

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 11-204
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of	:	June 1, 2012
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Attorney General	:	
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THE HONORABLE JIM SILVA, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. Where a community services district has received approval from a Local Agency Formation Commission to exercise its latent power to provide police protection and law enforcement services within its boundaries, may that district contract with the county or another local public agency in order to have the county sheriff or another local agency police department provide those services?

2. If so, does state law require the district to first obtain competitive bids or otherwise solicit proposals from multiple parties?

## CONCLUSIONS

1. Where a community services district has received approval from a Local Agency Formation Commission to exercise its latent power to provide police protection and law enforcement services within its boundaries, that district may contract with the county or another local public agency in order to have the county sheriff or other local agency police department provide those services.

2. Where a community services district has received approval from a Local Agency Formation Commission to exercise its latent power to provide police protection and law enforcement services within its boundaries and that district desires to contract with the county or another local public agency in order to have the county sheriff or other local agency police department provide those services, state law does not require the district to first obtain competitive bids or otherwise solicit proposals from multiple parties.

## ANALYSIS

The Community Services District Law<sup>1</sup> provides for the establishment of community services districts, which are local entities that consist of unincorporated territory and “possess many of the rights, and perform many of the functions, normally regarded as municipal in nature.”<sup>2</sup> We are informed that one such district (District)<sup>3</sup> wishes to exercise its “latent power”<sup>4</sup> to provide police protection and law enforcement

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<sup>1</sup> Govt. Code §§ 61000-61144 (“CSD Law”). All further references to sections of the Government Code are by section number only.

<sup>2</sup> 73 Ops.Cal.Atty.Gen. 183, 185 (1990); *see also* 89 Ops.Cal.Atty.Gen. 148, 149 (2006).

<sup>3</sup> These questions were submitted with reference to the Rossmoor Community Services District, which is located in the northwestern portion of Orange County. At one time, a separate statutory scheme governed this specific district. *See* former §§ 60400-60971. Those provisions have been repealed. 2000 Stat. ch. 506 § 25; 1985 Stat. ch. 60 § 2; 1982 Stat. ch. 487 § 4; 1955 Stat. ch. 1746 § 2. At present, the general provisions of the CSD Law apply to Rossmoor and other community services districts statewide, so we couch our discussion in general terms.

<sup>4</sup> For purposes of the CSD Law, a “latent power” means “those services and facilities authorized under Part 3 [of the CSD Law] (commencing with Section 61100) . . . , that a district did not provide prior to January 1, 2006.” § 61002(h).

services within its jurisdictional limits.<sup>5</sup> While a community services district must obtain the approval of its Local Agency Formation Commission (LAFCO) before exercising any latent power,<sup>6</sup> the questions presented here assume that the District has secured or will secure the requisite LAFCO approval.<sup>7</sup> Once the District receives such approval, its board of directors “may, by ordinance, order the exercise of [the] power [so approved].”<sup>8</sup>

Thus, the questions presented for our consideration are whether the District, with LAFCO approval, may contract with the county or another local public agency to have

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<sup>5</sup> See § 61100(i).

<sup>6</sup> § 61106(a); see also §§ 56654(b), 56824.10-56824.14. LAFCO proceedings of the type contemplated here are premised on the idea that a district’s “decision to engage in new or different functions by exercising some or all of its latent powers has the potential to impact the balance of services in a county.” See *South San Joaquin Irr. Dist. v. Super. Ct.*, 162 Cal. App. 4th 146, 156 (2008) (examining legislative intent behind relevant LAFCO statutes) (quoting Assembly Comm. on Local Govt. Rpt., Assembly 948, 2001-2002 Reg. Sess. (Apr. 24, 2001) at 4). A LAFCO must evaluate such proposals and make appropriate determinations in its role as “the “watchdog” the Legislature established to guard against the wasteful duplication of services.” *Id.* at 156-157 (quoting *Bookout v. LAFCO*, 49 Cal. App. 3d 383, 388 (1975)).

<sup>7</sup> The District maintains that LAFCO approval of its proposal is warranted notwithstanding the language of section 61107(b), which states that a LAFCO

shall not, . . . , approve a district’s proposal to exercise a latent power if [the LAFCO] determines that another local agency already provides *substantially similar* services or facilities to the territory where the district proposes to exercise that latent power.

