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OPINION	:	No. 79-1120
	:	
of	:	<u>March 18, 1980</u>
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SUBJECT: “CURRENT MARKET VALUE” DEFINED—The “current market value” of 25 acres of land and improvements sold by the state to the City of Commerce as directed by the provisions of chapter 1017, Statutes of 1978, is the “market” value of the property in the light of all of the uses to which an informed buyer could put the property including, but not limited to, uses in contemplation of which the Legislature directed that the property be sold.

The Honorable R. E. Rominger, Director, Department of Food and Agriculture, requests an opinion on a question that we have rephrased as follows:

In determining the “current market value” of the 25 acres of land and improvements sold by the state to the City of Commerce as directed by the provisions of chapter 1017, Statutes of 1978, is the value of the property to be determined based exclusively upon the purpose for which the property is to be sold, to wit: for the purpose of the construction of a residential development to provide an expanded supply of low and moderately priced housing, such housing to include but not be limited to low-income senior citizen housing and family housing units?

CONCLUSION

The “current market value” of 25 acres of land and improvements sold by the state to the City of Commerce as directed by the provisions of chapter 1017, Statutes of 1978, is the “market” value of the property in the light of all of the uses to which an informed buyer could put the property including, but not limited to, the uses in contemplation of which the Legislature directed that the property be sold.

ANALYSIS

We are requested to interpret the phrase “current market value” as it is contained in chapter 1017, Statutes of 1978, pertaining to the sale of approximately 25 acres of land and improvements, which was the property of the 48th Agricultural Association located in the City of Commerce, California.

Chapter 1017, Statutes of 1978, reads as follows:

“SECTION 1. The Department of General Services with approval of the State Public Works Board shall convey to the City of Commerce, for *current market value*, approximately 25 acres of land fronting on Eastern Avenue occupied by the Great Western Exhibit Center which is the property of the 48th Agricultural Association in Commerce, California.

“The property shall be conveyed for the purpose of construction of residential development to provide an expanded supply of low and moderately priced housing. Such housing shall include but not be limited to low-income senior citizen housing and family housing units.

“SEC. 2. Any cost or expense incurred by the Department of General Services in the sale of the parcel may be reimbursed from the proceeds of such disposition.

“SEC. 3. The Director of General Services shall except and reserve in the state all geothermal resources and all deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such resources and deposits. Such rights to prospect for, mine and remove shall be limited to those areas of the property conveyed which the director determines to be reasonably necessary for the removal of such resources and deposits.

“SEC. 4. The property described in Section 1 of this act shall be exempt from the provisions of Sections 21000 to 21174, inclusive, of the

Public Resources Code.

“SEC. 4.5. The 48th District Agricultural Association shall not expend for obtaining another fair and exposition site an amount in excess of the proceeds that it receives from the sale under Section 1.

“SEC. 5. The Department of General Services shall not enter into such transaction unless all moneys, excepting those described in Section 2, derived from the sale of such property are forwarded to the 48th District Agricultural Association to be expended for the sole purpose of obtaining another fair and exposition site for the 48th District Agricultural Association.

“SEC. 6. All proceeds received from the sale under Section 1, less costs and expenses of sale, are hereby appropriated to the 48th District Agricultural Association for expenditure by the district in accordance with the provisions of Section 5.” (Emphasis added.)

The 48th District Agricultural Association was the owner of a parcel of land, which has been used as a site for its Great Western Exhibit Center. Its property is public property, which is within the exclusive management and control of the state. (*Sixth District Agricultural Assoc. v. Wright* (1908) 154 Cal. 119, 128; *People v. San Joaquin Valley Agricultural Assoc.* (1907) 151 Cal. 797, 800.) The parcel is the subject of a quitclaim deed and agreement for the sale of real property executed by the state and the City of Commerce, providing for transfer of title from the state to the city upon the payment to the state of a sum of money yet to be determined. The quitclaim deed of the state has been delivered, leaving only the question of the value of the property to be determined.

