

# MILLER, OWEN & TROST

A PROFESSIONAL CORPORATION

DANIEL CALVERT  
PAUL J. CHRISMAN  
JENNIFER V. GORE  
CHRISTIANE E. LAYTON  
MADELINE E. MILLER  
NANCY C. MILLER  
KIRK E. TROST

ATTORNEYS AT LAW  
428 J STREET, SUITE 400  
SACRAMENTO, CALIFORNIA 95814-2394

TELEPHONE (916) 447-7933  
FACSIMILE (916) 447-5195

WILLIAM L. OWEN  
OF COUNSEL

## MEMORANDUM

TO: Peter Brundage

FROM: Nancy C. Miller

DATE: January 26, 2009

RE: City of Sacramento's Application to Amend its Sphere of Influence and the Applicability of Government Code section 56855

RECEIVED

JAN 29 2009

SACRAMENTO LOCAL AGENCY  
FORMATION COMMISSION

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## FACTS

Sacramento LAFCo ("LAFCo" or "the Commission") recently received an application for a sphere of influence (SOI) amendment by the City of Sacramento ("City"). In considering the application, you have asked me to discuss the ability of LAFCo to condition the approval of the SOI amendment on a renegotiation of the property tax allocations between the City and the Sacramento Metropolitan Fire District ("SMFD"), and discuss the application of Government Code section 56855.

## ISSUES

1. What authority does LAFCo have to condition approval of an amendment to the City's SOI, on negotiation of a property tax exchange agreement between the City and SMFD?
2. Does Government Code section 56855, apply when a city amends its sphere of influence to include new territory?
3. Does Government Code section 56855, apply when a city annexes territory?

## SHORT ANSWERS

1. The Commission has broad authority to impose conditions on approval of an amendment to the City's SOI. However, under Revenue and Taxation Code section 99, the County of Sacramento ("County") has the sole authority to negotiate property tax exchange agreements on behalf of SMFD. The Commission may impose conditions related to the consultation process with SMFD during the SOI approval. The Commission could request that with an annexation application, the City demonstrate the consultation process with SMFD, and that the annexation application addresses any service needs.
2. Government Code section 56855, does not apply when a city amends its sphere of influence to include new territory because Government Code section 56855, only applies to certain types of annexation.

3. Government Code section 56855, only applies to a city's annexation of new territory, if the city's boundaries are within the fire protection district, and the annexation proposal also proposes to annex territory into a fire protection district. This is not the case in the present application.

## **DISCUSSION**

We have been asked to discuss the Commission's authority to condition a SOI amendment on negotiation of a property tax exchange agreement between the City and SMFD. We have also been asked to give our analysis of Government Code section 56855 and the instances in which it applies.<sup>1</sup> This memo will (I) set forth the authority LAFCo has to condition approvals of SOI amendments, (II) discuss negotiation of property tax exchange agreements, (III) discuss the legislative history behind Section 56855, and (IV) interpret Section 56855.

### **I. LAFCo Has Broad Authority To Condition Approvals of Sphere of Influence Amendments.**

Section 56880 gives the commission the ability to "adopt a resolution making determinations approving or disapproving the proposal, with or without conditions..." "Conditional approval means approval given by LAFCo which is subject to the completion of certain actions prior or subsequent to recordation." (Sacramento Local Agency Formation Commission's Policies, Standards and Procedures Manual, Glossary of Terms, "Conditional Approval.") (Hereafter, "Sac LAFCo Policies.")

In addition to the broad statutory authority, LAFCo's own policies promote conditioning approvals on a wide range of grounds. LAFCo general policies "encourage communication on actions among the County, cities, and special districts." (Sac LAFCo Policies, Policy III.2.)

Further, the Commission can consider conditions to maximize the efficiency of services. (Sac LAFCo Policies, Policy IV.11.)

### **II. Revenue and Taxation Code Section 99, Only Applies to Jurisdictional Changes and Requires the County to Negotiate on Behalf of SMFD.**

In analyzing whether it is appropriate for the Commission to condition approval of the City's application for a SOI amendment on negotiation of a property tax exchange agreement, it is necessary to determine the instances in which Revenue and Taxation Code section 99, the statutory provision providing for such agreements, applies. In making this determination it is necessary to determine (A) what changes Revenue and Taxation Code section 99, applies to, and (B) what Revenue and Taxation Code section 99, allows.

#### **A. Revenue and Taxation Code Section 99, Does Not Apply to Sphere of Influence Amendments.**

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise noted.

“In the case of a jurisdiction changes...the auditor shall adjust the allocation of property tax revenue...for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).” (Rev. & Tax. Code § 99, subd. (a)(1).) “‘Jurisdictional change’ includes any change of organization, as defined in Section 56021 of the Government Code and a reorganization, as defined in section 56073 of the Government Code. ‘Jurisdictional change’ also includes any change in the boundary of those special districts that are not under the jurisdiction of a local agency formation commission.” (Rev. & Tax. Code § 95, subd. (e).) A reorganization, as defined in Government Code section 56073, is simply “two or more changes of organization initiated in a single proposal.” Government Code section 56021, defines a change of organization as follows:

“Change of organization” means any of the following:

- (a) A city incorporation.
- (b) A district formation.
- (c) An annexation to, or detachment from, a city or district.
- (d) A disincorporation of a city.
- (e) A district dissolution.
- (f) A consolidation of cities or special districts.
- (g) A merger or establishment of a subsidiary district.
- (h) A proposal for the exercise of new or different functions or classes of services, or divestiture of the power to provide particular functions or classes of services, within all or part of the jurisdictional boundaries of a special district.

