

CLIENT NEWS BRIEF

County Boards of Education May Not Exempt Charter Schools from Local Zoning Regulations

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A California Court of Appeal has held that a county board of education may not grant exemptions from zoning ordinances under Government Code section 53094. (*San Jose Unified School District v. Santa Clara County Office of Education* (Jan 24, 2017, No. H041088) __ Cal.App.5th __ <<http://www.courts.ca.gov/opinions/documents/H041088.PDF>>.) Specifically, county boards may not exempt the charter schools they authorize from zoning ordinances. School districts have this power; county boards do not.

The Santa Clara County Office of Education granted Rocketship Education ("Rocketship") a countywide charter to operate up to 25 charter elementary schools within the county. Rocketship proposed to locate one of its elementary schools on property that was owned by the City of San Jose ("City") and not zoned for school use. The proposed property was located within the jurisdiction of the San Jose Unified School District ("District"), but was zoned only for open space, parklands and habitat. Because the City's General Plan prohibited operating a school on the property, the Santa Clara County Board of Education granted Rocketship an exemption to the City's zoning ordinance under Government Code section 53094.

Under the language of Government Code section 53094, subdivision (b), only the "governing board of a school district" may grant zoning exemptions. The San Jose Unified School District and a local property owner filed separate petitions for writs of mandate seeking to invalidate the exemption. They argued that county boards of education are not school district governing boards, and lack authority to exempt property from local zoning laws. The trial court granted the District's writ petition and ordered the County Office of Education to rescind Rocketship's zoning exemption – thus leaving Rocketship without a school site.

The Court of Appeal upheld the trial court's decision. In reaching its conclusion, the appellate court relied on the legislative history of section 53094, which was enacted in response to 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. *Hall* and *Atherton* generally held that school districts engage in sovereign activities of the state when they design and construct school facilities, and therefore are not required to comply with local zoning ordinances in designating school locations. These cases, however, unwittingly immunized a large number of state agencies from local regulation, and section 53094 was passed to narrow this exemption authority specifically to local school districts.

The court noted that, although county offices of education have authority to grant charter petitions and oversee charter schools, it is local school districts that are obligated to provide charter school facilities under Proposition 39 (Ed. Code, § 47614, subd. (b).) Because a county office of education does not bear responsibility to acquire sites for charter schools, it does not perform a sovereign activity on behalf of the state if it chooses to do so. This is because the state has tasked districts, not county offices of education, with such responsibility. Therefore, empowering county boards of education to issue



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zoning exemptions would not advance section 53094's purpose – namely, preventing local interference with the state's sovereign activities.

While each charter school's situation is unique, this decision will likely impact the siting of county-authorized charter schools and require increased collaboration between government entities when zoning serves as an impediment to locating a charter school facility.

For more information on the *San Jose Unified School District* opinion or the Charter Schools Act, please contact the authors of this Client News Brief or an attorney in Lozano Smith's [Charter School Practice Group](#) or at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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