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OPINION	:	No. 80-607
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of	:	<u>December 23, 1980</u>
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SUBJECT: RECORDING OF DOCUMENTS BY BOARD OF SUPERVISORS OF GENERAL LAW COUNTY—So long as the recording of particular documents would not be in violation of pertinent state laws, a county board of supervisors of a general law county has the power to provide by ordinance for the recording of such documents in addition to those documents which state law authorizes to be recorded. However, such documents must be recorded pursuant to the procedures specified by state law.

The Honorable John A. Drummond, County Counsel, Mendocino County, has requested an opinion on the following question:

Does a county board of supervisors of a general law county have the power to provide by ordinance for the recording of particular documents in addition to those documents which state law authorizes to be recorded?

CONCLUSION

So long as the recording of particular documents would not be in violation of pertinent state laws, a county board of supervisors of a general law county has the power

to provide by ordinance for the recording of such documents in addition to those documents which state law authorizes to be recorded. However, such documents must be recorded pursuant to the procedures specified by state law.

ANALYSIS

The Legislature has established a comprehensive system governing the recording of documents. (See ch. 6 (§§ 27200–27383) of pt. 3, div. 2, tit. 3 of the Government Code, and see ch. 4 (§§ 1169–1220), tit. 4, pt. 4, div. 2 of the Civil Code.) The question we consider here is whether a county may by ordinance provide for the recording of those documents which have not been included in the state statutes on the subject.

A basic issue raised by this question is whether a general law county has the inherent legislative power to enact ordinances regarding the recording of documents since a county has “only those powers which are delegated to it by the Constitution or the Legislature.” (*City of Sausalito v. County of Marin* (1970) 12 Cal. App. 3d 550, 567.) The constitutional source of a general law county’s legislative power is article XI, section 7 (formerly section 11) of the California Constitution which provides:

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (See *Davis v. Justice Court* (1970) 10 Cal. App. 3d 1002, 1007.)

While some commentators have purported to discern in the cases a constricting of the broad scope of legislative power otherwise imported by the express terms of article XI, section 7 (see Peppin, *Municipal Home Rule in California III: Section 11 of article XI of the California Constitution*, 32 Cal. L. Rev. 341, 342–345 (1944); Comment, 6 Pacific L. J. 85, 93 (1975); but see Blease, *Civil Liberties and the California Law of Preemption*, 17 Hastings L J. 517, 531 (1966)), there has been no disputing of the proposition that article XI, section 7 at least vests in cities and counties that legislative authority which is denominated as the “police power.” (Peppin, *Municipal Home Rule, supra*, 32 Cal. L. Rev., at p. 345; see *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 140.) The police power in itself is an expansive source of legislative power. As stated in *People v. K. Sakai Co.* (1976) 56 Cal. App. 3d 531, 535:

“The police power has long been described as the inherent power of a body politic to enact and enforce laws for the promotion of the general welfare. [Citations] It has been said that an ‘attempt to define its reach or trace its outer limits is fruitless.’ [Citation] The scope of the police power changes with changing social and economic conditions. It is ‘not a

circumscribed prerogative, . . . but is elastic and . . . capable of expansion to meet existing conditions of modern life and thereby keep pace with the social, economic, moral, and intellectual evolution of the human race. . . .”

In thus depicting the police power, the court was quoting in part from the decision of the Supreme Court in *Miller v. Board of Public Works* (1925) 195 Cal. 477, 485, where the Supreme Court also observed that:

“In its inception the police power was closely concerned with the preservation of the public peace, safety, morals, and health without specific regard for ‘the general welfare.’ The increasing complexity of our civilization and institutions later gave rise to cases wherein the promotion of the public welfare was held by the courts to be a legitimate object for the exercise of the police power. As our civic life has developed so has the definition of ‘public welfare’ until it has been held to embrace regulations ‘to promote the economic welfare, public convenience and general prosperity of the community.’” (See also *Birkenfeld v. City of Berkeley*, *supra*, 17 Cal. 3d at p. 160.)

