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State of California

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OPINION	:	No. 84-601
of	:	DECEMBER 6, 1984
JOHN K. VAN DE KAMP Attorney General	:	
ANTHONY S. DA VIGO Deputy Attorney General	:	

THE HONORABLE CAMERON L. REEVES, COUNTY COUNSEL, COUNTY OF LAKE, has requested an opinion on the following question:

Must the county water district which owns and operates a sewer system, or the community services district which maintains certain public roads, bear the cost of adjusting sewer manhole covers to street grade when the community services district improves the road to a new grade?

CONCLUSION

The county water district which owns and operates a sewer system must bear the cost of adjusting sewer manhole covers to street grade when the community services district improves the public road to a new grade.

ANALYSIS

The present inquiry involves a dispute between two government agencies, i.e., a county water district[1] which operates a sewer system, and a community services district[2] which maintains a public road.[3] The question concerns the allocation of cost of relocation of subsurface sewer utilities necessitated by improvements to the road.[4]

With respect to the disputes between public corporations and agencies which do not involve the interest of the public as a whole, the rule is that where the facilities of one agency must be relocated to accommodate the improvement or extension of the facilities of another, the agency whose facilities were first in place should be compensated for the cost of relocation. The rationale is that such costs should be borne by those who are benefited by the improvement. (*City of Los Angeles* v. *Metropolitan Water District*

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[1] A county water district is established under the provisions of the County Water District Law (Water Code, § 30000 et seq.) and is authorized, inter alia, to acquire, construct, and operate facilities for the collection, treatment and disposal of sewage, waste and storm water of the district (Water Code, § 31100). A district may consist of all or part of the territor(ies) of one or more contiguous counties. (Water Code, §§ 30200, 30201.)

[2] A community services district is established under the provisions of the Community Services District Law (Gov. Code, § 61000 et seq.) and may consist of designated unincorporated territor(ies) of one or more counties. (Gov. Code, §§ 61100-61102.)

[3] We have observed that community services districts possess many of the rights, and perform many of the functions, normally regarded as municipal in nature. (67 Ops.Cal.Atty.Gen. 145, 148 (1984); 27 Ops.Cal.Atty.Gen. 261, 262 (1956).) With respect to the construction and maintenance of roads, Public Contracts Code section 20681 provides in part:

> "A [community services district] may exercise the powers hereinafter granted for such of the following purposes as have been designated in the petition for formation of such district and for such others of the following purposes as the district shall adopt as hereinafter provided:
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> ". . . . . .
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> "(j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or part of any street in such district, subject to the consent of the governing body of the county or city in which said improvement is to be made.
>
> "(k) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in subdivision (j), subject to the consent of the governing body of the county or city in which said improvement is to be made.
>
> ". . . . . ."

[4] We are advised that the road was dedicated to and accepted by the county, though not maintained as part of the county highway system. (Cf. Sts. & Hy. Code, § 941; 61 Ops.Cal.Atty.Gen. 466, 468-469 (1978).)

(1981) 115 Cal.App.3d 169, 174—dispute between water district and flood control district; *Northeast Sacramento etc. Dist.* v. *Northridge Park etc. Dist.* (1966) 247 Cal.App.2d 317—dispute between water district and sanitation district; *County of Contra Costa* v. *Central Contra Costa Sanitary Dist.* (1960) 182 Cal.App.2d 176—dispute between flood control district and sanitary district.)

If this rule were applied to the situation presented, it would follow that the county water district whose facilities were first in place should be compensated for the cost of relocation necessitated by the improvements to the road by the community services district, both being public agencies of specifically limited jurisdiction. In our view, however, the circumstances presented are otherwise governed by the principles which follow.

The people as a whole have a paramount right to use the public streets wherever located, such right being superior to any other right of a portion of the general public to any use of the street inconsistent therewith. (*City of Los Angeles* v. *Metropolitan Water Dist.*, *supra*, 115 Cal.App.3d at 173.) Hence, the subsurface use of property beneath a street must be compatible with the changing use of that street and, in the case of conflict, the agency maintaining the nonconforming subordinate use must bear the cost of relocation. (*City of Anaheim* v. *Metropolitan Water Dist. of So. Cal.* (1978) 82 Cal.App.3d 763, 769-770; 17 Ops.Cal.Atty.Gen. 19 (1951).)

While the improvement in the situation presented is not, unlike the cases last cited, accomplished by a city or county, it requires the consent of the governing body of the city or county in which it is made (Pub. Cont. Code, § 20681, subds. (j) & (k) - fn. 3, *ante*), and serves the paramount interests of the public generally. It is concluded that, in the absence of any specifically applicable statute (cf., e.g., Sts. & Hy. Code, §§ 680, 1463) or agreement in the premises, the county water district which owns and operates a sewer system must bear the cost of adjusting sewer manhole covers to street grade when the community services district improves the public road to a new grade.

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