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OPINION	:	No. 80-416
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of	:	<u>August 12, 1980</u>
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SUBJECT: AIRPORT ZONING AUTHORITY—Public Utilities Code section 21674(5) empowers a county Airport Land and Use Commission to zone land in the vicinity of airports to uses compatible to airports, subject to being overridden by the requisite majority of the governing body of a city or county.

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

Does Public Utilities Code section 21674(5) empower a county Airport Land Use Commission to zone land in the vicinity of airports to uses compatible to airports?

CONCLUSION

Public Utilities Code section 21674(5) empowers a county Airport Land Use Commission to zone land in the vicinity of airports to uses compatible to airports, subject to being overridden by the requisite majority of the governing body of a city or county.

ANALYSIS

In 1967, the Legislature added to the State Aeronautics Act (Pub. Util. Code, § 21001),¹ a new article creating and giving specified powers to county Airport Land Use Commissions (hereinafter “ALUC”). (§§ 21670–21677.) This act created in each county which is subject to the article² and which contains at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board an ALUC consisting of seven members. (§ 21670.) The members represent the county, cities within that county, airports within that county, and the public. (*Ibid.*) As enacted in 1967, the powers and duties of an ALUC were set forth in section 21674 as follows:

“The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction herein set forth:

“(1) To study conditions and make recommendations concerning the need for height restrictions on buildings near airports;

“(2) To make recommendations for the use of the land surrounding airports to assure safety of air navigation and the promotion of air commerce.

“(3) To hold public hearings regarding the subject matter in subdivisions (1) and (2) and make findings of fact thereon which would be advisory only to the involved jurisdiction.

“(4) To make and enforce rules and regulations for the orderly and fair conduct of such hearings.

“The powers of the commission shall be advisory only and shall in no way be construed to give the commission jurisdiction over the operation of any airport or jurisdiction over any matters relating to zoning or land use authority of any city or county.”³ (Emphasis added.) Also, at the time of

¹ All references to unidentified code sections hereinafter are to the Public Utilities Code.

² Los Angeles County is exempt (§ 21670) and if the Board of Supervisors and the Selection Committee of Mayors in any county determines that proper land use planning can be accomplished by another agency, the planning responsibilities of an ALUC are to be performed by that other agency rather than forming an ALUC. (§ 21670.1.)

³ Statutes of 1970, chapter 1182, section 4, amended subdivision 4 of section 21674 to read:

(4) To make and enforce rules and regulations for the orderly and fair conduct of such hearings which shall conform as nearly as possible to the provisions applicable to

enactment of the ALUC Law, section 21005 of the State Aeronautics Act provided:

“This part [the State Aeronautics Act] shall not be construed as limiting any power of the state or a political subdivision to regulate airport hazards by zoning.”

The question presented is whether the Legislature has granted ALUC’s zoning authority. Our review of the legislative changes that have been made to the ALUC law since enactment leads us to conclude that the Legislature intended and did grant such authority, although on a limited basis and subject to being overridden by local agencies.

In 1970, the Legislature added two new sections to the ALUC law as follows:

“21675. The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. This plan shall not be inconsistent with the State Master Airport Plan. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.” (Stats. 1970, ch. 1182, § 5.)⁴

Section 21676:

“Each public agency having representation on the commission shall assist in the development of an area plan. All such plans must be filed with

hearings conducted by local agency information commissions.”

⁴ Section 21675 was amended in 1973 to insert a paragraph (b) between the two paragraphs of the section to read:

“(b) The commission may include within Its plan formulated pursuant to subdivision (a) the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision shall not give the commission any jurisdiction or authority over the territory or operations of any such military airport.”

This was designed to overrule an opinion of this office in 55 Ops. Cal. Atty. Gen. 284 (1972); see 57 Ops. Cal. Atty. Gen. 567, 569 (1974).

the commission for its approval. If in the determination of the commission, an action or regulation of any public agency within the boundaries of the area plan is inconsistent with the commission plan, then the commission shall hold a hearing to determine whether or not the proposed action is in the best interest of the airport and the adjacent area. If it is determined that the action would be harmful, then the public agency shall be notified and the public agency shall have another hearing to reconsider its action. The public agency proposing the action or regulation, however, may overrule the commission after such hearing by a four-fifths vote of its governing body.

