

# CLIENT NEWS BRIEF

## Alert: California Public Records Act Requests Regarding Lease-Leaseback Procedures

Many school districts throughout the state have recently received one or more California Public Records Act (CPRA) requests from the California Taxpayers Action Network (CalTAN) and the Carlin Law Group regarding lease-leaseback (LLB) transactions. CalTAN and the Carlin Law Group filed multiple lawsuits against school districts in the past regarding lease-leaseback practices, and this CPRA request may be a precursor to future litigation.

The first of the recent CPRA requests CalTAN and the Carlin Law Group sent to school districts seeks documents related to board authorization of lease-leaseback transactions and payment records. A second CPRA request sent to school districts that provided documents to CalTAN in response to the first request seeks information related to the use of a "skilled and trained workforce," which is a relatively new requirement for lease-leaseback projects.

### Recent Changes in Lease-Leaseback Procedures for School Districts

Over the past several years, there have been multiple appellate court decisions and legislative changes which have affected the laws regarding lease-leaseback projects. School districts should be familiar with such changes, and if necessary should update their policies, practices and documents accordingly.

#### *Lease-Leaseback Court Decisions*

CalTAN is a nonprofit organization that participates in litigation against public entities, including in three major lease-leaseback cases described below. The Carlin Law Group appeared as plaintiff's counsel in all three cases.

In 2015, the Fifth District Court of Appeal (which has jurisdiction in the Central Valley) held that a lease-leaseback contract must contain provisions that reflect contractor financing and post-construction tenancy by the school district. *Davis* also held that a lease-leaseback contract with an entity that provided preconstruction services under a separate contract could be subject to legal challenge for a potential conflict of interest under Government Code section 1090. (*Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; [see 2015 Client News Brief No. 30.](#))

In 2016, the Second District Court of Appeal (which has jurisdiction in Los Angeles County and certain parts of the Central Coast) agreed with the *Davis* court about the potential for a conflict of interest in a lease-leaseback contractor's performance of preconstruction services under an earlier contract, but expressly disagreed with the *Davis* court regarding terms required for lease-leaseback contracts, ruling that a lease-leaseback contract need not include provisions about contractor financing and post-construction tenancy. (*McGee v. Balfour Beatty Construction* (2016) 247 Cal.App.4th 235; [see 2016 Client News Brief No. 25.](#))

Most recently, in *California Taxpayers Action Network v. Taber Construction, Inc. et al.* (2017) 12 Cal.App.5th 115, the First District Court of Appeal (which has

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jurisdiction in San Francisco and the Northern coastline of California) agreed with the *McGee* decision, and declined to follow the lease-leaseback holding of *Davis* and to read *Davis*' "genuine lease" and "financing" requirements into the lease-leaseback statute. ([See 2017 Client News Brief No. 32.](#)) All three cases agree on the Government Code section 1090 conflict of interest issue, but a conflict exists in different California appellate courts as to what must be contained in an LLB contract.

## *Legislative Changes*

Effective January 1, 2016, Assembly Bill (AB) 566 requires prequalification of contractors and mechanical, electrical, and plumbing subcontractors for all LLB projects for districts with ADA of 2,500 or more, regardless of funding source and regardless of price. AB 566 also requires use of a skilled and trained workforce on lease-leaseback projects, which relates directly to the information sought by CalTAN and the Carlin Law Group. ([See 2015 Client News Brief No. 51.](#))

The most recent modification to lease-leaseback procedures came through AB 2316, which went into effect on January 1, 2017. AB 2316 requires selection of the lease-leaseback contractor through a "best value" procedure specifically laid out in statute. Proposals submitted in response to a request for proposals (RFP) must be ranked by their best value scores and the board must award to the contractor that submitted the sealed proposal determined by the board to be the best value. The bill expressly permits a school district to award a single lease-leaseback contract that includes preconstruction services, apparently attempting to remove any potential conflict of interest issue under *Davis* and *McGee* that could result from the award of a preconstruction services contract to the contractor who will be providing construction services. AB 2316 also permits a school district to award the LLB contract for an agreed-upon lump sum or a fee for performing the services. ([See 2016 Client News Brief No. 63.](#))

## **Takeaways**

Lease-leaseback procedures are complicated, and the law regarding lease-leaseback projects has changed significantly over the past several years. School districts may wish to review their policies and practices regarding lease-leaseback projects and consult with legal counsel to ensure full compliance with the most recent laws and regulations. If your school district has received a CPRA request from CalTAN and the Carlin Group regarding lease-leaseback procedures, you may wish to contact legal counsel to assist with providing a timely and compliant response to the request.

If you have any questions about CalTAN and the Carlin Group's CPRA requests, or lease-leaseback procedures generally, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).