As to the scope of the police power vested in cities and counties, it has long been held that in the absence of a conflict with state law the police power afforded to them by article XI, section 7 of the Constitution is as broad as that which may be exercised by the state. (*Birkenfeld v. City of Berkeley*, *supra*, 17 Cal. 3d at p. 140; *Chavez v. Sargent* (1959) 52 Cal. 2d 162, 176; *McKay Jewelers, Inc. v. Bowron* (1942), *supra*, 19 Cal. 2d at p. 600; *Odd Fellows’ Cem. Assn. v. San Francisco* (1903) 140 Cal. 226, 230.) Accordingly, by virtue of this constitutional grant of police power the hiring of a county physician was authorized (*County of Marin v. Dufficy* (1956) 144 Cal. App. 2d 30, 34) as was the operation of a sewer system (*Morrison Homes Corp. v. City of Pleasanton* (1976) 58 Cal. App. 3d 724, 733). This constitutional provision was also held to afford authority to add fluoride to the local water supply (*de Aryan v. Butler* (1953) 119 Cal. App. 2d 674, 681–682); and to collect and dispose of refuse (*Ponti v. Burastero* (1952) 112 Cal. App. 2d 846, 851–852). Local rent control was also upheld as a valid exercise of the police power under article XI, section 7. (*Birkenfeld v. City of Berkeley*, *supra*, 17 Cal. 3d at pp. 140, 142.) These disparate subjects of local action, validated by the courts under article XI, section 7,¹ go well beyond the literal notion of a police regulation and reflect a local legislative power of significantly more comprehensive dimensions.

¹ See also 57 Ops. Cal. Atty. Gen. 36, 38 (1974) concluding that a county has the authority under article XI, section 7, to create an agency to provide legal assistance to the elderly poor, and 56 Ops. Cal. Atty. Gen. 157 (1973) concluding that a county under this constitutional provision has the authority to establish clinics for spaying or neutering cats and dogs.

Considering now the authority of a general law county to enact an ordinance providing for the recording of documents in light of this assessment of the local police power, we note that the general purposes of such laws are to protect purchasers of property from monetary loss by providing a system of notification of the various interests in such property (*Beach v. Faust* (1935) 2 Cal. 2d 290, 292–293; *City of Los Angeles v. Morgan* (1951) 105 Cal. App. 2d 726, 733; *Wineberg v. Moore* (1961) 194 F.Supp. 12, 18), and to preserve and provide access to important records and documents. (E.g., see Health & Saf. Code §§ 10060 and 10570 providing for the recording of birth and death certificates.) It would appear that ordinances to protect purchasers of property from being deceived or misinformed concerning the subject of their purchase, or to preserve and provide access to documents of importance to the community, can well be characterized as “regulations ‘to promote the economic welfare, public convenience and general prosperity of the community’ “and thus involve “legitimate object[s] for the exercise of the police power.” (*Miller v. Board of Public Works*, *supra*, 195 Cal. at p. 485.)

Consistent with this conclusion is *In re Sidebotham* (1938) 12 Cal. 2d 434 where the Supreme Court considered a challenge to a statute requiring subdividers to furnish notice prior to sale regarding the existence of encumbrances and other matters affecting title. In that case the court stated:

“The assertion that this is not valid police power legislation because it benefits only a special class, the purchasers and lessees of subdivided real estate, and not the whole public, is without substance. The object of the present law, prevention of fraud and sharp practices in a type of real estate transaction peculiarly open to such abuses, is obviously legitimate; and the method, involving investigation and disclosure of certain essential facts, and a protection for the innocent purchaser against loss of his land by foreclosure of the underlying mortgage, is perfectly reasonable. (*Id.* at p. 436; see also *People v. Mancha* (1974) 39 Cal. App. 3d 703, 720.)

Concluding that the enactment of ordinances providing for the recording of documents is within the basic legislative authority of a general law county under article XI, section 7 of the Constitution, we now reach the question of whether such county legislation would be in conflict with state law. This question is pertinent in view of the fact that the legislative authority granted by article XI, section 7 is limited by the qualification that authorized legislation must not [be] in conflict with general laws.”