“Each public agency owning any airport within the boundaries of the area plan shall file any substantive change in development plans with the commission for its approval. If such plans are inconsistent with the commission plan, then the public agency shall be notified and shall have another hearing to reconsider its action. Such public agency, however, may overrule the commission by a four-fifths vote of its governing body.” (Stats. 1970, ch. 1182, § 6.)

That same Act (Stats. 1970, ch. 1182, § 4) removed from the last paragraph of section 21674 the language limiting the ALUC to an advisory role, and denying an ALUC any zoning authority, so that the paragraph then read as it does today:

“The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.”

The next year, in response to a report to the Legislature by the Department of Public Health (“A Report to the 1971 Legislature on the Subject of Noise Pursuant to Assembly Concurrent Resolution 165, 1970”) the Legislature again amended the State Aeronautics Act. The cited report discussed a need to create land use regulation around airports in order to make uses compatible with airport noise. The report recommended:

“Amend The Public Utilities Code To Require Airport Land Use Commissions To Achieve, By Zoning, Compatible Land Uses In The Vicinity Of All New Airports And In The Vicinity Of Existing Airports Which Are Not Surrounded By Land Devoted To Incompatible Uses

Or

“Enact Other Legislation To Achieve This End.”

The Legislature adopted Statutes 1971, chapter 108 which made two changes. First, it

added a subdivision (g) to section 21002, the purposes section of the State Aeronautics Act:

“(g) Assuring that persons residing in the vicinity of airports are protected to the greatest possible extent against intrusions by unreasonable levels of aircraft noise.”

Second, it amended section 21005, quoted above to add this paragraph:

“It shall be the function of airport land use commissions created pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 to achieve by zoning compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of such airports is not already devoted to incompatible uses, and to this end the commissions shall require that all construction in such areas shall conform to such standards as the department may from time to time adopt.”

The Legislative Counsel’s Digest on Assembly Bill 2357, which became chapter 1085, stated:

“Declares function of airport land use commissions is to achieve through zoning land use in vicinity of airports compatible with airports to extent such land is not already under an incompatible use, and to require new construction in such areas to conform to standards adopted from time to time by Department of Aeronautics.”

Finally in 1975, this authority granted in 1971 in section 21005 was moved from the introductory portion of the State Aeronautics Act to the ALUC Law by (a) deleting the added paragraph to section 21005 and (b) adding a new subdivision (5) to section 21674 as follows:

“(5) To achieve by zoning compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of such airports is not already devoted to the incompatible uses, and to this end the commissions shall require that all new construction in such areas shall conform to such standards as the department may from time to time adopt.” (Stats. 1975, ch. 1052, § 19.)

We previously described the 1970 changes as follows:

“The amendments of 1970 *inter alia* deleted those provisions of section 21674 thereby providing for the full operation and effect of the added

sections 21675 and 21676. The Legislature by deleting the phrase ‘shall be advisory only’ implied thereby that certain powers of the Commission would be other than advisory. The Legislature in deleting the wording which prohibited the Commission from exercising jurisdiction over zoning and land use authority of cities and counties implied thereby that such jurisdiction could henceforth be exercised.” (Unpublished Opinion, I.L. 72–28, Feb. 15, 1972.)

In another unpublished opinion I.L. 73–142, Aug. 24, 1973) we noted:

“Our conclusion is reinforced by the fact that the Legislature in 1970 amended section 21674 and added sections 21675 and 21676 to change the role of airport land use commissions from an advisory body to a planning body with veto powers over the actions and regulations of public agencies which are inconsistent with the Commission’s comprehensive land use plan. Logic also dictates that the Commission cannot fully exercise its planning function unless actions and regulations are subject to its review. When the Commission’s plan has been formulated and adopted, it will be provided with the standards with which to determine inconsistency of a city’s actions and regulations with the Commission’s plan. This result is mandated by the Legislature’s determination that the actions and regulations of public agencies near airports should be guided by the Commission’s comprehensive land use plan.”

