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OPINION	:	No. 81-803
	:	
of	:	<u>MARCH 17, 1982</u>
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THE HONORABLE L. B. ELAM, COUNTY COUNSEL, SACRAMENTO COUNTY, has requested an opinion on the following question:

When it is proposed to combine two special districts, formed pursuant to the same principal act, into a single district by dissolving one of the districts and simultaneously annexing all of its territory to the remaining district which will continue to operate in the combined territory, is such a proposal governed by the "reorganization" procedures of the district Reorganization Act or by the "consolidation" procedures of that Act?

CONCLUSION

When it is proposed to combine two special districts, formed pursuant to the same principal act, into a single district by dissolving one of the districts and simultaneously annexing all of its territory to the remaining district which will continue to

operate in the combined territory, such a proposal is governed by the "reorganization" procedures of the District Reorganization Act and not by the "consolidation" procedures of that Act.

ANALYSIS

Confronted with a disorganized proliferation of special districts and an absence of a coherent and effective process for modifying or discontinuing such districts as the best interests of the community might require, the Legislature enacted the District Reorganization Act of 1965.¹ (*Morro Hills Community Services Dist. v. Board of Supervisors* (1978) 78 Cal.App.3d 765, 770-771; *Del Paso Recreation & Park Dist. v. Board of Supervisors* (1973) 33 Cal.App.3d 483, 490-491; 61 Ops.Cal.Atty.Gen. 497, 500-501 (1978); Final Report, Assembly Int. Comm. on Municipal and County Gov., pp. 39, 40-42, I Appen. to Assem. J. (1965 Reg. Sess.)) The purpose of this Act was to rationalize and bring uniformity to the processes of forming, altering and dissolving special districts in order to afford an effective means of making such processes more responsive to the continual changes in community needs for governmental services. (*Morro Hills Community Services Dist. v. Board of Supervisors*, *supra*, 78 Cal.App.3d at pp. 770-771; *Friends of Mount Diablo v. County of Contra Costa* (1977) 72 Cal.App.3d 1006, 1011; *Del Paso Recreation & Park Dist. v. Board of Supervisors*, *supra*, 33 Cal.App.3d at pp. 490-491; Final Report, Assembly Int. Comm., *supra*, at pp. 40-42, 48-50; 57 Ops.Cal.Atty.Gen. 599, 600 (1974).) The Legislature has designated this Act as providing "the sole and exclusive authority and procedure for the initiation, conduct and completion" of such district reorganizing processes. (§ 56001; *Morro Hills Community Services Dist. v. Board of Supervisors*, *supra*, 78 Cal.App.3d at p. 771; *Del Paso Recreation & Park Dist. v. Board of Supervisors*, *supra*, 33 Cal.App.3d at p. 491.)

Briefly outlining the procedures under the District Reorganization Act, we note that the process of instituting changes is initiated either by a petition submitted by the voters or by an application submitted by the legislative body of any affected county, city or district (§§ 56130, 56140, 56195). The petition or application setting forth the proposed change is submitted to the executive officer of the local agency formation commission (LAFCO) (§§ 56151, 56196). The matter is then set for public hearing before LAFCO (§§ 56157, 56198, 56262). LAFCO has the power to review the proposal and to disapprove it or to approve it "with or without amendment, wholly, partially or conditionally" (§ 56250.) In some circumstances, LAFCO may, prior to making a determination on the proposal, first submit it to a "reorganization committee" for its report and recommendations. (§§ 56211-56212.) After a hearing before LAFCO on the proposal,

¹ Government Code sections 56000-56550. Hereafter all section references are to the Government Code unless otherwise indicated.

LAFCO makes its determination disapproving or approving the proposal subject to any terms and conditions LAFCO may specify pursuant to its authority. (§ 56270.)

After such approval, the proposal, if it involves more than one district, is submitted to the board of supervisors for the conduct of proceedings for a change of organization (§ 56291) in compliance with LAFCO's determination. (§ 56292; see also §§ 56380, 56430.) Following a public hearing before the board of supervisors (see §§ 56383, 56433), the board makes its determination either disapproving or approving the proposal and submitting it, except in specified circumstances, to the voters for their approval or rejection. (See §§ 56386, 56439.)

