to give the residents of Sunset Beach an opportunity to vote on existing Huntington Beach taxes not currently paid by Sunset Beach resident and prohibiting Respondent OC LAFCO from completing the island annexation of Sunset Beach until such vote is taken is Denied.

The Court initially notes that the issue raised in the Petitioner's writ is one of first impression; there are no cases on point to guide this Court in its determination. The Court has considered all arguments and authorities submitted by both Petitioner and Respondents in reaching its decision.

Petitioner/Plaintiff CASB contends that the City's proposed island annexation of Sunset Beach under Government Code § 56375.3 must proceed, if at all, in compliance with Government Code § 57330 and Proposition 218, meaning that Huntington Beach must give the residents of Sunset Beach a vote on the taxes or the right to protest the annexation. Petitioner contends that Proposition 218, a constitutional provision, takes precedence over Government Code § 56375.3.

The City (and OC LAFCO) contends that the writ of mandate sought by Petitioner would (1) violate the separation of powers because the court would be replacing its judgment for the legislative mandate of the OC LAFCO to approve the island annexation; (2) that annexation is separate from taxation, and (3) Proposition 218 does not apply to the facts of this case.

The Court has determined that the "island annexation" procedures provided for in Government Code § 56375.3, found in the Cortese-Knox Local Government Reorganization Act of 1985 (**the Act**), apply to the annexation of Sunset Beach into the City of Huntington Beach and Proposition 218 does not apply.

Respondent OC LAFCO is required to approve the annexation of Sunset Beach if all provisions of Government Code § 56375.2(a)(1)(A)-(C) and (b)(1)-(6) are met. In this case there is no dispute that Sunset Beach falls within these provisions. The Court may not replace its judgment for the legislative mandate of Government Code § 56375.3.

The provisions of Government Code § 56375.3 do not provide for a protest procedure prior to annexation. That statute specifically provides for waiver of protest proceedings. Therefore, the citizens of Sunset Beach are not entitled to vote on the existing Huntington Beach taxes that will be imposed as a result of the annexation before the annexation is approved. Respondent OC LAFCO may not condition the annexation on the approval by the residents of Sunset Beach of the taxes at issue. The specific provisions of Government Code § 56375.3 regarding "island" annexations take precedence over the general provisions of Government Code 56375, which applies to non-island annexations and which would allow OC LAFCO to condition its approval of a non-island annexation and would allow for a protest procedure.

The Petitioner claims that certain new taxes will be imposed on the residents of Sunset Beach – taxes that Huntington Beach residents currently pay but Sunset Beach residents do not pay - if the annexation proceeds without allowing Sunset Beach residents an opportunity to vote on those taxes first. Petitioner relies on Proposition 218 and contends that Proposition 218 and Government Code § 56375.3 are in conflict and cannot be harmonized; therefore, Proposition 218 takes precedence over Government Code § 56375.3.

The Court finds that Proposition 218 does not apply to the facts of this case because the annexation of Sunset Beach will not involve the imposition, extension or increase of any new general or special taxes. The annexation of Sunset Beach will involve taxes, assessments and/or fees and charges that have previously been established and approved by the electorate of Huntington Beach. Therefore, there is no issue of a conflict between Proposition 218 and Government Code § 56375.3.

The Attorney General's statements in Opinion 99-602, pp. 9-10, were instructive to this Court. The Opinion addressed the question: "If a local agency formation commission conditions approval of a change of organization or reorganization upon a requirement that the subject agency levy or fix and collect a previously established and collected tax, benefit assessment, or property-related fee or charge on parcels being annexed to the agency, do the voter and landowner approval requirements set forth in the Constitution (Proposition 218) relating to taxes, assessments, fees and charges apply?"

The Attorney General's following observations provide guidance to this Court in reaching its decision: We have examined in detail the voters' pamphlet with respect to Proposition 218. . . . Nothing therein suggests that the proposed voter approval requirements were to be added to the voter approval requirements of the Act. The ballot materials regarding Proposition 218 simply do not support an intent by the electorate to subject LAFCO proceedings to the requirements of articles XIII C and XIII D. . . as a practical matter, it would be virtually impossible to comply with the varying and complex requirements of articles XIII C and XIII D with respect to changes of organization or reorganization under the Act . Not only the timing of the elections but the differing constituencies who would be voting on different measures with differing voter approval requirements . . . would present an administrative imbroglio.

Finally, while the case of Metropolitan Water District v. Dorff (1979) 98 Cal.App.3d 109 involved Proposition 13 and is not directly on point with the facts of this case, it was helpful to this Court. The court in the Metropolitan Water case discussed the interaction of Proposition 13 (Article XIII A) and provisions of the Metropolitan Water District Act. The court found that Proposition 13 did not prohibit the levy/imposition of an existing ad valorem tax , approved by the voters of the Metropolitan Water District prior to annexation, on property subsequently annexed to the Metropolitan Water District.

Court orders Clerk to give notice by e-mail and US mail.

John C. McCarron of Stern, Van Vleck & McCarron LLP, JMCCARRON@LAWPOLICY.COM
Holly O. Wathley of Colantuono & Levin, PC, HWhatley@CLLAW.US
Daniel S. Roberts of Best Best & Krieger, Daniel.Roberts@bbklaw.com