We understand that the Legislature was advised that the location of the property is such that the property is very valuable if it could be devoted to a use other than as a site for the 48th District Agricultural Association’s Great Western Exhibit Center. The Legislature was further advised that the 48th District Agricultural Association could obtain a replacement site for its Great Western Exhibit Center on other property equally as suitable for its purposes but not as centrally located for the more valuable uses to which the property could be put. Thus motivated, the Legislature enacted chapter 1017, Statutes of 1978, *supra*, authorizing the sale of the property for “current market value.”

The Agreement for the Sales of Real Property, dated October 24, 1979, provides in part that:

“WHEREAS, pursuant to AB 2157 [ch. 1017, Stats. 1978] the State will sell to City for construction of residential development to provide an

expanded supply of low and moderately priced housing and State desires to sell for such purpose the fee to an approximately 25 acre parcel of property in the City of Commerce, California, known as the "Great Western Exhibit Center." Said property is occupied by the 48th District Agricultural Association, and is described on Exhibit "A."

"NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

"1. The City will pay to the State the sum of \$2,765,000 for the purchase of the property described on Exhibit "A," attached hereto and made a part hereof, subject to possible upward price adjustments as hereinafter provided.

"2. The State will convey the property to City by Quitclaim Deed, after approval and execution of this document, upon payment by City to the State of \$2,765,000.

"3. The State has appraised the subject property at \$3,700,000 and City accepts the figure of \$3,700,000 as the fair market value of the property, provided legally its highest and best use is for industrial purposes, (subject to adjustments downward requested by the City and which are approved by the Department of General Services after consideration of certain development problems which were not considered in the appraised.

"The parties agreed to litigate, in a declaratory relief action to be filed in the Los Angeles Superior Court, the question as to whether legally the highest and best use of the property to be sold in accordance with the provisions of Chapter 1017, Statutes of 1978, is industrial or is residential. If the final decision of a court of competent jurisdiction holds that the highest and best use is commercial, the total purchase price shall be \$3,700,000 rather than \$2,765,000. If such decision is that the highest and best use is legally residential, then the parties hereto agree that the total purchase price shall be \$2,765,060. It is also understood that the 48th District Agricultural Association will request a written opinion from the Attorney General's office as to the legal highest and best use of the property, if the Attorney General issues a written opinion concluding that the highest and best use is legally residential, the parties agree that litigation will not be instituted and the total purchase price shall be \$2,765,000."

The issue of the “highest and best use” of the property is to be resolved in the following context:

“As you are now aware, it is the City’s contention that our use of the property has been specifically limited by AB 2157. Assemblyman Art Torres insisted upon a limitation of the use of the property in testimony before the Assembly Committees that reviewed the Bill. This insistence, in one instance, was in response to a legislator’s specific suggestion that the property be sold to the City without limitation, in the absence of a State limitation we would have no quarrel with the higher value appraised by the State. If, however, we are limited by the language or the action of the Legislature, we feel the appraisal assumptions should reflect this limitation.

“ ”

“In summary, the City does not feel it is right for the State to sell us property for a high industrial price based on standard assessment criteria and then tell us we must use it only for lesser uses specified in AB 2157. If the property’s use is restricted by the seller, the valuation should reflect the restriction.” (Letter dated November 14, 1979, from Robert Hinderliter, City Administrator, City of Commerce, California.)

Thus, it appears that the parties to the agreement agree that the property is to be valued with respect to its *legal* highest and best use. Further, they agree that the value of the property is \$2,765,000 if it legally may be used only for the residential purposes recited in chapter 1017, Statutes of 1978, and that it is to be valued at \$3,700,000 if it legally may be used for a higher use, e.g., commercial or industrial use; Further, the parties agree that the determination of the existence of a restricted use, if one exists, is to be arrived at by virtue of the provisions of chapter 1017, Statutes of 1978, and not by virtue of any other factor.