Emphasis added. Although, as discussed below, the county sheriff’s department currently fulfills its core statutory duties within the District’s unincorporated territory, the District maintains that its proposal to exercise latent law enforcement powers will call for a level of dedicated law enforcement presence and services within District boundaries that is significantly greater than—and therefore *not* “substantially similar” to—the core services currently provided by the county sheriff. Indeed, we are told, the District’s desire to provide a different and greater level of service for its territory and residents is the impetus for its request for LAFCO authorization. We express no opinion on whether the county LAFCO should approve the District’s proposal in these circumstances. For purposes of our analysis, however, we assume (as we have been asked to do) that such approval will be granted.

<sup>8</sup> § 61106(b).

that agency's law enforcement department provide police protection and law enforcement services to the District and, if so, whether the contracting process must include the solicitation of competitive bids. For the reasons that follow, we conclude that, with LAFCO approval, the District may contract with the county or another local public agency for police services, and that it may do so without soliciting competitive bids.

### **I. Contracting for police protection and law enforcement services**

State law requires a county sheriff to preserve the public peace,<sup>9</sup> arrest persons who commit public offenses,<sup>10</sup> prevent and suppress public disturbances,<sup>11</sup> and investigate the alleged commission of public offenses<sup>12</sup> throughout the county, including unincorporated county territory such as the area that constitutes the District.<sup>13</sup> We are informed that the county sheriff is currently fulfilling these core duties within District boundaries. We are also informed, however, that the District desires to provide for its territory and residents a different and greater level of law enforcement and police protection services than are provided by the sheriff, more akin to those provided by municipal police departments. Such services would include, for example, parking enforcement and a constant presence of patrol officers.

Under the CSD Law, community services districts are statutorily authorized to provide a "myriad of public services, including those relating to police and fire protection, . . ."<sup>14</sup> Specifically, section 61100(i) states that a community services district may provide "police protection and law enforcement services by establishing and operating a police department that employs peace officers pursuant to Chapter 4.5

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<sup>9</sup> § 26600.

<sup>10</sup> § 26601.

<sup>11</sup> § 26602.

<sup>12</sup> *Id.*

<sup>13</sup> Because the sheriff's jurisdiction extends throughout the entire county, the sheriff is authorized to perform statutory law enforcement duties in both unincorporated territories having no dedicated law enforcement department and local municipalities or districts having their own police departments. *People v. Scott*, 259 Cal. App. 2d 268, 280 (1968); 64 Ops.Cal.Atty.Gen. 846, 847 (1981); 38 Ops.Cal.Atty.Gen. 49, 50 (1961); 8 Ops.Cal.Atty.Gen. 149, 150 (1946). So, even if the District were to begin providing dedicated police services within its territory, the county sheriff's department would not be divested of its existing authority within District territory.

<sup>14</sup> *Zack v. Marin Emerg. Radio Auth.*, 118 Cal. App. 4th 617, 637 (2004).

(commencing with Section 830) of Title 3 of Part 2 of the Penal Code.”<sup>15</sup> Thus, under the terms of the statute, a community services district may choose to operate its own police department and to employ its own police officers.<sup>16</sup> In addition, however, such districts possess the power to “contract with *any* local agency . . . for the provision by or to the district of any projects, *services*, or programs authorized by [the CSD Law] . . . .”<sup>17</sup> Because providing police protection is one such authorized service, we believe that the District may enter into a contractual arrangement with either the county or another local agency for that agency to provide law enforcement services within District boundaries.

Alternatively, the CSD Law permits the District to enter into “joint powers agreements pursuant to the Joint Exercise of Powers Act, . . . .”<sup>18</sup> Under that Act, “[i]f authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, . . . .”<sup>19</sup> Here, we assume that the District will have LAFCO approval to exercise the power to

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<sup>15</sup> The cited Penal Code provisions (Pen. Code §§ 830-832.9) describe various peace officer positions and duties, as well as the qualifications and training required for such positions.

<sup>16</sup> See also 27 Ops.Cal.Atty.Gen. 261, 263 (1956).