In describing the effect of and the nature of a conflict between state statutes and a county ordinance the Supreme Court in *Lancaster v. Municipal Court* (1972) 6 Cal. 3d 805, declared:

“Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations].” (*Id.* at pp. 807–808. Accord *Markus v. Justice’s Court* (1953) 117 Cal. App. 2d 391, 396; see also *EWAP, Inc. v. City of Los Angeles* (1979) 97 Cal. App. 3d 179, 190.)

Since the present question relates to a situation where the county ordinance is directed to the recording of documents which are not covered by the state recording statutes, the issue of whether such ordinance is in conflict because it duplicates state legislation is not pertinent here. What we must consider, however, is whether such an ordinance conflicts with state statutes because it “enters an area fully occupied by general law.” The tests for determining whether the Legislature has occupied a particular field were set forth by the Supreme Court in *Galvan Superior Court* (1969) 70 Cal. 2d 851, 559–860 (quoting from *In re Hubbard* (1964) 62 Cal. 2d 119, 128):

“(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; and (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.” (Accord, *Bell v. City of Mountain View* (1977) 66 Cal. App. 3d 332, 338; *Yuen v. Municipal Court* (1975) 52 Cal. App. 3d 351, 354.)

In our determination of whether, in light of these tests, the state has occupied the field concerning the recording of documents, we assume at the outset that the question presented uses the term “recording” in the ordinarily understood legal sense to mean the copying and indexing of documents by the appropriate public official in legally designated books for the purpose of affording notice to third persons. (See *Dougery v. Bettencourt* (1931) 214 Cal. 455, 462–464. See also *City of Los Angeles v. Morgan* (1951) 105 Cal. App. 2d 726, 733.) Thus excluded from our consideration is the mere filing or depositing of documents with public officials. (See *Dougery v. Bettencourt, supra*, at p. 461; and see Government Code §§ 27361 and 27380² reflecting the distinction between recording and filing. In this regard see also Comment (1974) 5 Pacific L. J. p. 488.)

² Hereafter all section references are to the Government Code unless otherwise specified.

In evaluating the statutes relating to the subject of recording as thus delineated, we note that chapter 6 (§§ 27200–27383) of part 3, division 2, title 3 of the Government Code constitutes the basic statute on the subject. With extensive specification chapter 6 sets forth the standards and procedures to be followed in recording documents (art. 1, §§ 27200–27211; art. 4, §§ 27320–27336), a substantial enumeration and description of the various types of indexes that must be kept (art. 2, §§ 27230–27265), and an itemization of the fee requirements for the recording and indexing of the various types of documents (art. 5, §§ 27360–27383). The chapter also elaborates upon the information that must be contained in documents that are to be recorded. (See, e.g., § 27280.5: requirement that names of parties and witness must be legible; § 27287: requirement of acknowledgment of specified documents; § 27289: requirement that recorded notices be signed; § 27293: English translation requirements and procedures for foreign language documents; § 27294: requirement that each document have the recording fee endorsed upon it.)

Another major statute concerning the procedures for and the effect of recording of documents is contained in chapter 4 (§§ 1169–1220), title 4, part 4, division 2 of the Civil Code. The provisions of this statute in the Civil Code is expressly interrelated to the above-considered Government Code provisions. (See Civ. Code § 1172, and see §§ 27287, 27292.)

From an examination of these Government Code and Civil Code provisions it can be seen that the Legislature has devised a statutory system touching in abundant detail virtually every procedural aspect of the subject of recording of documents. Thus relevant is the observation of the Supreme Court in *Chavez v. Sargent* (1959) 52 Cal. 2d 162, 177: “State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation.” The court later elaborated on this observation by noting in *Galvan v. Superior Court*, *supra*. 70 Cal. 2d at p. 862 that finding preemptive intent:

“... in a multiplicity of statutes taken together’ of course presupposed closely related statutes.

“The task is . . . to determine whether the state has occupied the relevant field—an area of legislation, and is sufficiently logically related so that a court, or a local legislative body, can detect a patterned approach to the subject.” (Accord *Younger v. Berkeley City Counsel* (1975) 45 Cal. App. 3d 825, 831.)

