TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. CV 78-70
of	:	March 30, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Rodney Lilyquist, Jr. Deputy Attorney General	:	

SUBJECT: ACT APPLICABILITY TO STATE INSTITUTIONS—The 51st District Agricultural Association is subject to the provisions of the Subdivision Map Act and the Subdivided Lands Act in the subdivision and sale of its property.

Is the 51st District Agricultural Association subject to the provisions of the Subdivision Map Act and the Subdivided Lands Act in the subdivision and sale of its property?

The conclusion is:

The 51st District Agricultural Association is subject to the provisions of the Subdivision Map Act and the Subdivided Lands Act in the subdivision and sale of its property.

ANALYSIS

We have been informed that the 51st District Agricultural Association (hereinafter "Association") plans to subdivide approximately seven acres of its real property into twenty parcels for sale. The question presented is whether the Association must comply

with the provisions of the Subdivision Map Act (Gov. Code, §§ 66410–66499.37) and the Subdivided Lands Act (Bus. & Prof. Code, §§ 11000–11200) in the subdivision and sale of the property. We conclude that it must.

The Association is one of numerous district agricultural associations located throughout the state. Each association is a "state institution" (Agt. Code, § 3953) and is governed by state officers (Agr. Code, § 3962) appointed by the Governor (Agr. Code, § 3959). The associations are funded by the state and are subject to the control of various departments of the state. (56 Ops. Cal. Atty. Gen. 210, 214 (1973).) As a state institution, each association is considered to be a "public agency of the state." (See *Sixth District Agricultural Association v. Wright* (1908) 154 Cal. 119,128; 3 Ops. Cal. Atty. Gen. 263, 264 (1944).)

The Agricultural Code defines the purposes of a district agricultural association as follows:

> "(a) Holding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them.
>
> "(b) Constructing, maintaining, and operating recreational and cultural facilities of general public interest." (Agr. Code, § 3951.)

In carrying out its public purposes, an association may acquire and hold interests in real property. (Agr. Code, § 4051, subd. (b).) When an association sells an interest in property, the proceeds may be subsequently used in furthering the association's statutory objectives. (Agr. Code, § 4002.)

In California, two legislative schemes are generally applicable to the subdivision of real property and the sale of the subdivided parcels: the Subdivision Map Act and the Subdivided Lands Act.

The Subdivision Map Act basically requires that before property may be subdivided, a subdivision map must be prepared by the subdivider and be approved by the governing body of the city or county in which the land is located. (See 4 Miller & Start, Current Law of Cal. Real Estate (1977) § 24:33, pp. 60–61; 9 Hagman & Volpert, Cal. Real Estate Practice (1977) § 290.01, pp. 290–4; 2 Ogden's Revised Cal. Real Property Law (1975) § 25.2, p. 1205.) The purposes of the legislation are (1) to promote orderly community development, (2) to insure proper improvement of the areas within the subdivision that are dedicated for public purposes by the subdivider, and (3) to prevent fraud and exploitation

by the subdivider. (*Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 195–196; *Pratt v. Adams* (1964) 229 Cal. App. 2d 602, 606; 56 Ops. Cal. Atty. Gen. 496, 497 (1973).)

In general, the Subdivided Lands Act requires that before subdivided parcels may be sold or leased, certain information must be submitted by the subdivider to the California Department of Real Estate, and the Real Estate Commissioner must issue a public report authorizing the sale or lease. (See 4 Miller, *supra*, § 24:2, pp. 4–5; 12 Beil & Seneker, Cal. Real Estate Practice (1977) § 424.02, pp. 424–7; 2 Ogden, *supra*, § 25.3, pp. 1205–1206.) The purposes of the legislation are "to provide the prospective buyer with a full and complete picture of the risks which will be assumed prior to purchase of a parcel" and "to arm the buying public with a full disclosure of the essential facts to the end that an informed decision can be made on whether to purchase." (*Handeland v. Department of Real Estate* (1976) 58 Cal. App. 3d 513, 516.)

Governmental bodies such as the Association are neither expressly included nor excluded from the provisions of the Subdivision Map Act and Subdivided Lands Act. (See *Modesto Irr. Dist. v. City of Modesto* (1962) 210 Cal. App. 2d 652, 656.) The Subdivision Map Act refers broadly to "person, firm, corporation, partnership or association" (Gov. Code, § 66423), and the Subdivided Lands Act refers broadly to "owner, his agent or subdivider" (Bus. & Prof. Code, § 11010).

In determining whether these general terms are applicable to the Association as a governmental body, well-established rules of statutory construction must be followed. The California Supreme Court has recently reviewed these rules as follows:

> "[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. "Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only." [Citations.]'" (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 276–277; accord, *Regents of University of California v. Superior Court* (1976) 17 Cal. 3d 533, 536.)

