

EXHIBIT "G"

**ATTORNEY GENERAL OPINION RELATED TO
AMENDING INCORPORATION BOUNDARY**

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

EDMUND G. BROWN JR.
Attorney General

OPINION	:	No. 07-206
of	:	June 27, 2008
EDMUND G. BROWN JR.	:	
Attorney General	:	
TAYLOR S. CAREY	:	
Deputy Attorney General	:	

THE HONORABLE ROBERT A. RYAN, JR., COUNTY COUNSEL, COUNTY OF SACRAMENTO, has requested an opinion on the following question:

Does a Local Agency Formation Commission have the authority to enlarge the boundaries of a proposed incorporation beyond those set forth in the petition for incorporation?

CONCLUSION

A Local Agency Formation Commission has the authority to enlarge the boundaries of a proposed incorporation beyond those set forth in the petition for incorporation.

ANALYSIS

This question arises from a situation in which there is a proposal for the incorporation of a new city, but there is some dispute about where the boundaries of the new city should be drawn. The petition for incorporation excludes a certain area that the surrounding county believes should logically be included within the city's boundaries. The county believes that leaving the area unincorporated would create significant problems for the county, which would retain responsibility for providing services to that area. May the county's Local Agency Formation Commission (LAFCO) enlarge the proposed boundaries of the new city to include the disputed area? We conclude that it may.

The Cortese-Knox-Hertzberg Local Government Reorganization Act (Act) of 2000¹ establishes a LAFCO in each county to encourage orderly growth and development and the assessment of local community services needs.² After a LAFCO has reviewed a proposal, held hearings on it, and made any appropriate decisions, the proposal is normally submitted to the affected residents or landowners for a vote.³

When a petition is presented to a LAFCO for the incorporation of a city, the petitioners are required to specify the exact boundaries of the proposal.⁴ Hence, it is not a LAFCO's responsibility to establish the boundaries of a proposed incorporation in the first instance.⁵ While the Act does not expressly authorize a LAFCO to change the boundaries of a proposed incorporation, it does authorize a LAFCO "[t]o review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and

¹ Govt. Code §§ 56000-57550.

² *Id.* at §§ 56325-56337; see *Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.*, 135 Cal. App. 4th 793, 798 (2006) (LAFCOs described as "watchdogs," guarding against "indiscriminate" or "haphazard" organization of governmental functions).

³ Govt. Code §§ 56880, 57100.

⁴ *Id.* at § 56700(a)(3).

⁵ *Accord* 57 Ops. Cal. Atty. Gen. 423, 433 (1974) (concluding it was not a LAFCO's duty to draw preliminary boundaries, under former Knox-Nisbet Act, Govt. Code §§ 54773 *et seq.*).

guidelines adopted by the commission.”⁶ This statutory authorization has been interpreted to include the authority to change the boundaries proposed by the petitioners.⁷

Naturally, a LAFCO’s authority to change proposed boundaries is not without limitation. To begin with, the Act requires that any amendment to a proposal be “consistent with written policies, procedures, and guidelines adopted by the commission.”⁸ Additionally, a LAFCO may not amend a proposal in a way that changes the fundamental nature of the proposal.⁹

Within these limits, there may be any number of reasons why a LAFCO would consider changing the boundaries of a proposed incorporation area. For example, a LAFCO is required to “review the boundaries of the territory involved in any proposal with respect to the definiteness and certainty of those boundaries, the nonconformance of proposed boundaries with lines of assessment or ownership, and other similar matters affecting the proposed boundaries.”¹⁰ Thus, if the boundaries described in the petition are imprecise or do not properly reflect assessment or ownership boundaries, the LAFCO may be required to correct them.

In *Tillie Lewis Foods, Inc. v. City of Pittsburg*, the court of appeal remarked that a LAFCO may be required to “redraw the proposed boundaries by way of amendment or as a condition of its approval” in order to check the practice of manipulating the boundaries of annexation proposals “with the objective of bringing the affected territory within the purview

⁶ Govt. Code § 56375(a).

⁷ *Tillie Lewis Foods, Inc. v. City of Pittsburg*, 52 Cal. App. 3d 983, 1003 (1975) (“It is true that LAFCO may ‘establish’ new boundaries by altering those proposed pursuant to its power to approve a proposal ‘with . . . amendment.’); see also *id.* at n. 17 (“Such action, taken on an ‘ad hoc’ and case-by-case basis, has been a common occurrence in the LAFCO experience.” (Citing Richard T. LeGates, *Cal. Local Agency Formation Commissions*, 64-65 (U. Cal. Berkeley Inst. Govt. Studies 1970))).

⁸ Govt. Code § 56375(a).

⁹ *Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.*, 208 Cal. App. 3d 753, 765 (1989) (“[T]he alteration made by LAFCO cannot be said to have changed the general purpose or effect of the incorporation proposal.”).

¹⁰ Govt. Code § 56375(l).

of one annexation Act or the other for spurious political purposes.”¹¹

Another reason why a LAFCO might change a petitioner’s proposed boundaries is to deal with environmental concerns. Like any other governmental agency, a LAFCO must address itself to environmental considerations in accordance with the procedures set forth in the California Environmental Quality Act (CEQA), for any project that will have a significant effect on the environment.¹²

Or again, a LAFCO may change the boundaries of a proposal to prevent “an overlap of service responsibilities and inefficiencies in service provision”¹³ or “to bring about a unified and accountable government.”¹⁴ Indeed, these purposes lie at the heart of the policy that underlies the entire local government reorganization scheme.¹⁵

¹¹ *Tillie*, 52 Cal. App. 3d at 1005-1006.