With respect to the statutory provisions under consideration here, the summary review above demonstrates that they are organized in statutory articles each elaborating in a logical sequence upon a particular element of the procedures governing the recording of documents, and in a manner which comprehensively covers the subject of such recording

procedures.³ There is clearly a “patterned approach to the subject.” It can thus be fairly stated that “. . . the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern . . .” or, at the very least, that “. . . the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action” (*Galvan v. Superior Court, supra*, 70 Cal. 2d at pp. 859–860.)

Terms in the statute indicating an intent not to “tolerate further or additional local action” are found in those express provisions for a limited role for action by county boards of supervisors with respect to procedures for recording documents. In this regard sections 26505.5 and 27207 provide that the board of supervisors may authorize the recorder to destroy specified record books and documents, and section 26200 provides that the board of supervisors may authorize the making of a new index of records upon loss or destruction of the original.

In view of this express grant of limited authority to the county boards of supervisors in a field that is otherwise extensively covered by state law, it can be presumed that the Legislature did not intend any additional local regulation in the field. (See *Lancaster v. Municipal Court, supra*, 6 Cal. 3d at p. 808.)

But what would appear to be the most explicit indication of a legislative intent to exclude local regulations concerning the procedural aspects of recording is contained in section 27203 which in pertinent part provides:

“Any recorder to whom an instrument proved or acknowledged according to law or any paper or notice which may by law be recorded is delivered for record is liable to the party aggrieved for the amount of the damages occasioned thereby, if he commits any of the following: acts:

“ . . .

“(b) Records any instrument, paper, or notice, willfully or negligently, untruly, *or in any manner other than that prescribed by this chapter*” (Emphasis added.)

³ That the Legislature intended this procedural framework to be fully comprehensive is indicated by section 27322 which provides that, “The recorder shall record . . . in well-bound books or by such other means as provided in this chapter, *all* instruments, papers and notices the recording of which is required or permitted by law.” (Emphasis added.)

Thus it is not only the willful or negligent and the untrue recording of documents that subjects the recorder to liability. The Legislature has also expressly imposed liability for the recording of documents in a manner that is not specified in the statute. Therefore by the terms of this provision the Legislature has in effect mandated exclusive compliance with the procedures it has formulated.

However, a conclusion that the Legislature has occupied the field relating to the procedural aspects of recording still leaves the question whether the field has thus been occupied with respect to designating the types of documents that may be recorded. Considering the statutes on this facet of the subject, we note that in article 3 (§§ 27280–27297) of the main statute on recording, provision is made for the recording of “[a]ny instrument or judgment affecting the title to or possession of real property” (§ 27280(a).) Some of the other documents specified in that article are: notice of location of mining claim (§ 27282(a) (2)); affidavits of work on mining claims (§ 27284); certificates of taxes due and notices of various types of tax liens (~§ 27282(a) (3); 27282 (a) (4)); release, discharge or subordination of specified property tax liens (§ 27282 (a) (5)).

In addition to these provisions in the primary statute on recording, there are a large number of other specific statutes providing for the recording of various types of documents. See for example Health and Safety Code sections 10060, 10570: birth and death certificates; Civil Code sections 4210–4211: declarations of marriage; section 8213: notary public bond; Civil Code section 3065: contract for cutting and transporting timber; Food and Agricultural Code sections 20601–20797: cattle brands; Corporations Code section 15502: limited partnership certificates; section 66499.36: notice of violation of subdivision laws.

Thus as in the case of procedural matters governing the recording of documents, there is also an abundance of legislation concerning the types of documents that may be recorded. However, unlike the system of statutes governing the procedural aspects of recording, there is in this statutory array of document types, distributed throughout the various codes, no logical sequence, no discernible pattern of rationally related inclusions or exclusions (as, for example, there was in *Abbott v. City of Los Angeles* (1960) 53 Cal. 2d 674, 684–687) from which it can be inferred that the Legislature intended to exclude local legislation from the field. As the Supreme Court declared in *Gavan v. Superior Court*, *supra*, 70 Cal. 2d at pp. 861–862:

“The fact that there are numerous statutes dealing with guns or other weapons does not by itself show that the subject of gun or weapons control has been completely covered so as to make the matter one of exclusive state concern. [Footnote omitted.]

