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Clerk of the Superior Court

JUL 22 2015

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SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF SOLANO
DEPARTMENT ONE

CITY OF DIXON, a California
Municipality,

NO. FCS044917
FCS045536

Petitioner,

**ORDER REGARDING PETITION
FOR WRIT OF MANDATE**

vs.

Hearing Date: July 22, 2015

SUELLEN JOHNSTON, etc., et al.,

Respondents. /

SOLANO COUNTY TAXPAYERS'
ASSOCIATION, etc., et al.,

Real Parties in Interest. /

Petitioner's Petition for Writ of Mandate, Declaratory Relief and Injunctive Relief came on regularly for hearing on July 22, 2015 before the Honorable Paul L. Beeman. Steven G. Churchwell, Esq., and Nubia I. Goldstein, Esq., appeared as counsel for Petitioner. Daniel King, Esq., appeared as counsel for Respondent. Timothy A. Bittle, Esq., appeared as counsel for Real Party in Interest. The Court heard the statements and arguments of counsel. Thereafter, the matter was submitted for decision. Now, therefore, based on the pleadings and records on file and the statements and arguments of counsel, the Court enters the following order.

1 A key limitation on the initiative power is that it cannot be used to accomplish
2 administrative acts, but only legislative acts.

3 The electorate has the power to initiate legislative acts, but not
4 administrative ones: "While it has been generally said that the reserved
5 power of initiative and referendum accorded by article IV, section 1, of
6 the Constitution is to be liberally construed to uphold it whenever
7 reasonable [citations], it is established beyond dispute that the power
8 of referendum may be invoked only with respect to matters which are
9 strictly legislative in character [citations]. Under an unbroken line of
10 authorities, administrative or executive acts are not within the reach of
11 the referendum process [citations]. The plausible rationale for this rule
12 espoused in numerous cases is that to allow the referendum or
13 initiative to be invoked to annul or delay the executive or administrative
14 conduct would destroy the efficient administration of the business
15 affairs of a city or municipality." City of San Diego v. Dunkl (2001) 86
16 Cal.App.4th 384, 399 [quoting Lincoln Property Co. No. 41, Inc. v. Law
17 (1975) 45 Cal. App. 3d 230, 233-234].

18 As Dunkl later explained:

19 Once a legislative policy has been established, the administrative acts
20 that follow therefrom are not subject to referendum or initiative. They
21 should not obstruct the project, but should carry it out. An enactment
22 that interferes with the City's ability to carry out its day-to-day business
23 is not a proper subject of voter power. Similarly, an enactment that
24 would impose a straitjacket on the City to make it impossible to carry
25 out the public business should not be allowed. Id. at 400.

26 An act is legislative if it establishes a new policy or plan, and administrative if
27 it implements a policy or plan already adopted by that local entity or a superior
28 authority.

29 To decide whether a particular ballot measure constitutes a
30 legislative or an administrative act, we must apply the test well set
31 out and explained in Valentine v. Town of Ross (1974) 39 Cal. App.
32 3d 954, 957-958 [114 Cal. Rptr. 678]: "The acts, ordinances and
33 resolutions of a municipal governing body may, of course, be
34 legislative in nature or they may be of an administrative or executive
35 character. (Hopping v. Council of City of Richmond, 170 Cal. 605,
36 610 [150 P. 977].) . . . [P] Also well settled is the distinction between
37 the exercise of local legislative power, and acts of an administrative
38 nature. [P] Following earlier authority, we said in Martin v. Smith
39 ((1960)) 184 Cal. App. 2d 571, 575 [7 Cal. Rptr. 725]: "'The power

1 to be exercised is legislative in its nature if it prescribes a new
2 policy or plan; whereas, it is administrative in its nature if it merely
3 pursues a plan already adopted by the legislative body itself, or
4 some power superior to it." ' ' [Citation]; we also said (184 Cal. App.
5 2d at p. 575): 'Acts constituting a declaration of public purpose, and
6 making provisions for ways and means of its accomplishment, may
7 be generally classified as calling for the exercise of legislative
8 power. Acts which are to be deemed as acts of administration, and
9 classed among those governmental powers properly assigned to
10 the executive department, are those which are necessary to be
11 done to carry out legislative policies and purposes already declared
12 by the legislative body, or such as are devolved upon it by the
13 organic law of its existence.' [Citations.]" (Italics added.) *Id.* at 399-
14 400.

15 A local government's actions taken to implement a state-established policy
16 are not subject to modification or repeal through the initiative process.

17 Prescribing the policy and duty was the legislative act of the state;
18 carrying out the policy by performing the duty is an administrative
19 function delegated by the state to the local governing body, the
20 board of supervisors. "The governing body of the [local political
21 subdivision] . . . by its resolution did not make a law but thereby
22 acted in an executive or administrative capacity as an
23 instrumentality of the state to make operative the provisions of a
24 state law already existing." *Simpson v. Hite* (1950) 36 Cal.2d 125,
25 130 [quoting *State v. Butler* (1945), 145 Neb. 638 [17 N.W.2d 683,
26 690].

