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OPINION	:	No. 15-1103
of	:	September 2, 2016
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THE HONORABLE JOSE MEDINA, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a member of a city's redevelopment successor-agency board purchase commercial property located within a former redevelopment area pursuant to a right of first refusal contained in a lease that the member entered into before taking office?

CONCLUSION

A member of a city's redevelopment successor-agency board may not purchase commercial property located within a former redevelopment area pursuant to a right of first refusal contained in a lease that the member entered into before taking office.

ANALYSIS

In 1945, the Legislature created redevelopment agencies to revitalize blighted areas of communities.[1] For decades, the redevelopment agency was the "principal instrument of economic development" in California cities and counties.[2] In the vast majority of cases, the members of the legislative body of the city or county would also act as the board of the redevelopment agency.[3] The redevelopment agency board had the power to acquire real property, dispose of it without public bidding, construct infrastructure to enable building on project sites, and improve other facilities.[4]

In 2011, confronted with a statewide fiscal crisis, the Legislature enacted Assembly Bill 1X 26 (AB 1X 26) in order to recapture property tax increment revenue that had been diverted from schools to community redevelopment agencies.[5] This legislation prohibited redevelopment agencies from engaging in new business, directed that the agencies be dissolved, and provided for "successor agencies" to wind down their affairs.[6] As of February 1, 2012, the redevelopment agencies were dissolved, and the successor agencies, usually the cities or counties that created them, assumed both their assets and obligations.[7]

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[1] *Cal. Redevelopment Assn. v. Matasantos* (2011) 53 Cal.4th 231, 245-246 (*Cal. Redevelopment Assn.*); see Health & Saf. Code, § 33131, subd. (a) (redevelopment agencies are empowered to "prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas").

[2] *Cal. Redevelopment Assn.*, *supra*, 53 Cal.4th at p. 246.

[3] *Id.* at p. 246 & fn. 5.

[4] *Id.* at p. 246, citing Health & Saf. Code, §§ 33391, subd. (b), 33421, 33445.

[5] Assem. Bill No. 1X 26 (2011-2012 1st Ex. Sess.), enacted as Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 5 (eff. Jun. 29, 2011); Health & Saf. Code, §§ 34161-34191; *Cal. Redevelopment Assn.*, *supra*, 53 Cal.4th at p. 241; *County of San Bernardino v. Cohen* (2015) 242 Cal.App.4th 803, 807; 97 Ops.Cal.Atty.Gen. 57 (2014); see generally 97 Ops.Cal.Atty.Gen. 75, 76-77 (2014) (describing tax increment financing in former redevelopment agencies).

[6] *Cal. Redevelopment Assn.*, *supra*, 53 Cal.4th at pp. 241, 250-251.

[7] Health & Saf. Code, §§ 34170, subd. (a), 34172, subds. (a), (c), 34173, subd. (b), 34174, subd. (a), 34175; *Cal. Redevelopment Assn.*, *supra*, 53 Cal.4th at pp. 274-276; 97 Ops.Cal.Atty.Gen., *supra*, at p. 77. Community redevelopment authority has since returned to a limited extent. On September 22, 2015, Governor Brown signed Assembly Bill 2, which permits local government officials to form "community revitalization and investment authorities" in disadvantaged areas by using property tax increment revenue—other than from the school districts' share of such revenue—for public works

We are told about one city council member who took office on June 23, 2009, and, as part of his council duties, also served on the city's redevelopment agency board until the board was dissolved on February 1, 2012. At that point, he and the rest of the city council became members of the city's newly-created successor agency board.

In 2006, before assuming any of these offices, the council member entered into a lease of commercial property in a redevelopment area. The lease, which is set to expire in 2017,[8] includes a right of first refusal, under which the council member has the right to match a third party's offer to purchase the property during the duration of the lease.[9] We are asked whether it would now be a conflict of interest for the council member to exercise this right of first refusal, and purchase the property. We believe that it would.

