TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. CV 78-74
of	:	March 30, 1979
GEORGE DEUKMEJIAN Attorney General	:	
Rodney Lilyquist, Jr. Deputy Attorney General	:	

SUBJECT: STATUTE APPLICABILITY TO STATE DEPARTMENTS—The 75 contiguous parcels of land owned by the Department of Transportation in Newport Beach are subject to the merger provisions of Government Code section 66424.2 for the purpose of sale.

The Honorable Marian Bergeson, Assemblywoman for the 74th District, has requested an opinion on the following question:

Are the 75 contiguous parcels of land owned by the Department of Transportation in the City of Newport Beach subject to the merger provisions of Government Code section 66424.2 for the purpose of sale?

The conclusion is:

The 75 contiguous parcels of land owned by the Department of Transportation in the City of Newport Beach are subject to the merger provisions of Government Code section 66424.2 for the purpose of sale.

ANALYSIS

We have been informed that the Department of Transportation (hereinafter "CALTRANS") wishes to dispose of 75 contiguous parcels of land in the City of Newport Beach (hereinafter "Newport"). The parcels were acquired by CALTRANS for the purpose of constructing a freeway, the plans for which have since been abandoned. Each of the parcels is unimproved and none conform to the minimum parcel size standard of the current Newport zoning ordinance.

Newport has an ordinance that provides for the merger of undeveloped, substandard sized, contiguous parcels which are all held by the same owner. The question presented for determination is whether the parcels owned by CALTRANS are subject to the provisions of Newport's merger ordinance. We conclude that CALTRANS is not immune from the merger provisions of the Newport ordinance.

Newport's merger ordinance is authorized by Government Code section 66424.2,[1] one of the statutes of the Subdivision Map Act (§§ 66410–66499.37) (hereinafter "Act"). The Act was enacted in part to promote orderly community development. (*Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 195–196; *Pratt v. Adams* (1964) 229 Cal. App. 2d 602, 606.) Minimum lot size restrictions facilitate this purpose. (See *Clemons v. City of Los Angeles* (1950) 36 Cal. 2d 95, 100.)

Section 66424.2 allows a local agency to provide by ordinance that if any one of two or more contiguous parcels "held by the same owner does not conform to standards for minimum parcel size to permit use or development under a zoning ordinance of the local agency and at least one of such contiguous parcels is not developed with a building. . . . such parcels shall be merged . . . ."

The Act is generally applicable to any "person, firm, corporation, partnership or association" (§ 66423), while section 66424.2 and Newport's merger ordinance refer generally to "owner." Consequently, governmental entitles are neither expressly included nor excluded from the general provisions of the Act (see *Modesto Irr. Dist. v. City of Modesto* (1962) 210 Cal. App. 2d 652, 656), section 66424.2, or the Newport merger ordinance.

In determining whether CALTRANS is subject to these broadly worded enactments, we are guided by well-established principles of statutory construction. The California Supreme Court has recently reviewed these rules as follows:

[1] All unidentified section references hereinafter refer to the Government Code.

> "[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 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.) As previously mentioned, the Act refers to "person" and section 66424.2 and the Newport merger ordinance refer to "owner."

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. 2d 699, 704–705; *City Streets Imp. Co. v. Regents* (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 when CALTRANS wishes to dispose of its property rather than use it for a public purpose, it must comply with the provisions of the Act and the local ordinances enacted thereunder. The purpose of constructing freeways is unaffected here by complying with a local ordinance enacted to insure orderly community development, since the ordinance affects CALTRANS only with respect to the size of the lots upon their subsequent sale. It is not the use of the property by CALTRANS for a public purpose that is in issue; such public purpose has been abandoned. While sale of the parcels will result in revenue for subsequent use in furthering CALTRANS' public purposes, the sales are not so closely related to these purposes "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 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 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 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.

In summary, CALTRANS is not immune in the sale of its property from the application of Newport's ordinance merging substandard sized parcels. The public purpose of constructing freeways is unaffected by such application and orderly community development is thereby fostered.[2]

*****

---

[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. NS 701a (1938), we again stated the general rule without discussing the exception and incorrectly held that "Opinion No. 9161 [was] superseded by Opinion No. NS 701."