¹² *Bozung v. Local Agency Formation Com.*, 13 Cal. 3d 263, 282 (1975); *see id.* at 276 (LAFCO is governmental agency within meaning of CEQA); *see generally* Public Resources Code § 26000 *et seq.* (CEQA).

¹³ *Placer*, 135 Cal. App. 4th at 798 (quoting Daniel J. Curtin, *Curtin’s Cal. Land Use and Planning Law*, 381-382 (24th ed., Solano Press 2004)).

¹⁴ *Fallbrook*, 208 Cal. App. 3d at 760.

¹⁵ Govt. Code § 56001:

The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all

In light of these authorities, we believe that a decision to enlarge the boundaries of an incorporation proposal to promote the efficient extension of services would be an appropriate exercise of a LAFCO's powers to approve, disapprove, or amend a proposal.¹⁶

We therefore conclude that a Local Agency Formation Commission has the authority to enlarge the boundaries of a proposed incorporation beyond those set forth in the petition for incorporation.

incomes in the most efficient manner feasible.

The Legislature recognizes that urban population densities and intensive residential, commercial, and industrial development necessitate a broad spectrum and high level of community services and controls. The Legislature also recognizes that when areas become urbanized to the extent that they need the full range of community services, priorities are required to be established regarding the type and levels of services that the residents of an urban community need and desire; that community service priorities be established by weighing the total community service needs against the total financial resources available for securing community services; and that those community service priorities are required to reflect local circumstances, conditions, and limited financial resources. The Legislature finds and declares that a single multipurpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities especially in urban areas. Nonetheless, the Legislature recognizes the critical role of many limited purpose agencies, especially in rural communities. The Legislature also finds that, whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.

¹⁶ *Id.* at § 56375(a).

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DEPUTY COUNTY COUNSEL

**Re: Local Agency Formation Commission – Authority to
“Expand” Boundaries of a Proposed Incorporation**

Dear Mr. Brown:

This Office seeks your opinion regarding the following:

Does Government Code § 56375 permit a Local Agency Formation Commission to alter the boundaries of a proposed incorporation beyond those set forth in a petition for incorporation?

A petition is being circulated for the potential incorporation of the community of Arden Arcade within the currently unincorporated territory of the County of Sacramento. The boundaries of the proposed incorporation exclude property which should, logically, be included within and served by this new city. Its exclusion will create significant service problems for the County should the incorporation be successful as proposed.

The Sacramento County Local Agency Formation Commission (LAFCO) has historically taken the position that LAFCO may not expand the proposal presented for the incorporation of a new city. For the reasons set forth below, we believe that this is contrary to what is, in fact, LAFCO's authority. As a result, we respectfully request that your opinion in an attempt to clarify this matter.

Certainly, initial boundaries for a reorganization or change of organization must be set forth in the petition or resolution initiating the reorganization or change of organization. (57 Ops. Cal. Atty. Gen. 423.) However, once a proposal is properly before LAFCO, it is no longer controlled by the proponents, but by LAFCO.

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Government Code § 56375 specifically provides that LAFCO may ". . . review and approve or disapprove with or without amendment . . . proposals for changes of organization. . ." (sudv. a.) The question of whether this permits LAFCO to make material additions to government organization proposals has been answered:

". . . interpretation of section subdivision (a), which would allow material deletions but not material additions, is not consistent with these definitions. Contrary to FSD's argument the plain meaning of the words chosen by the Legislature – 'with or without amendment' – encompass both additions and deletions so long as the general nature of the subject matter is not changed."

* * *

"The limitation FSD suggests is also inconsistent with the Legislature's expressed goals in this area. Under FSD's interpretation of section 56375, LAFCO could never add an agency without the proponents' consent. The vice in this interpretation lies in the fact that the power to amend would rest with the proponents, not LAFCO. Such a hindrance to LAFCO's power to promote the logical formation and modification of local agencies is at odds with the Legislature's creation of an independent agency designed to bring about a unified and accountable government." (***Fallbrook Sanitation District vs. San Diego Local Formation Commission*** (1989) 208 Cal.App.3d 753, at 760.)¹

Given the purpose of LAFCO and the scope of its considerations, this Office believes that LAFCO may make material additions to proposed boundaries of a proposed city if it determines that such changes promote the logical formation of the new city. The petition serves only to initiate LAFCO's jurisdiction. The ultimate configuration of the proposed city is LAFCO's to decide, not the petitioners'.

A review of alternative boundaries for policy purposes is appropriate. Should LAFCO determine that additions of territory would further the logical formation of the new city, it may make those additions. Ultimately, the determination to approve or disapprove LAFCO's determinations will be the affected voters'.

¹ The court also dismisses the use of *City of Ceres vs. City of Modesto* (1969) 274 Cal.App.2d 545 as authority to the contrary noting that in that case no proposal was before LAFCO. (*Id.*)

Honorable Gerald Brown
Attorney General

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January 26, 2007

Your attention to this request will be appreciated.

Sincerely,

ROBERT A. RYAN, JR.
County Counsel

cc: Board of Supervisors
Mr. Terry Schutten
Mr. Geoff Davey
Mr. Paul Hahn