

1-1-1976

# Empty Corridors: The Legal Aspects of the Closure and Sale of Surplus Public Schools

Patricia Paulson White

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

---

## Recommended Citation

Patricia Paulson White, Comment, *Empty Corridors: The Legal Aspects of the Closure and Sale of Surplus Public Schools*, 16 SANTA CLARA L. REV. 595 (1976).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol16/iss3/5>

This Comment is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com).

## EMPTY CORRIDORS: THE LEGAL ASPECTS OF THE CLOSURE AND SALE OF SURPLUS PUBLIC SCHOOLS

During recent years a substantial drop in the birth rate has combined with escalating prices for suburban single-family homes to effect a dramatic decline in enrollment in California public schools.<sup>1</sup> Many classrooms built during the population boom of the 1950's are empty, and with increasing frequency, school district governing boards are responding to the financial bind caused by declining enrollment and restrictive school finance legislation<sup>2</sup> by closing and selling public schools.<sup>3</sup>

When a school is closed and sold, conflicting interests may come into play. On one side, the school district desires to maximize the amount realized from the sale, while on the other side, the citizens may have an interest in retaining the land in public use for open space or recreation. A school site which is sold to a city for open space will command a lower price than school property which can be developed for commercial or residential use.<sup>4</sup>

The comment will focus on two primary issues: (1) whether a school district is subject to municipal zoning regulations when it sells school property; and (2) whether taxpayers who

---

1. According to statistics compiled by the California State Department of Education, statewide public school enrollment in grades K-12 peaked in 1970 at 4,457,325. As of October, 1974, enrollment had declined to 4,295,414, and enrollment is expected to continue dropping to a projected low of 3,915,221 in 1981. Telephone interview with Erwin Decker, Ass't to the Deputy Superintendent of Public Instruction, February 3, 1976.

2. CAL. EDUC. CODE § 20902 *et seq.* (West Supp. 1976).

This group of statutes, popularly known as S.B. 90, imposes a ceiling on the revenue base, so that school districts do not reap the benefit from an increase in the assessed valuation of local property.

3. According to a survey completed by the California State Department of Education December 11, 1975, 143 schools have been closed to their original purpose, and 51 school districts have indicated the expected future closure of 86 schools. Of those schools which have been closed, 16 schools have been sold, and eight are presently available for sale. Telephone interview with Erwin Decker, Ass't to the Deputy Superintendent of Public Instruction, February 3, 1976.

4. *E.g.*, the price originally sought by the Los Altos School District, Los Altos, California, for the Hillview school property and Lot 18 (part of the district's former administration site) was \$1,606,500. This price was based on the estimated value of the school property under R1-10 (residential) zoning and the estimated value of Lot 18 under R-3-1 (commercial) zoning. The property was offered to bidders for a minimum price of \$1,004,000 on February 3, 1975. No bids were received. The property was rezoned to a Public and Community Facilities zone, and in August, 1975, the Hillview site was purchased by the City of Los Altos for \$433,350.

find the school board's decision to close a school economically unsound may bring suit against the school district governing board under California Code of Civil Procedure section 526a.<sup>5</sup> An analysis of the particular legal problems attending school closures in the Los Altos School District, Los Altos, California, will be used to illustrate the difficulties which may occur when a public school is offered for sale.<sup>6</sup>

#### STATUTORY REGULATION OF THE SALE OF SCHOOL PROPERTY

California Education Code section 16201<sup>7</sup> empowers school district governing boards to sell unnecessary school property to any public agency, including a city. The sale may be effected only by a unanimous resolution of the school board.<sup>8</sup> The recent enactment of Assembly Bill 172<sup>9</sup> by the California Legislature clarified the law by requiring that surplus school property be offered first to local agencies for park, recreation, or open space purposes. The legislature has clearly manifested its intent to encourage the retention of school property for public use.

Until recently, proceeds from the sale of school property had to be placed into the school district's capital outlay fund.<sup>10</sup> On September 15, 1975, the legislature passed Senate Bill 443, amending the California Education Code to provide that a school district with no anticipated need for additional school construction may deposit sale proceeds into the district's general fund.<sup>11</sup>

Some cities are facilitating the retention of surplus school property for public use by amending the municipal zoning ordinances to include school property in restricted zones. For example, subsequent to a resolution by the Los Altos School District governing board to sell one elementary school and a por-

---

5. CAL. CIV. PRO. CODE § 526a (West Supp. 1976).

6. Los Altos, which is an affluent suburb, is representative of the type of community in which school closures are occurring. As the city is substantially developed and is surrounded by other cities, very little open space remains.

