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OPINION	:	No. 80-302
	:	
of	:	<u>May 28, 1980</u>
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Rodney Lilyquist, Jr.	:	
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SUBJECT: SALE OF REAL PROPERTY—After receiving and spending federal funds for the purchase of real property to be used for low and moderate income housing, a general law county may sell the property to a developer at below market value through direct negotiation and without the solicitation of competitive bids.

The Honorable Adrian Kuyper, County Counsel, Orange County, has requested an opinion on the following question:

After receiving and spending federal funds for the purchase of real property to be used for low and moderate income housing, may a general law county sell the property to a developer at below market value through direct negotiation and without the solicitation of competitive bids?

CONCLUSION

After receiving and spending federal funds for the purchase of real property to be used for low and moderate income housing, a general law county may sell the property to a. developer at below market value through direct negotiation and without the solicitation of competitive bids.

ANALYSIS

Under the community development block grant program (see 42 U.S.C. § 5301 *et seq.*; 24 C.F.R. § 570.1 *et seq.* (1979)), the United States Department of Housing and Urban Development provides funds to local governments for various activities. Among the approved activities is the construction of housing for persons of low and moderate income.

We are informed that Orange County, a general law county, has received funds under the federal program and has purchased certain parcels of real property with the funds. The county now wishes to sell the property to a private housing developer for the construction of housing for low and moderate income persons.

The question presented for analysis is whether the county, in carrying out the purposes of the federal program, is precluded under California law from selling the property to the developer through direct negotiation rather than at public auction to the highest competitive bidder. We conclude that the county need not comply with the California statutes requiring a public auction sale.

We note first that a general law county may exercise, through its board of supervisors, “only those powers expressly or impliedly granted to it by the Constitution or statute.” *McCafferty v. Board of Supervisors* (1969) 3 Cal. App. 3d 190, 192; see Gov. Code § 23003.)¹

Sections 23004 and 25521 authorize a board of supervisors to sell any real property belonging to the county. The Legislature, however, has generally required that the sale of county land be at public auction with conveyance to the highest bidder. Section 25363 provides in part: “The board of supervisors may sell or lease at public auction, and convey to the highest bidder, for cash, any property belonging to the county not required for public use.” (See also §§ 25526, 25530, 25531, 25538, 25538.1, 25539; 35 Ops. Cal. Atty. Gen. 38, 38–39 (1960).)

Exceptions to the bidding procedure requirement exist for conveyances to other public entities (§§ 25365, 25365.5, 25365.6, 25368) where the property has little value (§§ 25363, 25576, 25576.5, 25538), or where such a procedure would be an idle act. (*Meatrin v. Steveland, Inc.* (1977) 68 Cal. App. 3d 490, 498.)

Significant for our discussion is the legislative authorization for a county to sell residential property at below market value under the provisions of sections 25539.1 and 25539.2. These statutes provide:

¹ All unidentified section references hereinafter are to the Government Code.

“The Legislature hereby finds that many persons and families of low or moderate income cannot afford to purchase housing in the conventional housing market. The Legislature also recognizes that counties occasionally acquire residential property requiring substantial rehabilitation prior to being deemed habitable. Since maintenance of existing housing stock and the extension of opportunities for homeownership are desirable objectives, the Legislature declares that the public interest would be well served if counties were empowered to sell such residential property at less than market value to persons and families of low or moderate income, as defined in section 41056 of the Health and Safety Code, on condition that the purchaser rehabilitate the home and reside therein for a specified length of time.” (§ 25539.1.)

“When the legislative body of a county finds the public interest and convenience require the sale for less than the market price of residential property acquired by the county, it may pass an ordinance providing for such sale. The ordinance shall set forth the procedure to be followed in completing such sales, including the qualifications required of a purchaser of such property, and shall contain provisions requiring that the purchaser of the property live in the property for a specified length of time and must rehabilitate such property to the extent specified in the ordinance; provided, however, that title to the property shall not be transferred until all the requirements set forth in the ordinance have been satisfied. Persons eligible to purchase such residential property shall be persons and families of low or moderate income or very low income households as defined in sections 41056 and 41067 of the Health and Safety Code. To the greatest extent possible, counties shall utilize such ordinances to assist very low income and low income households.” (§ 25539.2.)

