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OPINION	:	No. 80-1212
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of	:	<u>MAY 7, 1981</u>
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The Honorable Milton Goldinger, County Counsel of Solano County, has requested an opinion on the following question:

May a mosquito abatement district trade improved real property that it presently owns to a private party for real property and improvements of equal value?

CONCLUSION

A mosquito abatement district may not trade improved real property that it presently owns to a private party for real property and improvements of equal value.

ANALYSIS

The question before us arises out of the following factual situation presented to us by the requester of this opinion:

A mosquito abatement district owns real property upon which the building housing its headquarters offices is situated. The building is in need of major repairs but is still functional and is presently in use. A private developer wishes to develop the entire city block upon which the district's property is located. The developer therefore seeks to acquire the district's property. In exchange for this property the developer is offering to give the district real property that would be appraised to be of equal value and which would have to include a structure that would meet the district's need for a suitable headquarters building. The district generally favors this transaction as it will afford the district the opportunity to acquire a headquarters building that is in better condition than its present one.

The question presented to us is whether, under the circumstances indicated, the district is empowered to exchange with a private party its real property for other property of equal value.

The statutory provisions governing the establishment and operations of a mosquito abatement district are set forth in sections 2200 to 2360 of the Health and Safety Code.¹ The powers of such a district are specified in section 2270 (see 62 Ops. Cal. Atty. Gen. 643, 643–645 (1979)) which, among other things, provides: that the district may “[t]ake all necessary or proper steps for the extermination of [insect pests]. . . .” (§ 2270(a)); that it may acquire property necessary for the purpose of “construct[ing], repair[ing], and maintain[ing], necessary dikes, levees, cuts, canals, or ditches” “[i]f necessary or proper, in the furtherance of the objects of [the mosquito abatement district statute]” (§ 2270(d)); that it may sell or lease any of its real property but that every such sale “shall be made to the highest bidder at public auction. . . .” (§ 2270(g)); and that and to carry out the objects specified in, [the mosquito abatement district statute]” (§ 2270(1)).² See also section 2205 authorizing the district “to exercise the powers expressly

¹ Hereafter all section references are to the Health and Safety Code.

² As set forth in full, section 2270 provides:

The district board may:

“(a) Take all necessary or proper steps for the extermination of mosquitoes, flies, or other insects either in the district or in territory not in the district but so situated with respect to the district that mosquitoes, flies, or other insects from such territory migrate into the district.

“(b) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies, or other insects either in the district or in territory not in the district but so situated with respect to the district that mosquitoes, flies, or other insects from such territory migrate into the district.

“(c) Purchase such supplies and materials, employ such personnel and contract for

granted or necessarily implied by [the statute].”)

such services as may be necessary or proper in furtherance of the objects of this chapter.

“(d) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain, necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, right-of-way, easements, property, or material necessary for any of those purposes.

“(e) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

“(f) Enter upon without hindrance any lands, within or without the district, for the purpose of inspection to ascertain whether breeding places of mosquitoes, flies, or other insects exist upon such lands; or to abate public nuisances in accordance with this article, or to ascertain if notices to abate the breeding of mosquitoes, flies, or other insects upon such lands have been complied with, or to treat with appropriate chemical or biological control agents any breeding places of mosquitoes, flies or other insects upon such lands.

“(g) Sell or lease any land, rights-of-way, easements, property or material acquired by the district.

“Every sale of real property pursuant to this subdivision shall be made to the highest bidder at public auction after five days’ notice given pursuant to Section 2204 of this code, and at such place within the district as the district board shall specify.

“(h) Borrow money in any fiscal year and repay it in the same or in the next ensuing fiscal year. The amount borrowed in any fiscal year is not to exceed fifteen cents (\$0.15) on each one hundred dollars (\$100) of assessed valuation of property in the district.

“(i) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board not to exceed 5 percent per year, payable annually or semiannually as the board may prescribe.

“(j) Provide a civil service system for any or all employees of the district.

“(k) Assess civil penalties as determined by the discretion of the board, but not to exceed \$500 per day for each day that a notice or hearing order to abate a nuisance has not been complied with.

“Any sum which may be collected shall become part of the district’s general fund to be used solely for vector control purposes for the entire district.

“(l) Do any and all things necessary or incident to the powers granted by, and to carry out the objects specified in, this chapter.”

In *Skreden v. Superior Court* (1975) 54 Cal. App. 3d 114, the court recognized that while the statute did not expressly authorize a mosquito abatement district to acquire property for its office building, the statute conferred such power upon the district “by clear implication.” (*Id.* at p. 117; *accord*, 62 Ops. Cal. Atty. Gen. 643, *supra*, at pp. 645–646.) Further, the power of a district to dispose of real property (an equipment yard) which has become unsuitable for its purposes and acquire new property which is more suitable for such purposes, has been recognized in a previous opinion of this office (8 Ops. Cal. Atty. Gen. 266, 267 (1946).)

Thus the ultimate objective of the district, the disposal of an office building which is becoming unsatisfactory for the district’s uses, and the acquisition of new property with a more satisfactory office building, is within the district’s general powers. However, the question here is whether such power may be exercised through the process of an exchange of realty.