27 These implementation actions by necessity encompass funding decisions made
by the local government to accomplish the implementation. *Mission Springs Water
District v. Verjil* (2013) 218 Cal.App.4th 892 [water and sewer rate rollback proposed by
initiative found invalid, as the uncontroverted evidence established that the rates
charged were absolutely necessary, and there was no evidence to suggest water
district's budget was padded with high salaries, sweetheart pension deals, or lavish
offices].

Under the Porter-Cologne Water Quality Control Act, state and regional water
boards are given primary responsibility for coordination and control of water quality,

1 and the establishment of water quality standards. Water Code sections 13001, 13241.
2 Cities are charged with the duty of meeting those standards.

3 The proposed initiatives, directly or indirectly, challenge the actions of
4 Plaintiff/Petitioner CITY OF DIXON ("CITY"), through its elected city council, to
5 upgrade its sewage treatment plant, to meet the standards set by the state and
6 regional water boards.

7 The court finds that the proposed initiatives at issue in these consolidated
8 actions are invalid, as they would affect the administrative acts of CITY in attempting
9 to comply with state policy actions, on matters of statewide concern.

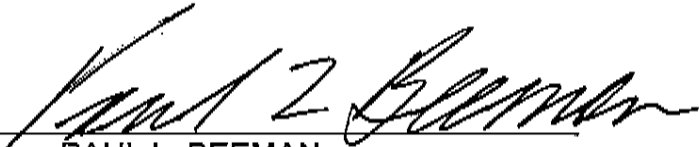
10 As an alternative basis for finding these proposed initiatives invalid, the court
11 finds that they would interfere with CITY's ability to carry out its day-to-day business
12 and to perform essential government functions. Citizens for Jobs & the Economy v.
13 County of Orange (2002) 94 Cal.App.4th 1311 [initiative which placed spending and
14 procedural limitations on county board of supervisors re conversion of former military
15 air station to civilian use was found invalid on this and other bases]; Dunkl, supra, 86
16 Cal.App.4th at 400.

17 The court also notes that there is a notice procedure for rate increases such as
18 the one targeted by the proposed initiatives, and an opportunity for affected ratepayers
19 to register their opposition to it, which would by law prevent the rate increase if the
20 opposition rate reached a threshold level by the 45 day deadline. Cal. Const., art. XIII
21 D, § 6, subd. (a)(2); Mission Springs, supra, 218 Cal.App.4th at 921. Real Parties in
22 Interest conceded at oral argument that this notice was provided, but that the level of
23 protest necessary to prevent the rate increase was not achieved.

24 Finally, the court notes the option exists for voters to boot out the
25 representatives whose votes enacted the rate increase and/or related actions
26 designed to comply with state water standards set by the state and regional water
27 boards. Id. at 921.

1 **IT IS THEREFORE ORDERED** that Respondents SUELLEN JOHNSTON, in
 2 her official capacity as City Elections Official for the City of Dixon, and IRA
 3 ROSENTHAL, in his official capacity as Registrar of the County of Solano, are to take
 4 no action to process the proposed initiatives which are the subject of FCS044917 and
 5 FCS045536, as those proposed initiatives are invalid, as beyond the power of the
 6 electorate.

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 11 DATED: July 22, 2015



 PAUL L. BEEMAN
 Judge of the Superior Court

1 SOLANO COUNTY COURTS
2 STATE OF CALIFORNIA
3 580 Texas Street, Fairfield, CA

4 **CERTIFICATE AND AFFIDAVIT OF MAILING** NO. FCS044917, FCS045536

5 I, Donna Callison, certify under penalty of perjury that I am a Judicial Assistant
6 of the above-entitled Court and not a party to the within action; that I served the
7 attached by causing to be placed a true copy thereof in an envelope which was then
8 sealed and postage fully prepaid on the date shown below; that I am readily familiar
9 with the business practice for collection and processing of correspondence for mailing
10 with the United States Postal Service; that this document was deposited in the United
11 States Postal Service on the date indicated. Said envelopes were addressed to the
12 attorneys/parties and any other interested party as indicated below.

13 Document Served: Order Regarding Petition for Writ of Mandate

14 STEVEN G CHURCHWELL ESQ 15 NUBIA I GOLDSTEIN ESQ 16 CHURCHWELL WHITE LLP 17 1414 K STREET 3 RD FLOOR 18 SACRAMENTO CA 95814 19 (and facsimile to: 916-468-0951)	20 DEREK P COLE ESQ 21 DANIEL KING ESQ 22 COTA COLE LLP 23 2261 LAVA RIDGE COURT 24 ROSEVILLE C 95661 25 (and facsimile to: 916-780-9050)
26 TIMOTHY A BITTLE ESQ 27 HOWARD JARVIS TAXPAYERS FOUNDATION 921 ELEVENTH STREET SUITE 1201 SACRAMENTO CA 95814 (and facsimile to: 916-444-9823)	

28 I declare under penalty of perjury that the foregoing is true and correct and that
29 this declaration was executed on July 22, 2015 at Fairfield, California.

30 
31 Donna Callison