



# Courts Reject Attempts to Exempt Charter Schools from Local Zoning Requirements

by John R. Yeh

Two recent cases confirm that only school districts can exercise Government Code section 53094's power to exempt classroom facilities from local zoning requirements. That statute provides that "the governing board of a school district ... by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district."

## City of Sunnyvale Case

In *City of Sunnyvale et al. v. Summit Public Schools et al.*, Santa Clara County Superior Court Case No. 1-13-CV-255504, the Court granted the City's Motion for Summary Adjudication challenging a charter school's attempt to exercise the zoning exemption on its own behalf, and concluding that "the Legislature expressly provided that a 'school district,' as opposed to a charter school itself, may render an ordinance inapplicable to a 'charter school facility' under specified circumstances, but it did not amend the Government Code to allow charter schools themselves to issue an exemption ..."

After a bench trial during the spring of 2016, the Court entered judgment on the City's behalf, ruling that the charter school's ongoing occupation of the site constituted a continuing nuisance since it constituted a nonconforming use. The charter school has filed a Notice of Appeal. (A trial court decision is only binding between the parties and is not citable as binding precedent outside of that context.)

## San Jose Unified School District Case

In *San Jose Unified School District v. Santa Clara County Office of Education, et al.*, Case No. H041088, the Sixth District Court of Appeal issued a published decision last week ruling that the local county board of education improperly attempted to exercise the zoning exemption on behalf of a Rocketship Education charter school authorized by the County Board.

In rejecting the County Board's argument that it was entitled to exercise the zoning exemption as a "school district," the Court of Appeal affirmed the trial court's ruling, and stated as follows:

... [I]t is local school districts that are obligated to provide facilities to charter schools ... The state has not tasked county boards of education with acquiring sites for charter schools; to the extent county boards of education do so, they are not carrying out a sovereign activity on behalf of the state. It follows, then, that empowering county boards of education to issue zoning exemptions for charter school facilities does not advance

the purpose of section 53094—namely, preventing local interference with the state's sovereign activities. For the foregoing reasons, the legislative history convinces us that section 53094 does not authorize county boards of education to issue zoning exemptions for charter school facilities."

The County Board and Charter School have the right to seek further review of the decision by the California Supreme Court.

## Broader Implications on Municipal Police Power

Government Code section 53091 states that "[e]ach local agency shall comply with all applicable building ordinances and zoning ordinances," and Government Code section 53094 requires school districts to comply therewith if "the zoning ordinance makes provision for the location of public schools" and if "the city or county has adopted a general plan." Under those circumstances, a proposed siting of a public school would have to conform to the municipality's local zoning ordinances, or otherwise be allowed through the issuance of a use permit or general plan amendment.

Government Code section 53094 creates a significant exception by expressly allowing school districts to render local ordinances inapplicable as to classroom facilities (subject to challenge by the city or county under the arbitrary and capricious standard), in recognition of the decisions in *Hall v. City of Taft* (1956) 47 Cal.2d 177 and *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, establishing that "[t]he public schools of this state are a matter of statewide rather than local or municipal concern."

As the decisions in the above two cases indicate, courts adjudicating the Government Code section 53094 zoning exemption are likely to do so in light of the legislative intent to balance state sovereignty over the construction of public schools with municipal control over land use and zoning. In the two cases cited above, denying the Government Code section 53094 zoning exemption power to charter schools and county boards of education was not deemed to interfere with the state's sovereignty in the area of the construction of public schools.

*John R. Yeh is a partner in Burke, Williams & Sorensen, LLP's Education Law practice group. He represented the City of Sunnyvale and San Jose Unified School District in both of the above cases.*



John R. Yeh  
Partner, Education Law  
Practice Group  
jyeh@bwslaw.com