It is our view that the clear legislative purpose in the 1970–1971 amendments was to give the ALUC’s positive land-use planning and zoning functions, even if limited to the area surrounding an airport and even if subject to being overridden in application by the requisite majority of the city council or board of supervisors.⁵

Zoning is essentially one tool to be used in land-use regulations. It has been described as follows:

“In its original and primary sense zoning is simply the division of a city into districts and the prescription and application of different regulations in each district. These ‘zoning regulations’ are generally divided into two classes: (1) those which regulate the height or bulk of buildings within certain designated districts-in other words, those regulations which have to do with structural and architectural design of the buildings and (2) those which

⁵ The overrule requires a four-fifth vote or the city council or board of supervisors (§ 21676), except that in Marin County, a majority is sufficient. (§ 21677.)

prescribe the use to which buildings within certain designated districts may be put. *Miller v. Board of Public Works* (1925) 195 Cal. 477, 486. Stated another way, ‘Zoning is a separation of the municipality into districts, and the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land.’ *O’Loan v. O’Rourke* (1965) 231 Cal. App. 2d 774, 780.” (Longtin, California Land Use Regulations (1977) p. 73.)

Even though generally thought of in terms of city or county regulation, zoning is one exercise of the state’s police power (*Miller v. Board of Public Works* (1925) 195 Cal. 477, 485–487), and there is no impediment to the Legislature granting that power to other agencies in the statewide interests. Here, of course, the Legislature has created ALUC’s as part of the State Aeronautics Act and its purposes. (§ 21002.)⁶

City and county zoning is the subject of extensive procedural statutes (Gov. Code, § 65800 *et seq.*) and must be integrated with and consistent with that jurisdiction’s general plan. (Gov. Code, § 65860; 58 Ops. Cal. Atty. Gen. 21 (1975).) Further, such local zoning

⁶ Section 21002 now provides:

“The purpose of this part is to further and protect the public interest in aeronautics and aeronautical progress by the following means:

“(a) Encouraging the development of private flying and the general use of air transportation.

“(b) Fostering and promoting safety in aeronautics.

“(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.

“(d) Granting to a state agency such powers and imposing upon It such duties that the ,rate may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a statewide system of airports, encourage the flow of private capital into aviation facilities, and cooperate with and assist political subdivisions and others engaged in aeronautics in the development and encouragement of aeronautics.

“(e) Establishing only those regulations which are essential* and clearly within the scope of the authority granted by the Legislature [*sic*], in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety and the rights of others.

“(f) Providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state.

“(g) Assuring that persons residing in the vicinity of airports are protected to the greatest possible extent against intrusions by unreasonable levels of aircraft noise.”

must meet certain constitutional standards as to reasonableness and not be arbitrary in Operation. (*Wilkins v. City of San Bernardino* (1946) 29 Cal. 2d 332, 337.)

The fact that the zoning authority granted to ALUC's is far less detailed than the zoning authority granted cities and counties does not detract from the clear intent of the Legislature to grant land-use control powers, including zoning, to ALUC's.⁷ Section 21674(5) enumerates one of the powers of an ALUC:

“To achieve by zoning compatible land uses in the vicinity of all new airports and in the vicinity of existing airports and to this end the commissions shall require that all new construction in such areas shall conform to such standards as the department [of Transportation] may from time to time adopt.”

Section 21675(a) mandates:

“The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards. . . .”

We conclude that the ALUCs have been granted zoning authority.

Section 21676 provides a mechanism, albeit not a model of clarity, for reconciling the land-use planning and zoning regulations of an ALUC with those of the county or city in which the airport and surrounding areas are located. The first level is that of measuring the local regulation against those of the ALUC, and if the ALUC determines that the local regulation is inconsistent with the ALUC plan, and after a hearing, that the implementation of the local regulation would be harmful and not in the best interests of the airport and the adjacent area, then, at that point, the ALUC plan would prevail. We so concluded in an unpublished opinion. (I.L. 72–28, *supra*, Feb. 15, 1972.) On the second level, however, the local agency, after a hearing, may overrule the determination of the ALUC if the city council or board of supervisors so votes with the requisite majority. The existence of such an override, however, does not detract from our conclusion that airport land use commissions have been granted zoning authority.

⁷ We assume for purposes of this opinion that the zoning activities of a particular ALUC will conform to the constitutional standards as to reasonableness.