While these statutes refer specifically to existing residential properties, the Legislature has also authorized the use of public funds to provide the land for new housing developments for low and moderate income persons. As long as the developer agrees to allocate a minimum of 25 percent of his project for low and moderate income persons, a county (or city) may provide “utilization of federal or state grant moneys or local revenues to provide the land on which the housing development will be constructed at a reduced cost.” (§ 65915, subd. (c).)

We view subdivision (c) of section 65915 as giving authority to a local government to use the designated funds in any manner that will “provide the land” to a developer “at a reduced cost.” Under the statute, one method would be for the local government to purchase the property with the designated funds and then sell it to the developer at a

“reduced cost.”² For example, property valued at \$100,000 could be purchased by a county and resold to a developer for \$50,000. In so doing, the county would be reducing the cost of the property to the developer, while effectuating the intent of the Legislature to provide housing for low and moderate income persons. As stated in section 65917, the legislative purpose of granting such an incentive is “to . . . contribute significantly to the economic feasibility of low and moderate income housing.”

This purpose is clearly distinguishable from the legislative purpose in requiring the sale of public property be to the “highest bidder.” The latter requirement is appropriate where no public purpose is served other than to make available the maximum amount of funds to the government agency. (See 35 Ops. Cal. Atty. Gen. 38, 39 (1960).) Where, however, a valid public purpose is served by not requiring competitive bidding procedures, the Legislature has so provided. (Sec §§ 25365, 25365.5, 25365.6, 25368.) The construction of housing for low and moderate income persons manifestly carries out a well recognized public purpose. (See §§ 25539.1, 26227, 65917; *California Housing Finance Agency v. Elliot* (1976) 17 Cal. 3d 575, 582–586; *Board of Supervisors v. Dolan* (1975) 45 Cal. App. 3d 237, 242–247; *Winkelman v. City of Tiburon* (1973) 32 Cal. App. 3d 834, 844–846.)

We believe, therefore, that the providing of land to a developer “at a reduced cost” under section 65917 is distinguishable in purpose and intent from the selling of public property at public auction “to the highest bidder” under the competitive bidding statutes. It is well established that the provisions of a specific statute, such as section 65917 dealing with low and moderate income housing, control possible conflicting provisions of a general statute, such as section 25363 dealing with surplus property. (See *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal. 3d 392, 420.)

Moreover, we question whether the general competitive bidding statutes would be applicable to the present circumstances even if the authorization under section 65915 had not been enacted by the Legislature. Section 25363, for example, speaks in terms of the property being “not required for public use,” a characterization that would not appear to be applicable to land upon which low and moderate income housing is constructed pursuant to a government program. Additionally, an argument may be made that a “sale” of property “owned” by the county is not at issue; rather, the county is merely acting as a “trustee,” “agent,” and “conduit” under the federal program. (See 62 Ops. Cal. Atty. Gen. 562, 563–564 (1979).)

² In such case, section 65916 requires that the local government “assure continued availability for low and moderate-income units for 30 years.”

Finally, we recognize that section 6 of article XVI of the California Constitution generally withholds the power of the state, a county, or city “to make any gift or authorize the making of any gift, or any public money or thing of value to any individual, municipal or other corporation whatever.” It is well established, however, that this constitutional prohibition is not violated where the expenditure of the public funds, although benefiting private persons, serves a public purpose, including the construction of low and moderate income housing. (See *California Housing Finance Agency v. Elliot*, *supra*, 17 Cal. 3d 575, 582–586; *The Housing Authority v. Dockweiler* (1939) 14 Cal. 2d 437, 457–458; *Board of Supervisors v. Dolan*, *supra*, 45 Cal. App. 3d 237, 241–247; *Winkelman v. City of Tiburon*, *supra*, 32 Cal. App. 3d 834, 844–846.)

The conclusion to the question presented, therefore, is that after receiving and spending federal funds for the purchase of real property to be used for low and moderate income housing, a general law county may sell the property to a developer at below market value through direct negotiation and without solicitation of competitive bids.