In considering this matter, we are guided by our earlier opinion involving conflicts of interest for successor agency board members. In 97 Ops.Cal.Atty.Gen. 75 (2014), we determined that, after the passage of AB 1X 26, the conflict-of-interest statutes that governed redevelopment agencies continue to apply to their successor agencies.[10] Our reasoning was twofold. First, AB 1X 26 vested in the successor agencies all the duties and obligations of the redevelopment agencies that AB 1X 26 did not specifically repeal, restrict, or revise. Second, AB 1X 26 did not alter the conflict-of-interest statutes for redevelopment agencies.[11] We went on to conclude that these anti-conflict statutes generally prohibit a successor agency board member from acquiring real property in the former redevelopment area.[12] In reaching this conclusion, we invoked Health and Safety Code section 33130, subdivision (a), which provides that an "agency or community

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and affordable housing. (Assem. Bill No. 2 (2015-2016 Reg. Sess.), ch. 319; see Gov. Code, §§ 62000-62208.)

[8] The lease originally ran for five years, and was set to expire in 2011, but the council member exercised an option to extend the lease for six more years.

[9] The right of first refusal in the board member's commercial lease provides that: (1) the owner may not sell the premises before the lease has expired without giving him written notice of sale between the owner and the prospective purchaser; and (2) the board member then has 12 calendar days to exercise his right of first refusal to purchase the property on the same terms as in the notice of sale.

[10] 97 Ops.Cal.Atty.Gen., *supra*, at pp. 77-81.

[11] 97 Ops.Cal.Atty.Gen., *supra*, at p. 79, citing Health & Saf. Code, § 34173, subd. (b).

[12] 97 Ops.Cal.Atty.Gen., *supra*, at pp. 81-84, citing Health & Saf. Code, §§ 33130, 33130.5.

officer" may not "acquire any interest in any property included within a project area within the community."[13]

We now evaluate whether this same prohibition would prevent a successor agency board member—such as the council member at issue here—from purchasing commercial property in a former redevelopment area pursuant to a right of first refusal in a lease that the board member entered into *before* joining the redevelopment/successor agency board. In this evaluation, the phrase "acquire any interest in any property" in Health and Safety Code section 33130, subdivision (a) is crucial. If a successor agency board member purchases real property located in a former redevelopment zone through a preexisting right of first refusal, does he or she "acquire any interest in any property" in that zone?

To answer this question, we use well-established principles of statutory interpretation. The "first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose."[14] If the statutory language is clear, we "follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend."[15] But where the plain meaning alone does

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[13] 97 Ops.Cal.Atty.Gen., *supra*, at p. 81. Health and Safety Code section 33130, subdivision (a) states:

> No agency or community officer or employee who in the course of his or her duties is required to participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area shall acquire any interest in any property included within a project area within the community. If any such officer or employee owns or has any direct or indirect financial interest in property included within a project area, that officer or employee shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered on the minutes of the agency and the legislative body. Failure to make the disclosure required by this subdivision constitutes misconduct in office.

[14] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.

[15] *Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186, internal quotation marks omitted.

not conclusively resolve the question, we may examine extrinsic aids, including the statute's legislative history.[16]

In construing the statutory language at issue here, it is important to understand what a "right of first refusal" is. Sometimes called a "preemptive right," a right of first refusal is "a contractual right to purchase property in the event the owner decides to sell."[17] It "does not become an option to purchase until the owner of the property voluntarily decides to sell the property and receives a bona fide offer to purchase it from a third party,"[18] at which point the holder of the right of first refusal "has a limited period . . . to either *match* the offer or reject it."[19]

With this understanding, we conclude that the council member here would "acquire" an interest in real property by exercising his right of first refusal. First, the council member's lease gives him a leasehold interest in the property.[20] From the provision in the lease granting him a right of first refusal, he also possesses a contractual right to buy the property before the owner may sell it to a third party. In the event the owner and a third party reach an agreement for a sale of the property, the council member's right of first refusal then becomes an option to purchase. If he then exercises the option to purchase, he would *acquire* an ownership interest—a property interest that is new and distinct from his preexisting leasehold interest, right of first refusal, or option to purchase[21]—within the meaning of Health and Safety Code section 33130, subdivision

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[16] *MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083-1084.