The present question requires an interpretation of specific provisions of the District Reorganization Act and arises out of a factual situation involving a proposal to unite two districts into a single district. This is to be accomplished by the process of dissolving one district and simultaneously annexing all of its territory into the territory of another district. The annexing district, with the same governing body, would continue to exist with its territory thus expanded as a result of the annexation. In this factual situation both of the districts were formed pursuant to the same principal act.² The specific question we consider is whether such a process must be undertaken pursuant to the "reorganization" procedures of the District Reorganization Act (§§ 56430-56444) or do the Act's "consolidation" procedures (§§ 56380-56388) govern in the circumstances outlined above.

The significance of this question lies in the fact that a reorganization can be accomplished with the approval of a majority of voters of only the annexed territory of the district to be dissolved (§ 56440, subs. (a), (c), § 56443),³ whereas a consolidation must be approved by a majority of voters in *each* of the districts involved (§ 56388).⁴

² For purposes of the District Reorganization Act a "district" is defined in section 56039 as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." However, that section also excludes from the operation of the Act a number of types of districts that would otherwise come within this definition, such as school districts, air pollution control districts, transit districts, various kinds of water and flood control districts, etc. For purposes of this opinion we assume that the districts in question are of the type subject to the Act.

³ Section 56252 authorizes LAFCO to order an election either within the annexed territory only, or both within such territory and within the territory of the rest of the district. But this authorization is limited to orders "approving a proposal for an annexation or detachment." The present question, however, involves proposals for "reorganization" or "consolidation." (See §§ 56140(d), 56141, 56195, 56211.)

⁴ Section 56261.1 permits a consolidation or a reorganization, resulting in combining two or more districts into a single district, to be ordered without an election under limited circumstances: where such proposed change is by application of the legislative bodies of each of the involved

Controlling the resolution of this question are the Act's definitions of the pertinent terms.

The general term applicable to all types of modifications in the organization of districts is the phrase "change of organization." This term is defined in section 56028 to mean:

"... an *annexation* or *detachment* of territory to or from a district, a minor boundary change, the *dissolution* or *consolidation* of any district or districts, a merger or the establishment of a subsidiary district, and, in the case of a reorganization, also includes district formations, annexations to, detachments from, and disincorporations of, cities when the affected cities do not object to such annexations, detachments, or disincorporations, and the incorporation of new cities when the board of supervisors does not object to such incorporations." (Emphasis added.)

With respect to the terms which are the specific subject of the question before us, the term "consolidation" is defined in section 56035 as:

"[T]he uniting or joining of two or more districts into a single new successor district, all such districts having been or being formed pursuant to the same principal act."

The term "reorganization" is defined in section 56068 to mean:

"(a) Two or more changes of organization proposed for any single subject district; or

"(b) One or more changes of organization proposed for:

"(1) Each of two or more subject districts, including cities, landowner-voter districts or resident-voter districts and may include the formation of

districts and such application has been adopted by the unanimous vote of all of the members of each of those legislative bodies.

Implementing a reorganization without an election is also authorized where the reorganization consists *solely* of annexations, detachments, minor boundary changes, formation of county service areas or any combination thereof (§§ 56261, 56438, 56439(c), 56439.5). However, since the transaction under consideration here consists of the dissolution of a district as well as an annexation, such provisions are inapplicable to the present situation.

one or more new districts consisting of all or any part of the territory of any of the subject districts; or

"(2) Any single such subject district and shall include the formation of one or more new districts consisting of all or any part of the territory of such subject district." (See also § 56210.)