7. CAL. EDUC. CODE § 16201 (West 1969).

8. *Id.* § 16203(a).

9. Cal. Stats. (1975), ch. 219 at 502-03.

10. CAL. EDUC. CODE § 16053 (West 1969). CAL. EDUC. CODE § 16053.5 (West Supp. 1975), allowing school districts with declining enrollment to deposit sale proceeds into the general fund, expired June 30, 1975. The capital outlay fund is reserved for construction and remodeling expenses.

11. *Id.* § 16053, as amended, Cal. Stats. (1975), ch. 743. The general fund is used to defray all expenses other than capital improvements, including salaries and supplies.

tion of a former administration site, the Los Altos City Council enacted Ordinance No. 75-4, which amended the Los Altos Municipal Code Zoning Map<sup>12</sup> by placing all schools within the city limits in a newly-created Public and Community Facilities District (PCF). Property within the new PCF District may be used for schools, non-profit recreation areas, golf courses, churches, museums, and open space<sup>13</sup>—a limitation which substantially reduces the market value. A second elementary school within the Los Altos School District is to be closed and sold in June, 1976, and the school district has made the sale of the property contingent upon the granting of R1-10 (residential) zoning.<sup>14</sup>

### IS A SCHOOL DISTRICT SUBJECT TO MUNICIPAL ZONING REGULATIONS?

Prior to 1959, when the California Legislature enacted Government Code sections 53090 through 54095,<sup>15</sup> the law in California as to the applicability of municipal ordinances to school districts was well settled by two leading cases, *Hall v. City of Taft*<sup>16</sup> and *Town of Atherton v. Superior Court*.<sup>17</sup>

In *Hall v. City of Taft*,<sup>18</sup> the issue was whether a municipal corporation's building ordinances were applicable to the construction of a public school building. The contractor, whose plans had been approved by the State Department of Education and the State Division of Architecture, had failed to obtain a city building permit involving a \$300.00 fee. The California Supreme Court held that "[t]he public schools of this state are a matter of statewide rather than local or municipal concern."<sup>19</sup> Furthermore, the *Hall* court held that school districts are agencies of the state,<sup>20</sup> and that state regulations completely occupied the field of school construction;<sup>21</sup> accordingly,

---

12. LOS ALTOS, CAL., MUN. CODE § 10-2.3410 (enacted March, 1975).

13. *Id.* §§ 10-2.2202 to 10-2.2203.

14. Palo Alto Times, November 5, 1975, at 30, col. 1.

15. CAL. GOV'T CODE §§ 53090-95 (West Supp. 1976). See text accompanying notes 34-37 *infra*.

16. 47 Cal. 2d 177, 302 P.2d 574 (1956).

17. 159 Cal. App. 2d 417, 324 P.2d 328 (1958); see Note, *City Planning: Location of School Sites: Conflict With Municipal Zoning Ordinance*, 47 CALIF. L. REV. 171 (1959).

18. 47 Cal. 2d 177, 302 P.2d 574 (1956).

19. *Id.* at 179, 302 P.2d at 576.

20. *Id.* at 181, 302 P.2d at 577.

21. *Id.* at 184, 302 P.2d at 579.

a school district could not be subject to local regulations absent express provision of the state constitution or the legislature.<sup>22</sup> Any conflict in authority must be resolved in favor of the state.<sup>23</sup>

Like the *Hall* decision, *Town of Atherton v. Superior Court*<sup>24</sup> was predicated upon the doctrine of preemption. The *Atherton* case resolved the issue of the applicability of municipal zoning ordinances to school sites. The Menlo Park School District, which extended into part of Atherton, initiated an eminent domain proceeding in order to acquire land for construction of a school. The city sought to block the petition on the ground that the property in question was zoned for residential use. The court of appeal followed the rule of the *Hall* decision, holding that a school district is an agency of the state<sup>25</sup> and that the state, through comprehensive statutes in the California Education Code,<sup>26</sup> had preempted the field of school site selection.<sup>27</sup> It was conceded that the town of Atherton had a constitutionally-conferred power to zone,<sup>28</sup> but the court concluded that such zoning, as applied to school districts, "is merely advisory or recommendatory . . . and is not binding on the school district."<sup>29</sup>

A firm tenet of municipal law is Dillon's Rule: a municipal corporation has only those powers granted to it expressly or by necessary implication.<sup>30</sup> The *Atherton* court reaffirmed this concept, noting that a municipality has no authority to bind the state or its agencies unless such authority is expressly granted.<sup>31</sup> The court did not find that the legislature had expressly consented to municipal control of school sites.<sup>32</sup>

---

22. *Id.* at 183, 302 P.2d at 578.