“To approach the issue of preemption as a quantitative problem provides no guidance in determining whether the Legislature intends that local Units shall not legislate concerning a particular subject, and further confounds a meaningful solution to preemption problems by offering a superficially attractive rule of preemption that requires only a statutory nose count. Thus, in the instant case, by grouping weapons licensing, registration and prohibitions, and offenses involving the use of firearms, the very volume of statutes might suggest that the Legislature has covered, and preempted the ‘field. Language in *In re Lane*, . . . 58 Cal. 2d 99, 110 (concurring opinion), that ‘general intent may be found in a multiplicity of statutes taken together’ of course presupposed closely related statutes.

“The task is, as shown in *Hubbard*, [62 Cal. 2d 1191 to determine whether the state has occupied a relevant field—an area of legislation which includes the subject of the local legislation, and is sufficiently logically related so that a court, or a local legislative body, can detect a patterned approach to the subject. Thus, that the state has legislated concerning the possession of loaded firearms on government premises indicates no patterned approach to the subject of prohibited users, such as prisoners or ex-felons or minors. A field cannot properly consist of statutes unified by a single common noun”

We therefore conclude that while the Legislature has occupied the field with respect to procedures governing the recording of documents, it has not, despite the “multiplicity of statutes” on the subject, occupied the field with regard to specifying which documents may be recorded. Consequently a general law county may provide for the recording of those documents which are not expressly specified or included in any of the state recording statutes,⁴ unless, of course, the recording of such documents would violate some other state

⁴ We are informed by the requester of this opinion that the county as a means of enforcement is desirous of recording notices of violations of various building, health, subdivision and zoning laws which have been found to exist by the county inspectors. In this regard we would note that such notices reflect what are merely charges of violations and under no rule of law do they operate to encumber title to or the right of possession of property.” Such notices would thus not be an “instrument or judgment affecting the title to or possession of real property” as specified in section 27280. This conclusion is supported by the reasoning in *Brown v. Johnson* (1979) 98 Cal. App. 3d 844, where the court held that a notice or a vendor’s lien on real property was not an instrument affecting property that could be recorded under section 27280(d). In that case the court stated:

“Such lien . . . is not a specific absolute charge upon the property, but only in equitable right of the vendor to resort to it in case the purchase money is not paid. . . . A vendor’s lien is a mere personal privilege to resort to land as a means of enforcing a land sale contract. [Citation.] The right to resort to a vendor’s lien must be established

statute such as one which requires the confidentiality of the documents in question. (See e.g., Welf. & Inst. Code § 10850 making welfare recipient records confidential.) As noted, local law which duplicates or contradicts state law is in conflict with such law and is thus void. (*Lancaster v. Municipal Court*, *supra*, 6 Cal. 3d at Pp. 807–808.) However, concerning the manner of recording those documents which may be provided for by county ordinance, such recording must be pursuant to procedures specified by state law.⁵

by suit, the lien is of no operative force or effect until established by a decree of court and may be asserted only by a suit of equity for the purpose of obtaining such a decree. [Citation.]

“ . . . The notice thus did not create the lien nor did it affect the title or possession of the property. The notice was therefore not authorized to be recorded. (*Id.* at pp. 850–851; see also *Dreifus v. Marx* (1940) 40 Cal. App. 2d 461, 466: writ of attachment not included under recording statute.)

It would appear that a notice of violation of building laws, etc., which may or may not result in a court order, which in itself would not necessarily affect title or possession, is an instrument that has an even more remote effect upon title or possession than a notice of a vendor’s lien, and would thus not be covered by section 27280(a)

In addition to our conclusion that the notices in question are not included in the general provisions of section 27280(a), we also assume in view of the question asked in the opinion request, that the proposed ordinance would not provide for the recording of those types of documents that are already specifically designated under particular state statutes. For example, see section 66499.36 which provides for the recording of a notice of violation of subdivision laws.

⁵ In this opinion we do not address the question whether the recording of a document pursuant to a county ordinance will impart constructive notice. (See *Brown v. Johnson* (1979) 98 Cal. App. 3d 844, 849; *Stearns v. Title Ins. & Trust Co.* (1971) 18 Cal. App. 3d 162, 169; *Dreifus v. Marx* (1940) 40 Cal. App. 2d 461, 465–466.)