[17] 10 Miller & Starr, Cal. Real Estate (4th ed. 2015) § 34:118; see also 54A Cal.Jur.3d Real Estate (May 2016 update) § 719.

[18] *Campbell v. Alger* (1999) 71 Cal.App.4th 200, 206-207.

[19] *Bill Signs Trucking, LLC v. Signs Family Limited Partnership* (2007) 157 Cal.App.4th 1515, 1523, internal quotation marks and ellipses omitted; see *Pellandini v. Valadao* (2003) 113 Cal.App.4th 1315, 1322 ("a right of first refusal is a 'preemptive right to purchase property on the terms and conditions of an offer to purchase by a third person'"), quoting *C. Robert Nattress & Associates v. Cidco* (1986) 184 Cal.App.3d 55, 66.

[20] 10 Miller & Starr, Cal. Real Estate (4th ed. 2015) § 34:2; see *De Luz Homes v. County of San Diego* (1955) 45 Cal.2d 546, 566-568; *City of South San Francisco v. Mayer* (1998) 67 Cal.App.4th 1350, 1354.

[21] See *Auerbach v. Assessment Appeals Bd. No. 1 for County of Los Angeles* (2006) 39 Cal.4th 153, 161-163; *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162-163.

(a).[22] The council member is therefore barred from purchasing this property in the former redevelopment area during his period of his service, even though his contractual right of first refusal existed prior to this period.[23]

Our interpretation of Health and Safety Code section 33130, subdivision (a) conforms to the Legislature's purpose in enacting the statute and retaining it after AB 1X 26: "to prevent conflicts of interest in a member of a [successor] agency with respect to property within the [former] redevelopment area under the jurisdiction of that agency . . . ."[24] This interpretation also aligns with judicial authority mandating that conflict-of-interest statutes be interpreted broadly to eliminate even the possibility of divided loyalty by public officials.[25] Although the council/successor agency board member entered into the lease before he assumed office, an exercise of the lease's right of first refusal to purchase the property would occur after he assumed office.[26] This

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[22] Black's Law Dict. (10th ed. 2014) pp. 28 ("acquire" is "[t]o gain possession or control of; to get or obtain"), 934 ("interest" is "[a] legal share in something; all or part of a legal or equitable claim to or right in property"); Random House Webster's Unabridged Dict. (2d ed. 1997) p. 993 ("interest" is "a share, right, or title in the ownership of property in a commercial or financial understanding or the like"); Webster's New Internat. Dict. (2d ed. 1961) p. 23 ("acquire" is "[t]o gain by any means . . . as, to *acquire* a title"); see *Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 30 (in statutes, words are ordinarily given "their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary").

[23] If the board member had purchased the property before assuming office, he would have been allowed to maintain ownership during his tenure provided he made a written disclosure of this interest to the agency, and the disclosure was entered into the board's minutes. (Health & Saf. Code, § 33130, subd. (a); see 61 Ops.Cal.Atty.Gen. 243, 245 (1978) ["Section 33130 distinguishes between what is permitted a member of the council and what is not on the basis of when an interest is acquired, not on the basis of the nature of the interest in property"].) He might also have been required to abstain from participating in decisions regarding the project area where the property is located. (97 Ops.Cal.Atty.Gen., *supra*, at p. 82, fn. 31.)

[24] 61 Ops.Cal.Atty.Gen., *supra*, at pp. 246-247; see 97 Ops.Cal.Atty.Gen., *supra*, at pp. 77-81.

[25] 61 Ops.Cal.Atty.Gen., *supra*, at p. 247.