23. *Id.* at 189, 302 P.2d at 582.

24. 159 Cal. App. 2d 417, 324 P.2d 328 (1958).

25. *Id.* at 421, 324 P.2d at 331.

26. CAL. EDUC. CODE §§ 5021, 5022, 5041 (West 1975); *id.* § 18102 (West Supp. 1976).

27. The court stated, "The comprehensive system of school control and operation by the school districts as shown in the statutes . . . is completely inconsistent with any power of a municipality to control the location of school sites." 159 Cal. App. 2d at 427, 324 P.2d at 334-335.

28. CAL. CONST. art. XI, § 11.

29. 159 Cal. App. 2d at 423, 324 P.2d at 332.

30. *Nance v. Mayflower Tavern, Inc.*, 106 Utah 517, 150 P.2d 773 (1944), *citing* J. DILLON, MUNICIPAL CORPORATIONS § 237 (5th ed. 1911).

31. 159 Cal. App. 2d at 428, 324 P.2d at 335, *citing* C.J. Kubach Co. v. McGuire, 199 Cal. 215, 217, 248 P.2d 676, 677 (1926).

32. *Id.*

The *Atherton* holding was followed in *Landi v. Superior Court*,<sup>33</sup> in which the owners of property condemned for the expansion of a school site challenged the eminent domain proceeding on the ground that the property in question was zoned for residential use. The petitioners' writ was denied on the basis of the reasoning in *Atherton*.<sup>34</sup>

*Legislative Response to the Hall and Atherton Cases:  
Government Code Sections 53090 through 53095*

In 1959, the California Legislature modified the *Hall* and *Atherton* rules by enacting Government Code sections 53090 through 53095.<sup>35</sup> Section 53090 defines "local agency" as "an agency of the State for the local performance of governmental or proprietary function within limited boundaries." Section 53091 provides that such local agencies must comply with municipal building and zoning ordinances, but expressly exempts school districts from city building ordinances and requires that they comply with zoning regulations only if the zoning ordinances make provision for the location of public schools. The pertinent statute as far as school property is concerned is section 53094, which authorizes the governing board of a school district to exempt the district from a city or county zoning ordinance by a two-thirds vote of the board members except when the use of the property is for nonclassroom facilities, including warehouses and automotive storage and repair buildings, if such nonclassroom facilities are not adjacent to land used for a school. A municipality which deems such an action by a school district to be arbitrary and capricious has the right to request judicial review of the governing board's decision.<sup>36</sup>

The next question is whether a school district may exercise its right to disregard a local zoning ordinance and subsequently sell the property free of zoning restrictions. It is possible that a court might find the legislature intended to permit school districts to exempt property only for the purpose of school site location; but section 53091 alone effectively insures that school sites may be chosen without regard to zoning regulations. Thus, unless section 53094 is merely redundant, it must have been intended to except school districts—as distinguished from

---

33. 159 Cal. App. 2d 839, 324 P.2d 326 (1958).

34. *Id.*

35. CAL. GOV'T CODE §§ 53090-95 (West Supp. 1976).

36. *Id.* § 53094.

other local agencies—from municipal control. The nonclassroom facilities provision is a troublesome factor in this analysis, however. The intent of the provision seems to be to authorize local control of the separate location of such unsightly and traffic-generating facilities as school bus sheds. Some citizens might find a housing development built on former school property at least as unsightly and traffic-generating as school-support facilities. Also, a decision by a school district to exempt itself from zoning regulations prior to a sale of school property might well be deemed arbitrary and capricious.