A change of organization does not include a SOI amendment. SOI is given its own definition at Government Code section 56076. Therefore, because a SOI amendment is not a change of organization, a SOI amendment is not a jurisdictional change. Consequently, Revenue and Taxation Code section 99, does not apply to SOI amendments.

**B. Revenue and Taxation Code Section 99, Requires the County Board of Supervisors to Negotiate Any Property Tax Exchange Agreement on Behalf of SMFD.**

The procedure for negotiating the property tax exchange agreement provides that the County Board of Supervisors is the negotiating party. The Commission can require that the County consult with SMFD during the negotiation as this is required by statute. The Commission could also set forth some parameters of the consultation with an emphasis to service efficiencies. (Rev. & Tax. Code § 99, subd. (b).) The Commission could also ask that the City ensure the County is including SMFD in the negotiations. Finally, the Commission could condition approval on receiving a report from SMFD about its involvement in the negotiations. In sum, there are ways that the Commission could condition approval on a meaningful consultation process that involves SMFD.

**III. The Legislative History of Section 56855.**

Before beginning discussion and interpretation, it is necessary to set forth Section 56855 in full. Section 56855 reads as follows:

**Annexation of territory to fire protection districts; contracts**

(a) This section shall apply to any proposal which contains the annexation of territory to a fire protection district which is organized pursuant to the Fire Protection District Law of 1987, Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code, and the affected territory is or is proposed to be all of part of a city which is within the fire protection district.

(b) Prior to the adoption by the local agency formation commission of a resolution making determinations, the district may request and the commission shall impose, as a term and condition, a requirement that the legislative body of the city shall enter into a contract with the district. The contract shall require:

(1) That the affected territory shall remain part of the district for a period of at least 10 years.

(2) That the city shall pay the cost of services provided by the district. This payment shall be in amounts and on terms specific in the contract.

(3) Any other conditions to which the city and the district mutually agree.

With the entirety of Section 56855 in mind, discussion of the legislative history of Section 56855 is warranted.

Section 56855 was created pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Before 2000, the provisions of Section 56855 were contained in Section 56848.3.

Section 56848.3 was enacted in 1987 as part of an overhaul of California's laws regarding fire protection. Prior to 1987 there were two statutes applicable to fire district annexations. First, there was Section 56115, which gave fire protection districts the authority to initiate, conduct, and complete detachments of territory, dissolutions of districts, or inclusion of a city within a district. Second, there was Section 56848, which gave LAFCOs the authority over the annexation or incorporation of territory of a fire protection district. Therefore, prior to the 1987 overhaul, both fire protection districts and LAFCOs had authority over external boundary changes of fire protection districts. Consequently, Section 56848.3 was enacted to give LAFCOs the exclusive authority over the determination of fire protection districts' external boundaries.

Fire protection districts still retained authority over the boundaries of internal zones within the districts.

In sum, the legislative history of Section 56855, and its predecessor, Section 56848.3, demonstrates that LAFCos have the exclusive authority over the external boundaries of fire protection districts. With this legislative history in mind, interpretation of Section 56855 is necessary.

#### **IV. Interpretation of Section 56855.**

Section 56855 does not apply to SOI amendments. The plain language of Section 56855 states that it applies “to any proposal which contains the annexation of territory...”

Second, Section 56855 only applies to proposals to annex territory into a fire protection district. The plain language of Section 56855 states that it applies to any proposal “which contains the annexation of territory *to* a fire protection district” [emphasis added].

Third, Section 56855 only applies to if “the affected territory is or is proposed to be all or part of a city which is within the fire protection district.” The plain language of this phrase indicates two requirements. First, the proposal must include annexation of territory into a city. Second, the entire city, to which the territory is proposed to be annexed, must be within the fire protection district. These are two facts that must be determined on a case-by-case basis. First, the proposal will indicate whether the annexation is into a city. If this is true, then it must be determined whether the city is within the fire protection district.

Two hypothetical examples in Sacramento County can demonstrate the application of Section 56855. First, if there was a proposal to annex territory into the City of Sacramento, Section 56855 would not apply. The City of Sacramento is served by its own fire department. Further, a comparison of the maps of the City of Sacramento and SMFD shows that the City of Sacramento is not within SMFD’s boundaries. Consequently, annexations of territory into the City of Sacramento are not subject to Section 56855.

In contrast, if there was a proposal to annex territory into the City of Citrus Heights, Section 56855 might apply as the City of Citrus Heights is served by SMFD.

#### **CONCLUSION**

In conclusion, the Commission has broad powers to condition approval of the City’s SOI amendment on numerous grounds. Revenue and Taxation Code section 99, gives the County the authority to negotiate the property tax exchange agreement on behalf of SMFD but the Commission may require conditions related to the consultation process.

Additionally, Government Code section 56855, applies to annexations if the city to which the territory is proposed to be annexed is within a fire protection district, and the proposal also includes a request to annex the territory into a fire protection district. This conclusion is

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supported by the legislative history of Government Code section 56855, which was to give LAFCos exclusive authority over the external boundaries of fire protection districts.