Pursuant to this latter principle, governmental entitles have been held subject to legislation which by its terms applies simply to any "person." (*City of Los Angeles v. City of San Fernando, supra*, 14 Cal. 3d 199, 277; *Flournoy v. State of California* (1962) 57 Cal. 2d 497, 498–499; *Hoyt v. Board of Civil Service Commrs.* (1956) 21 Cal. 2d 399, 402;

State of California v. Marin Mun. Water District (1941) 17 Cal. 2d 699, 704–705; *Estate of Cooke* (1976) 57 Cal. App. 3d 595, 602.)

The crucial distinction in each of these cases concerns whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired (see *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 182–183; *City of Orange v. Valenti* (1974) 37 Cal. App. 3d 240, 244), while no exception is provided when the agency's public purposes are unaffected. (See *Regents of University of California v. Superior Court*, *supra*, 17 Cal. 3d 533, 537; *Flournoy v. State of California*, *supra*, 57 Cal. 2d 497, 498–499; *State of California v. Marin Mun. Water District*, *supra*, 17 Cal. 3d 699, 704–705; *City Streets Imp. Co. v. Regents, etc.* (1908) 153 Cal. 776, 779; *Dropo v. City & County of S.F.* (1959) 167 Cal. App. 2d 453, 460.)

Based upon the foregoing precepts, we believe that the Association must comply with the provisions of the Subdivision Map Act and Subdivided Lands Act in the subdivision and sale of its property. Its statutory purposes of holding fairs and operating facilities of general public interest are unaffected by complying with these statutory schemes enacted to insure orderly community development and informed purchasing decisions. It is not the use of the Association's property for public purposes that is in issue, only the disposal of its property. While sale of the parcels will result in revenue for subsequent use in furthering the Association's public purposes, the sales are not so closely related to the agricultural fair activities so as "to cloak the former with immunity even if the latter are immune." (See *Regents of University of California v. Superior Court*, *supra*, 17 Cal. 3d 533, 537.)

We are aware that in *Morris v. Reclamation District No. 108* (1941) 17 Cal. 2d 43, 53, the Supreme Court appears to indicate that the provisions of the Subdivision Map Act are inapplicable to all public agencies "where such subdivisions are authorized by law." Morris dealt with the issue of the reapportionment of special assessments and concerned a statute that gave the public agency in question the authority to subdivide property in the furtherance of its governmental responsibilities. Such activities thus came within the general principle of sovereign immunity and the exception to the rule was inapplicable. Moreover, Morris was not considering the current version of the Subdivision Map Act. Not only has the Legislature now included specific references to public agencies (see, e.g., § 66428), but the purposes of the legislation have been expanded to cover land use control and environmental protection (see §§ 66473.5, 66474), areas where a public agency disposing of unwanted property might not have specific knowledge or expertise. Accordingly, a broad reading of Morris to the effect that the general provisions of the Subdivision Map Act are inapplicable even when sovereign powers are not impaired would be inappropriate and inconsistent with the more recent pronouncements by the Supreme

Court in such cases as *Regents of University of California v. Superior Court*, *supra*, 17 Cal. 3d 533, 536, and *City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal. 3d 199, 276–277.[1]

In summary, compliance by the Association with the statutory schemes enacted to insure orderly community development and informed purchasing decisions will not impair the Association's public purposes of holding fairs and operating recreational and cultural facilities. Consequently, the Association is subject to the provisions of the Subdivision Map Act and Subdivided Lands Act in the subdivision and sale of its property.[2]

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[1] Since we conclude that the Association's public purposes are unaffected by the legislative schemes in question, we need not consider whether all governmental bodies may warrant sovereign immunity protection in their public activities. It may be argued that a mere state "institution" and "instrumentality" is not clothed with the sovereignty of the state and has no sovereign immunity from general legislation. (See *Regents of University of California v. Superior Court, supra*, 17 Cal. 3d 533, 536; *City Streets Imp. Co. v. Regents, etc*., *supra*, 153 Cal. 776, 779; *Estate of Royer* (1899) 123 Cal. 614, 624.)

[2] In Ops. Cal. Atty. Gen. 9161 (1934), we discussed the general principle of sovereign immunity and the application of the exception to the rule where sovereign powers were not impaired. In Ops. Cal. Atty. Gen. NS 701 (1937), we merely stated the general sovereign immunity principle. In Ops. Cal. Atty. Gen. 701a (1938), we again stated the general rule without discussing the exception and incorrectly held that "Opinion No. 9161 [was] superceded by Opinion No. NS 801."