### *Scope of the Exemption Power*

The proper interpretation of Government Code sections 53090 through 53095 was the issue confronted by the California Court of Appeal in *City of Santa Clara v. Santa Clara Unified School District*.<sup>37</sup> The Santa Clara Unified School District sought a use permit to build a continuation school on district-owned property which was zoned for residential use. The use permit was denied because of a blanket disapproval of the concept of a continuation school.<sup>38</sup> Following the denial of the permit, the school board voted to exempt itself from the zoning ordinance pursuant to Government Code section 53094. The city filed suit, contending that the district's action was arbitrary and capricious and that section 53094 was unconstitutional. The trial court upheld the constitutionality of section 53094 but found the board's action arbitrary and capricious.<sup>39</sup> On appeal, the latter holding was reversed.<sup>40</sup> The court of appeal sustained the right of the school district to exempt itself from the zoning ordinance and stated that the only reasonable interpretation of Government Code sections 53091 and 53094 is that a school district must abide by local zoning ordinances unless it chooses to exercise its right of exemption, a decision which the district may make at any time.<sup>41</sup> A school district's discretion is not limited in any way except for the provision for judicial review if the district's determination to exempt itself is arbitrary and capricious.<sup>42</sup>

---

37. 22 Cal. App. 3d 152, 99 Cal. Rptr. 212 (1971).

38. *Id.* at 155, 99 Cal. Rptr. at 215.

39. *Id.* at 156, 99 Cal. Rptr. at 215.

40. *Id.* at 163, 99 Cal. Rptr. at 220.

41. *Id.* at 158, 99 Cal. Rptr. at 216-17.

42. *Id.*

The *Santa Clara* court, in a footnote, cited legislative intent in support of its decision:

Thus, it appears that the Legislature deliberately accorded different treatment to school districts than to other local agencies. . . . Sections 53090 through 53095 were primarily designed to insure that *other* local agencies which were not subject to such thorough control by the state could not claim exemption from city and county zoning requirements by virtue of the language contained in *Hall v. City of Taft*. . . . The Legislature accordingly provided in section 53094 that school districts, as opposed to other local agencies, should retain the right to exempt themselves from local zoning ordinances.<sup>43</sup>

There are limits to the sovereign power, however, and these limits were delineated recently in *Board of Trustees of the California State University and Colleges v. City of Los Angeles*,<sup>44</sup> in which it was held that the state's immunity from municipal ordinances is limited to situations where the state acts in its governmental capacity. The court held that when California State University at Northridge leased land to a circus, the university was acting in a proprietary rather than a governmental capacity, and that given the finding that the state had not preempted the field of circus regulation, the university had to comply with the Los Angeles ordinance in question.<sup>45</sup>

There is a strong likelihood a court might find that a school district which acts in a governmental capacity when it closes a school is acting in a proprietary capacity when it subsequently sells the property. Given such a finding, the school district

---

43. *Id.* at 158 n.3, 99 Cal. Rptr. at 217 n.3, citing *Problems of Local Government Resulting from the Hall v. Taft Case Decision*, 6 ASSEM. INTERIM COMM. REP. NO. 8, MUNICIPAL AND COUNTY GOVERNMENT 7 (1959). *But see* 56 OP. ATT'Y GEN. 210, 215 (1973), which stated that "the intent [of CAL. GOV'T CODE §§ 53090-95 (West Supp. 1976)] was to restore the previously accepted power of cities and counties to regulate school districts and similar local public entities within the city or county."

The immunity of state departments other than local agencies from municipal ordinances remains well established. *See In re Means*, 14 Cal. 2d 254, 93 P.2d 105 (1939); 50 OP. ATT'Y GEN. 210 (1973); 8 E. MCQUILLAN, MUNICIPAL CORPORATIONS § 25.15, at 45 (3d ed. 1965). This immunity was recently reaffirmed in *City of Orange v. Valenti*, 37 Cal. App. 3d 240, 112 Cal. Rptr. 379 (1974), in which a city ordinance was held inapplicable to the lease of an office building by the Department of Human Resources for use as an unemployment insurance office.

44. 49 Cal. App. 3d 45, 122 Cal. Rptr. 361 (1975).

45. *Id.* at 50, 122 Cal. Rptr. at 364.

would be barred from exempting itself from the municipal zoning regulations for the purpose of the sale of surplus property.<sup>46</sup>

*The Los Altos School District and the "Public and Community Facilities" Zone*

The Los Altos School District, Los Altos, California, (LASD) provides an example of the conflict which may arise between city and school district when school property is offered for sale. On October 7, 1974, the governing board of the Los Altos School District decided to convert Covington Junior High School, one of three junior high schools in the LASD, to use both as an administration and maintenance facility and as an elementary school. The school board resolved to close Hillview Elementary School, effective June, 1975, and to sell Hillview and a portion of Lot 18 (part of the LASD's former administration site). The LASD, in dividing Lot 18, failed to obtain a parcel map and city approval pursuant to the Subdivision Map Act.<sup>47</sup> It was the opinion of County Counsel<sup>48</sup> that the school district, as an agency of the state, was exempt from the Subdivision Map Act;<sup>49</sup> however, the City Attorney contended that the LASD must comply with the act and obtain a parcel map.<sup>50</sup>