An exchange, of course, involves a disposal as well as an acquisition of property. (*Bixby v. Bent* (1881) 59 Cal. 522, 528.) But the only power specified in the statute in reference to a district’s disposal of its real property is the power to “[shell or lease” such property. (§ 2270(g)) There is no express reference to the exchange of property. However, in examining the legal nature of an exchange the Supreme Court declared that: “In law, an exchange is two sales.” (*Robbins v. Pacific Eastern Corp.* (1937) 8 Cal. 2d 241, 269; see also Cal. U. Com. Code § 2304(1).) Similarly in *House v. McMullen* (1909) 9 Cal. App. 664, 673, it was noted that “‘exchange,’ . . . is indeed a species of sale.” See also *Roberts v. Northern Pacific Railroad* (1895) 158 U.S. 1,18, where the United States Supreme Court concluded that where a county possessed the power to sell its land for money, there is nothing in the absence of an express provision of law “that restricts them from selling for money’s worth.” See also *Mansfield v. District etc. Assoc.* (1908) 154 Cal. 145, 147–148 where in reference to the power of a district agricultural association, the Supreme Court stated: “the much more generally accepted definition of a sale is the exchange of an interest in real or personal property for money or its equivalent.” (*Accord*, *Wilson v. Superior Court* (1935) 2 Cal. 2d 632, 636.) Thus, standing alone, the statutory authority of a mosquito abatement district to sell and purchase real property would appear to encompass the power to exchange such property. (See Annot. (1958) 60 A.L.R. 2d 220, 225, § 3(b) enumerating cases supporting the proposition that an express power in a municipality to buy and sell realty includes the power to exchange realty.) However, the provision in section 2270(g) authorizing a district to sell its real property is expressly qualified by the requirement that: “Every sale of real property pursuant to 2270(g)) shall be made to the highest bidder at public auction after five days’ notice . . .” (“The mode prescribed is the measure of the power.”) *People v. Zamora* (1980) 28 Cal. 3d 88, 98.)

The significance, with respect to a district's powers, of the requirement that sales of its real property shall be accomplished through the competitive bidding process is illuminated by the purposes of such a requirement. ("It is a well-established legal principle that the purpose of a statute is a guiding stat in defining the language it employs. *Sierra Club v. City of Hayward* (1981) 28 Cal. 3d 840, 860, fn. 12.) The primary purpose of the competitive bidding provision, as is indicated by its reference to the "highest bidder," is to reinforce the possibility that the district realize the highest obtainable economic return upon the disposition of its property. In commenting upon such a provision the Supreme Court of Arizona stated: "The undoubted purpose of the law is to benefit the taxpayers and citizens of the city by regulating the manner in which disposition may be made of city property, to the end that the city shall secure as great a return for its property as is reasonably possible." (*Brown v. City of Phoenix* (Ariz. 1954) 272 P. 2d 358, 361; see *Post v. Prati* (1979) 90 Cal. App. 3d 626, 636; and *cf.* 30 Ops. Cal. Atty. Gen. 274, 277 (1957).) Another recognized purpose of competitive bidding laws is to avoid favoritism in the carrying out of public transactions. (*City of Inglewood-L.A. County Civic Center Auth. v. Superior Court* (1972) 7 Cal. 3d 861, 867; see 10 McQuillin, *Municipal Corporations* (1966 rev.) § 28.54, p. 153.)

However, because an exchange, in effect, excludes bids that may be higher as well as lower than the appraisal values upon which the exchange is based, and because it predetermines the purchaser of the public property, an exchange would be inimical to the competition encouraging purposes of the requirement that real property be sold 'to the highest bidder at public auction.' (§ 2270(g).)

The propriety of an exchange of real property in the face of a competitive bidding requirement was similarly assessed by the *Ohio Court of Appeals in Young v. City of Dayton* (1962) 188 N.E.2d 166, a case where a city with a charter requirement for competitive bidding sought to exchange real property with particular private parties. In that case the court stated:

"If two or more persons are endeavoring to gain the same thing at the same time, the essence of competition requires that each shall be free to act and have equal opportunity to secure the object sought and if one is hampered or restricted by conditions that do not apply to the other, then the moral soundness, the integrity of competition, is thereby undermined to the detriment of the public." [Citations omitted.]

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"If the [particular parties'] property alone is acceptable as the purchase price for what the city has to sell, then only the [particular parties] can hope to bid successfully, and there is no opportunity for competition.

“Counsel for defendant city argues that there is no provision against a trade or swap of properties. However, the provisions of the charter specifying how unneeded property shall be disposed of prevent a trade or swap being made here. This fact was obviously recognized by the city when it passed the ordinance providing for the formalities, at least, of a public auction.

“It may well be argued that the city ought to have authority to make such a trade. But it cannot do so without a revision of the charter authorizing it to do so.” (*Id.* at p. 168.)

We conclude therefore that by virtue of the requirement in section 2270(g) that real property be sold by a district “to the highest bidder at public auction,” a mosquito abatement district is precluded from disposing of its real property by exchanging it with a private party³ for other real property of equal value. (See *Cimpher v. City of Oakland* (1912) 162 Cal. 87: Grant of city property void for failure to comply with charter requiring sales to be pursuant to ordinance and by public auction to the highest bidder.)⁴

³ See Government Code section 25365 which permits a county to exchange real property with special districts under specified conditions upon a four-fifths vote of the board of supervisors.

⁴ We note *Meakin v. Steveland, Inc.* (1977) 68 Cal. App. 3d 490, 498, which recognized that there can be “exceptional circumstances” which may excuse compliance with competitive bidding requirements “where requests for competitive proposals would be futile, unavailing or would not produce an advantage” In that case the court found such exceptional circumstances to exist in the fact that the proposed grantee was the only potential purchaser because the property’s situation rendered it unmarketable to anyone else, and that the grantee was willing to pay the full appraised value for the property. However, we do not perceive that such “exceptional circumstances” obtain in the present situation.