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AUG 25 1981

Sacramento, California  
August 25, 1981

Honorable Byron Sher  
Assembly Chamber

Local Agency Formation Commission: Petition  
For Reorganization - #13925

Dear Mr. Sher:

You have furnished us with a statement of facts and asked us a question based on those facts.

## FACTS

A citizens' committee has submitted a petition of application with the applicable local agency formation commission (hereafter referred to as LAFCO) for a proposed reorganization of unincorporated territory pursuant to Section 56140 of the Government Code. The proposed reorganization involves a municipal incorporation of certain unincorporated territory and the dissolution or merger and establishment of other special districts. The executive officer of the LAFCO (hereafter referred to as the executive officer) has reviewed the petition and has stated that it is not complete under Section 54791 of the Government Code. The executive officer asserts that the basis for the determination is the need for additional data and information required by subdivision (e) of Section 54792 of the Government Code, which includes the "spheres of influence" for certain nearby cities and districts which are required to be considered by the LAFCO pursuant to subdivision (h) of Section 54796 of the Government Code. The spheres of influence for the cities and districts in the area subject to the petition have not yet been adopted.

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The executive officer expressly acknowledged to the petitioners that no further data or information is required from the petitioners. The executive officer stated that other information in the form of a "community plan" is needed to complete the spheres of influence and it is to be furnished from other sources. The executive officer has stated that in all other respects the petition is acceptable and that when the spheres of influence are completed, the petition will be deemed filed.

QUESTION

Under the stated facts, may the executive officer refuse to accept the petition of application for reorganization for filing?

OPINION

Under the stated facts, the executive officer may not refuse to accept the petition of application for reorganization for filing.

ANALYSIS

Initially, we note that the petition of application for reorganization (hereafter referred to as the petition) was filed pursuant to Section 56140 of the Government Code.<sup>1</sup> Section 56140 is a part of the District Reorganization Act of 1965, found in Division 1 (commencing with Section 56000) of Title 6.<sup>2</sup> Also, we note that the executive officer has rejected the petition, citing Sections 54791, 54792, and 54796. Those sections are parts of the Knox-Nisbet Act, found in Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5.<sup>3</sup>

The Knox-Nisbet Act provides, generally, for local agency formation commissions, to discourage urban sprawl and to encourage the orderly formation and development of local governmental agencies (Sec. 54774). The District Reorganization Act generally provides for, among other things, the incorporation of a new city as part of a plan of reorganization unless the board of supervisors objects to it (Sec. 56003.1) pursuant to the determinations of the LAFCO in exercising its powers, among others, under the Knox-Nisbet Act (Sec. 56250).

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- 1 Hereafter all statutory references are to the Government Code.
  - 2 Hereafter referred to as the District Reorganization Act.
  - 3 Hereafter referred to as the Knox-Nisbet Act.

A LAFCO has the power and duty to review and approve or disapprove, with or without amendment, wholly, partially, or conditionally, any proposal for, among other things, the incorporation of cities and the formation, change, consolidation, or dissolution of special districts as parts of a plan of reorganization (Secs. 54790, 54790.1, and 56258; see also Secs. 56028 and 56068).

A proposal requesting proceedings for the change of organization or a reorganization (see Sec. 56066) may be made by petition of specified contents (Sec. 56140; see also Sec. 54792), which is required to be filed with the executive officer (Secs. 54791 and 56151).

The contents of the petition are specified in Section 54792, for purposes of the Knox-Nisbet Act, and in Section 56140 for the purposes of the District Reorganization Act.

Section 54792 reads, as follows:

"54792. Each application shall be in such form as the commission may prescribe and shall contain:

"(a) A statement of the nature of each proposal;

"(b) A description of the boundaries of the territory proposed to be incorporated into a new city, to be formed into a special district, to be annexed to a local agency or to be excluded from a city;

"(c) A map showing such boundaries;

"(d) Such data and information as may be required by any rule or regulation of the commission;

"(e) Such additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission; and

"(f) The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the executive officer's report and who are to be given mailed notice of hearing." (Emphasis added.)

Section 56140 contains different requirements, and has no provision similar to subdivision (e) of Section 54792, emphasized above.

In the factual situation in question, the executive officer has called attention to the provisions of Section 54796, which set forth the factors to be considered in review of a proposal, and noted that the commission is required to consider the "... 'sphere of influence' of any local agency which may be applicable to the proposal being reviewed." (subd. (h), Sec. 54796). The executive officer then rejected the petition because it did not "contain" the spheres of influence of the cities and special districts which may be applicable to the proposal.

This matter could be resolved by reference to Section 56250, which provides that to the extent of any inconsistency between the Knox-Nisbet Act and the District Reorganization Act, the provisions of the District Reorganization Act control. However, we are reminded that the codes are to be read as one and, if possible, reconciled and harmonized so that all parts may be given effect (Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 230-231). Statutes must be given a reasonable and common sense construction in accordance with the different purpose and intention of the lawmakers (City of Costa Mesa v. McKenzie, 30 Cal. App. 3d 763, 770). Also, in construing a statute, the courts must look to the context of the law, and where uncertainty exists, consideration should be given to the consequence that will flow from a particular interpretation (Ivens v. Simon, 212 Cal. App. 2d 177, 181).

With these admonitions in mind, we see that Section 54774 requires consideration of spheres of influence. That section reads, in pertinent part, as follows:

"54774. \* \* \*

"Upon determination of a sphere of influence, the commission shall adopt such sphere, and shall periodically review and update the adopted sphere.

"The spheres of influence, after adoption, shall be used by the commission as a factor in making regular decisions on proposals over which it has jurisdiction. The commission may recommend governmental reorganizations to particular agencies in the county, using the spheres of influence as the basis for such recommendations. Such recommendations shall be made available, upon request, to other governmental agencies or to the public.

\* \* \* (Emphasis added.)

Section 54774 requires the spheres of influence to be used after adoption in making decisions. However, a lack of an adopted sphere of influence plan does not prohibit LAFCO from considering a proposal (Simi Valley Recreation & Park Dist. v. Local Agency Formation Com., 51 Cal. App. 3d 648, 684).

Furthermore, even if the courts were to construe Section 54792, together with Section 56140, to permit the executive officer to require the petition to contain other matters or factors which may be considered by LAFCO, we do not think that it would be reasonable to construe Section 54792 to permit the executive officer to require petitioners to furnish information which the petitioners cannot develop or obtain, as stated in the circumstances in question.

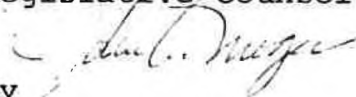
Therefore, in the factual situation under consideration, we think that the executive officer's rejection of the petition on the grounds that he may require any information which may be considered by LAFCO before accepting it, based on the requirement that the LAFCO consider the nonexistent sphere of influence, is incorrect because LAFCO is not required to consider a nonexistent sphere of influence.

The facts denote that no other reason exists as a basis for refusing to file the petition. Therefore, pursuant to the provisions of both Sections 54791 and 56157, the executive officer is under a mandatory duty to accept the proposal for filing.

Thus, in our opinion, under the stated facts, the executive officer may not refuse to accept the petition of application for reorganization for filing.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

  
By  
John A. Moger  
Deputy Legislative Counsel

JM:dse