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NO BID LEASE-LEASEBACK AGREEMENTS UPHeld

The California Court of Appeal, Second Appellate District, (Los Angeles) recently ordered its previously unpublished decision in *McGee v. Balfour Beatty Construction, LLC*, (*McGee*) to be published. The case addressed whether school districts must obtain competitive bids when entering into lease-leaseback contracts for public works construction projects under Education Code section 17406. The Court rejected a claim by a taxpayer that the lease-leaseback agreements between Torrance Unified School District and its contractor were void for lack of compliance with the competitive bidding statutes.

In upholding the validity of the no bid lease-leaseback arrangements, *McGee* also rejected holdings in the Fifth Appellate District's 2015 decision in *Davis v. Fresno Unified School District* (2015) 237 Cal. App. 4th 261 (*Davis*), that a lease-leaseback agreement to be valid must contain a financing component and a "genuine lease" during which the district must occupy the improvements and make level lease payments. However, the *McGee* court did agree with the *Davis* court that a third party taxpayer may have standing to allege a conflict of interest under Government Code section 1090 when independent contractors, such as the lease-leaseback contractors in *McGee* and *Davis*, are involved in the making of the lease-leaseback agreement.

Publishing the *McGee* decision has the effect of making it precedent that school districts outside of the Fifth Appellate District (Kern and the other central valley counties) can rely on. Unfortunately, *Davis* remains precedent for districts in the central valley.

It should be noted that AB 2316 (O'Donnell) is currently under consideration in the legislature. If signed into law as currently written, this legislation, among other things, would modify sections 17400 and 17406 to delete the authority to enter into a lease-leaseback contract without advertising for bids and require that a lease-leaseback contractor be selected through a fair and competitive best value process.

Should you have any questions concerning the lease-leaseback project delivery method or any other aspect of this update, please feel free to contact our office.

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