We note the potential conflict of interest in expressing our opinion upon the issue presented because it appears that the state has bound itself to abide by our opinion while the city is not bound but rather expressly covenants to institute a legal proceeding if our conclusion is adverse to their contention as to the meaning of chapter 1017, Statutes of 1978. However, the parties have waived that potential conflict of interest. Our own independent analysis of the potential conflict of interest leads us to conclude that it is in principle no different than any other situation involving the state where we are asked to render our opinion concerning an issue of statutory interpretation where the state may be affected adversely by our conclusions.

Thus, we turn to the question of the proper interpretation of chapter 1017, *supra*, with respect to the issue of whether it contains a valid limitation upon the future use of the affected property, upon sale by the state to the City of Commerce.

The state Legislature may act with respect to property, held in public ownership, in a proprietary capacity as its owner or in its sovereign capacity by enacting laws regulating its use or, perhaps, in both capacities. Did the Legislature, in enacting chapter 1017, intend to act as an owner conveying its property or as a sovereign limiting the use of this parcel by its legal owners or both?

Viewing chapter 1017 as evidencing an act of an owner conveying its land, it seems evident that the laws applicable to conveyancing generally would be applicable. In this respect, the language utilized by the Legislature with respect to its use suggests no reservation of a future interest in the land, no condition to the conveyance of the fee, no right of reentry encumbering the title of the city once the parcel is conveyed. (See generally, *Beran v. Harris* (1949) 91 Cal. App. 2d 562.) Chapter 1017 is entitled “An act relating to the sale and purchase of property” (Emphasis added.) This language indicates that the state was acting in its proprietary capacity. Had the Legislature intended to reserve a property interest to enable it to enforce the “use” provision, it easily could have used language indicative of such an intent similar in nature and substance to that it used in section 3 of chapter 1017 to reserve the mineral rights in the state. The “use” language used in chapter 1017 is not as restricted as that used in the deed in *Beran, supra*, which language recited that the property was to be used for certain purposes “only.” The court stated that such language was “but a declaration of the purpose for which the grantor expected the land would be used.” The Legislature is presumed to know the law, including case law, and to have it in mind when it legislates. It must be presumed to know the law of the *Beran* case when it enacted chapter 1017.

Viewing chapter 1017 as an attempt to restrict the use of land by the legislation in the nature of a zoning act, it must be noted that the language used in chapter 1017 is singularly inappropriate to accomplish that purpose.

Article IV, section 16 of the California Constitution provides:

“(a) All laws of a general nature have uniform operation.

“(b) A local or special statute is invalid in any case if a general statute can be made applicable.”

Chapter 4, title 7 of the Government Code (commencing with § 65800) is a general statute which authorizes counties and cities to enact zoning regulations governing the use of

property. We know of no reason why this general zoning statute would not be applicable to the land authorized to be conveyed by chapter 1017. Thus, if chapter 1017 were construed as a zoning measure it would be invalid under article IV, section 16(b) of the California Constitution.

Our courts have equated the provisions of article IV, section 16(b) of the California Constitution to those of the equal protection clause and they discuss the legal issue in terms of whether the classification by the Legislature is reasonable or arbitrary. (See *Serve Yourself Gas Stations Ass'n. v. Brock* (1952) 39 Cal. 2d 813, 820; *Sawyer v. Barbour* (1956) 142 Cal. App. 2d 827, 838.) There is, however, no attempt at classification in enacting chapter 1017 but rather there is only a simple legislative statement that one piece of land is to be used for a particular purpose. Since there is evident no attempt to avoid the clear language of article IV, section 16(b), we conclude that they did not intend chapter 1017 to operate as a zoning measure by utilizing the legislative power of the state to restrict the use of the land in question.

The words used by the Legislature in enacting chapter 1017 are more expressive of its purpose in authorizing the sale of the property than they are of enacting an enforceable restriction upon the subsequent use of the property. The phrase "current market value" appears to be indicative of a legislative intent that the state obtain the best price possible.

Accordingly, it is concluded that the property should be valued on the basis of its highest and best use, including commercial and industrial uses, in the absence of a judicial decision binding upon the parties and their successors in interest that restricts the future use of the property.