<sup>17</sup> § 61070 (emphasis added). The full text of the statute is as follows:

A district may contract with any local agency, state department or agency, federal department or agency, or any tribal government for the provision by or to the district of any facilities, services, or programs authorized by this division, within or without the district, subject to compliance with Section 56133.

Section 56133 generally requires LAFCO approval where a district or city seeks to provide a “new or extended service outside its jurisdictional boundaries[.]” See § 56133(a)-(c). These provisions might come into play, for example, were the District to propose having a neighboring city’s police department provide law enforcement services within the District’s (and therefore outside that city’s own) jurisdictional boundaries. We are informed that the county LAFCO has asked the District to submit, as part of the District’s application to exercise latent powers, its proposed contract with the local agency that would provide law enforcement services to the District. Thus, LAFCO approval of the District’s application as a whole would necessarily include any approval required under section 56133 regarding the provision of extraterritorial services.

<sup>18</sup> § 61060(j). The Joint Exercise of Powers Act is codified at sections 6500 through 6599.3.

<sup>19</sup> § 6502.

provide law enforcement services within its boundaries, and that any local agency with which the District might contract—including the county or a neighboring city, for example—would already be exercising law enforcement powers within its own jurisdiction. It is not, however, “necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised.”<sup>20</sup> Furthermore, notwithstanding the use of the term “*joint powers*,” the contracting agency “may agree to provide *all* or a portion of the services to the other parties [here, the District] in the manner provided in the [joint powers] agreement.”<sup>21</sup> Indeed, under similar circumstances, we have previously concluded that there could be “no valid objection” to a joint powers agreement between a community services district and a county to have the county sheriff provide law enforcement services within the district there at issue.<sup>22</sup>

Therefore we conclude that, where a community services district has received LAFCO approval to exercise its latent power to provide police protection and law enforcement services within its boundaries, that district may contract with the county or another local public agency in order to have the county sheriff or other local agency police department provide those services.

## 2. Competitive bidding not required

Having concluded that the District may contract with the county or another local agency for law enforcement services within District boundaries, we next consider whether state law requires the District to solicit competitive bids before entering into such a contract. As discussed above, the CSD Law expressly permits the District (1) to contract with any other local agency for a service that is otherwise authorized under the CSD Law<sup>23</sup> and/or (2) to enter into joint powers agreements with other agencies for these purposes.<sup>24</sup> As a rule, “absent a statutory requirement, a public entity is not bound to engage in competitive bidding.”<sup>25</sup> In neither of the authorized scenarios under

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<sup>20</sup> *Id.*

<sup>21</sup> § 6506 (emphasis added).

<sup>22</sup> 38 Ops.Cal.Atty.Gen. at 52; *see also* 67 Ops.Cal.Atty.Gen. 145, 148 (1984) (community services district may “contract with the county to have its roads patrolled and its ordinances enforced by the sheriff”).

<sup>23</sup> § 61070.

<sup>24</sup> § 61060(j).

<sup>25</sup> *San Diego Serv. Auth. for Freeway Emergs. v. Super. Ct.*, 198 Cal. App. 3d 1466, 1469 (1988); *see also Smith v. City of Riverside*, 34 Cal. App. 3d 529, 535-536 (1973);

consideration here is there a statutory requirement that a community services district engage in competitive bidding before contracting with another public agency.<sup>26</sup>

Therefore we conclude that, where a community services district has received LAFCO approval to exercise its latent power to provide police protection and law enforcement services within its boundaries and that district desires to contract with the county or another local public agency in order to have the county sheriff or other local agency police department provide those services, state law does not require the district to first obtain competitive bids or otherwise solicit proposals from multiple parties.

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*Co. of Riverside v. Whitlock*, 863, 877-878 (1972); *Davis v. City of Santa Ana*, 108 Cal. App. 2d 669, 677-678 (1952); 72 Ops.Cal.Atty.Gen. 86 (1989); 38 Ops.Cal.Atty.Gen. 92, 93 (1961).

<sup>26</sup> By contrast, community services districts (like most governmental agencies) are generally required to use competitive bidding in connection with contracting to purchase materials or supplies for public works projects or contracting for the construction of such projects where the cost exceeds a certain monetary threshold. See Pub. Cont. Code §§ 20682 (materials and supplies), 20682.5 (construction contracts).