Analyzing the present transaction in terms of these definitions we note such transaction consists of at least two "changes of organization": the annexation of territory and the dissolution of a district. (A "detachment" of the territory from the district being dissolved is also an implicit component of this transaction.) Further, these changes involve two districts. The transaction thus comprises the elements of a "reorganization" as specified in subdivision (b) of section 56068: "One or more changes of organization proposed for: (1) Each of two or more subject districts" Likewise a "consolidation" also consists of changes of organization involving at least two districts, and thus it too satisfies such criteria of a "reorganization." However, a "consolidation" is a specific type of multidistrict transaction: that which involves the combining of only those districts formed under the same principal act and which results in the formation of a *new* successor district. (§ 56035; see also § 56380(a).) As noted, the transaction considered here also consists of the combining of two districts that have been formed under the same principal act. To this extent it manifests elements of a "consolidation." However, the transaction is distinguishable from a "consolidation" in that it is not devised so as to result in the establishment of a "new successor district." Instead, the transaction contemplates the continuation of the annexing district enhanced by the annexed territory. Therefore, the proposed transaction is not of the type specified as being subject to the "consolidation" procedures of the District Reorganization Act. (§§ 56380-56388.) But since it involves at least two "changes of organization" affecting two districts, the transaction would be subject to that Act's "reorganization" procedures. (§§ 56430-56444.)

While it is true that the community would be left with much the same governmental configuration after either a consolidation or the transaction considered here, in that one district of a particular type would be serving the same territory that was formerly served by two districts of that type, the fact that the proposed transaction would not create a new governmental entity, as would a consolidation, constitutes a distinction of sufficient substance between the two types of reorganizing operations to warrant divergent treatment by the Legislature. Most pertinent in this regard is the fact that creation of a "new successor district" under the consolidation procedures requires the establishment and selection of a new governing body with jurisdiction over all of the newly united territory. (§ 56112.) This, of course, is a matter of some consequence that is equally significant to all of the voters in both of the joined districts. The fact that the voters in both of the districts being consolidated have essentially an equal and significant interest in such an organizational

change is reflected in section 56112, which provides that an elective governing body and officers of a consolidated district shall be selected at the same election that is conducted to confirm the consolidation, and in section 56388, which provides that such consolidation must be approved by a majority of the voters "in *each* district ordered to be consolidated." (Emphasis added.)

On the other hand, where, as in the transaction considered here, one of the combined districts continues in existence with the same governing personnel, the significance of the change to the voters of such continuing district would be far less than it would be to the voters in the territory of the dissolving district who would, as a result of the change, be coming under the jurisdiction of a different governmental entity. (§ 56480.) Consequently, in a reorganization involving an annexation and dissolution and the continuation of the annexing district, such as is proposed here, the matter is presented for approval of the voters only in the annexed territory of the district which is being dissolved. (§ 56440, subds. (a) and (c); § 56443.)⁵ (See *Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 675-681, concerning the propriety of confining an election only to the territory ordered to be detached.)

It can thus be seen that joining districts in a manner that results in the continuation of an existing district, as opposed to the creation of a new district, to exercise jurisdiction over the entire combined territory constitutes a substantial variation from the organizational changes contemplated by the consolidation provisions of the District Reorganization Act. Thus where an existing district will be continued, there would be no basis for applying the consolidation provisions with its requirement of an election in the territories of both of the districts being joined.

We therefore conclude that the reorganization provisions (§§ 56430-56444) and not the consolidation provisions (§§ 56380-56388) are applicable to the process of combining the territory of two districts by annexation where one of the districts is dissolved and the other district continues to function with jurisdiction over the entire combined territory.

⁵ This selective pattern of voter participation, operative in the process of confirming changes of organization, is paralleled in the District Reorganization Act's provisions governing the procedures for initiating such changes of organization when such initiation is by voter petition. With respect to initiating changes involving annexation or dissolution it is petitions from the voters or landowners in the territory to be annexed (§ 56170) or the district to be dissolved (§ 56173) that are required. (See also § 56190.) However, when it is sought to initiate, by petition, a consolidation, petitions from the voters of *each* of the involved districts are required. (§ 56172; see §§ 56195-56198 regarding the initiation of changes of organization by legislative bodies as opposed to voter petitions.)