In a resolution passed December 1, 1975, the LASD governing board decided to close and sell another school, Portola Elementary School, effective June, 1976. The sale of Portola School was made contingent upon the city granting the parcel residential (R1-10) zoning.<sup>51</sup> Bids were opened on February 25, 1976, and the school board unanimously accepted the high bid of \$1,175,000 from a real estate developer who plans to build single-family homes on the site.<sup>52</sup> The Los Altos City Council has announced its intent to preserve the Portola site as open space; however, the city has no funds available for purchase of the property.<sup>53</sup> If the City Council fails to rezone the Portola

---

46. *Id.*

47. CAL. GOV'T CODE § 66410 *et seq.* (West Supp. 1976).

48. Interview with Robert Owens, Deputy Santa Clara County Counsel, in Santa Clara, California, Oct. 16, 1975.

49. CAL. GOV'T CODE § 66410 *et seq.* (West Supp. 1976).

50. Interview with Anthony Lagorio, Los Altos City Attorney, in Los Altos, California, Oct. 31, 1975.

51. Palo Alto Times, Feb. 26, 1976, at 1, col. 3.

52. *Id.*

53. *Id.*, Feb. 19, 1976, at 2, col. 4. The Los Altos City Manager has stated that the PCF zone is a "pretty big club" and has indicated that the city is considering

property within 120 days, which course appears likely, the developer's purchase of the site will be nullified. While the LASD school board has gone on record as favoring the acquisition of surplus school property by the city, the implementation of the district's master plan requires that the district realize the sale price which could be obtained by selling Portola School under R1-10 zoning.<sup>54</sup>

When the school board first decided to sell Hillview School, the property was zoned R1-10<sup>55</sup> and could have been developed as an area of single-family homes. Following the decision to sell the school, on March 25, 1975, the Los Altos City Council amended the Los Altos Municipal Code Zoning Map<sup>56</sup> and placed all schools within the city limits in the previously discussed Public and Community Facilities District (PCF). When the LASD offered the Hillview property for sale, there were no bidders.<sup>57</sup> The school district decided to offer Hillview to the city, and in August, 1975, the City of Los Altos purchased the Hillview property for \$433,350.00.<sup>58</sup> The city uses the property for recreation purposes and has leased a portion of the school building to a private school. Had the new PCF zoning ordinance not prevented the school district from selling the land for residential development, the market value of the property would have been much higher.<sup>59</sup>

The right of the LASD to exempt Lot 18 and Portola School from the PCF zone pursuant to Government Code section 53094 is not clear. It is probable that both the nonclassroom facilities clause in section 53904 and the fact that the

---

means to raise funds to purchase the Portola property. He said that the city and the school district would have to negotiate a new selling price and that the price should be well below the developer's offer of \$1,175,000. *Los Altos Town Crier*, Mar. 3, 1976, at 2, col. 1.

54. Information from the office of the Superintendent, Los Altos School District, Feb. 10, 1976.

55. LOS ALTOS, CAL., MUN. CODE § 10-2.106 (incorporating the zoning map). This code section was amended in March, 1975, adding § 10-2.3410, which placed schools in a Public and Community Facilities District.

56. LOS ALTOS, CAL., MUN. CODE § 10-2.3410 (enacted March, 1975).

57. The property was offered at a minimum price of \$1,004,000, and bids were due to be opened March 17, 1975. No bids were received by that date. Interview with clerk, Office of the Superintendent, Los Altos School District, in Los Altos, California, Feb. 10, 1976.

58. Addendum to Agreement for Sale and Purchase of Real Property between the Los Altos School District and the City of Los Altos, August 26, 1975 (on file at the SANTA CLARA L. REV.).

59. See note 4 *supra*.

district may be deemed to be acting in a proprietary capacity will preclude the LASD from exempting itself from the PCF District zoning for the purpose of selling school property. Nevertheless, it is possible that a court, following the holding in *City of Santa Clara v. Santa Clara Unified School District*,<sup>60</sup> would sustain such an exemption. However, some city attorneys are of the opinion that once the property has been sold to a private party, the purchaser would be required to comply with the city zoning ordinances in any event.<sup>61</sup> Hence there is some question as to whether a school district in the position of the LASD can look to the courts for redress.