[26] Cf. *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 194-197 (exercising a renewal option in a lease that the city council member entered into before taking office is "a 'making' of a contract" prohibited as a conflict of interest under Government Code section 1090); see also *id.* at p. 197 (where the court sympathizes with the council member's dilemma of either resigning from office or foregoing the renewal

situation creates a danger that the council member could exploit his position to buy the property in the former redevelopment area by a "possible misuse of information or influence" about the area to the community's detriment.[27]

There are three statutory exceptions to the rule prohibiting a redevelopment/successor agency board member from acquiring property within the former redevelopment area, but none of them would allow the contemplated purchase.[28] The first exception permits a board member to acquire an interest in a property in order to participate as an owner, or to re-enter into a business, if he or she "has owned a substantially equal interest as that being acquired for the three years immediately preceding the selection of the project area."[29] This exception does not apply here because the council member did not have an interest substantially the same as the contemplated

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option, but emphasizes the public policy of removing personal influence in the official discharge of duties).

[27] 97 Ops.Cal.Atty.Gen., *supra*, at p. 83, fn. 38, citing Sen. Local Gov. Com., Analysis of Assem. Bill No. 1075 (1985-1986 Reg. Sess.) as amended Apr. 23, 1985, p. 2 (analysis dated May 30, 1985) (Health and Safety Code section 33130, subdivision (a)'s first sentence is "the strongest and most specific protection against economic conflicts of interest" in this context). Given our conclusion that Health and Safety Code section 33130 precludes the purchase, we need not discuss whether, and under what circumstances, other conflict-of-interest schemes may be implicated by these facts. (See Gov. Code, § 1090 [contractual conflicts of interest]; Gov. Code, § 87100 [financial conflicts of interest]; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1170-1172 [common-law conflicts of interest]; 97 Ops.Cal.Atty.Gen., *supra*, at p. 82, fn. 31; 61 Ops.Cal.Atty.Gen., *supra*, at p. 248, fn. 1.)

[28] Health & Saf. Code, §§ 33130, subds. (b), (c), 33130.5. "These exceptions allow an officer to acquire and hold a property interest within a project area only for limited purposes, and contain safeguards to ensure that the officer will not, by virtue of his or her position, gain an unfair advantage with respect to the terms of the property acquisition, or profit from redevelopment improvements." (97 Ops.Cal.Atty.Gen., *supra*, at p. 84.) In examining these exceptions, we are mindful that they are to be construed narrowly to effect a broad interpretation of the general rule against conflicts of interest. (*Id.*, at pp. 85-86 & fns. 46-48 (applying this maxim to the exception for residential use in Health and Safety Code section 33130.5), citing Cal. Atty. Gen., Indexed Letter, No. IL 92-1112 (Dec. 2, 1992) at pp. 2-3.)

[29] Health & Saf. Code, § 33130, subd. (b); see Assemblymember George N. Zenovich, letter of intent to Governor Edmund G. Brown re Assem. Bill No. 2454 (1965 Reg. Sess.) June 25, 1965, p. 2 (the statutory purpose of requiring prior ownership of a substantially equal interest "is to prevent speculative acquisitions of property").

ownership interest in the commercial property for the three years before the project area was selected. The second exception authorizes a board member, if certain requisites are satisfied, to lease property.[30] This exception does not apply because we are concerned here with the lawfulness of the council member's potential purchase of the property, not the lawfulness of his current lease. The third exception relates to acquiring property for personal residential use.[31] This exception does not apply because the board member would continue to use the property only for commercial purposes after purchasing it. Because no statutory exception applies, we conclude that Health and Safety Code section 33130, subdivision (a), prohibits the council member from exercising his right of first refusal to purchase the property.[32]

We conclude that a member of a city's redevelopment successor-agency board may not purchase commercial property located within a former redevelopment area pursuant to a right of first refusal contained in a lease that the member entered into before taking office.

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[30] Health & Saf. Code, § 33130, subd. (c); see Assemblymember Ross Johnson, letter of intent to Governor George Deukmejian re Assem. Bill No. 1075 (1985-1986 Reg. Sess.) June 17, 1985, p. 1 (characterizing this exception as "a very narrow exemption from existing law").

[31] Health & Saf. Code, § 33130.5.

[32] 97 Ops.Cal.Atty.Gen., *supra*, at p. 83 (because the Legislature provided exceptions to Health and Safety Code section 33130, subdivision (a), "we must conclude that the Legislature intended to include no unstated or implied ones").