#### ARE TAXPAYERS' SUITS AGAINST SCHOOL DISTRICTS PROPER UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 526a?

What recourse is available to taxpayers who may challenge a school district governing board's decision to close a school? California Code of Civil Procedure section 526a provides in pertinent part:

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or within one year before the commencement of the action, has paid, a tax therein.<sup>62</sup>

Section 526a expressly establishes a right of action against cities and counties. Can this section be interpreted as extending a right of action against school districts? A taxpayers' suit against the LASD provides an illustration of this issue.

A group of Los Altos citizens contended that the decision by the governing board of the LASD to close Hillview School and convert Covington to an elementary school was economically unsound. Covington Junior High School was the largest junior high school in the district and had facilities lacking at the two junior high schools on the periphery of the LASD. The

---

60. 22 Cal. App. 3d 152, 99 Cal. Rptr. 212 (1971).

61. Interview with Anthony Lagorio, Los Altos City Attorney, in Los Altos, California, Oct. 31, 1975.

62. CAL. CIV. PRO. CODE § 526a (West Supp. 1976).

two smaller junior high schools, Blach and Egan, lack multi-purpose rooms and swimming pools and have much smaller libraries than Covington. The cost of converting Covington to an elementary school coupled with the cost of increasing the capacity at Blach and Egan Junior High Schools amounted to a total expenditure of \$1,240,000.<sup>63</sup> Had the governing board elected to retain Hillview and Covington Schools and to close Egan Junior High School, the expenditures incurred would have amounted to roughly \$448,000.<sup>64</sup> It was the contention of a citizens' group called the Los Altos Property Owners that the LASD governing board's plan involved an unnecessary expenditure of \$747,000. The Los Altos Property Owners filed suit against the school district and the governing board seeking an injunction against the closing of Hillview and the conversion of Covington.<sup>65</sup> The gravamen of the action was that the LASD decision was *ultra vires* and amounted to a waste of public funds. While the designation "*ultra vires*" normally describes an action taken by a public body outside the scope of its authority, plaintiffs relied upon *Rathbun v. City of Salinas*,<sup>66</sup> in which the court held that the decision of the city to lease part of a public parking lot to a bank was *ultra vires* because the effect of the action was to benefit the bank and to diminish the use and value of the lot to the city. Plaintiffs contended that while it is within the scope of the LASD governing board's power to purchase and sell school sites, the expenditure of \$747,000 without receiving some public benefit is an *ultra vires* action. Therefore, plaintiffs argued that they had stated a cause of action under the rule of *Gogarty v. Coachella Valley Junior College District*,<sup>67</sup> which permits "[a] taxpayer [to] sue a governmental body in a representative capacity in cases involving fraud, collusion, *ultra vires*, or failure on the part of the governmental body to perform a duty specifically enjoined."<sup>68</sup> The trial court rejected the Los Altos Property Own-

---

63. Unpublished memorandum by Dean Storkan, counsel for petitioners in *Los Altos Property Owners v. Hutcheon*, Civ. No. P 28316 (Santa Clara Super. Ct., Aug. 14, 1975), at 3 (on file at the SANTA CLARA L. REV.).

64. *Id.*

65. *Los Altos Property Owners v. Hutcheon*, Civ. No. P 28316 (Santa Clara Super. Ct., Aug. 14, 1975), *appeal docketed*, No. 38,366, Cal. Ct. App., 1st Dist., Feb. 25, 1976.

66. 30 Cal. App. 3d 199, 106 Cal. Rptr. 154 (1973).

67. 57 Cal. 2d 727, 730, 371 P.2d 582, 584, 21 Cal. Rptr. 806, 808 (1962).

68. *Id.* See *Lusk v. Compton City School Bd. of Educ.*, 252 Cal. App. 2d 376, 60 Cal. Rptr. 426 (1967).

ers' argument, stating that in order to establish that an action is *ultra vires*, not only must plaintiffs show a lack of public benefit, but also that there was a private benefit,<sup>69</sup> as in *Rathbun v. City of Salinas*.<sup>70</sup>

Alternatively, petitioners contended that they had a cause of action against the LASD school board for waste of public funds pursuant to section 526a.<sup>71</sup> The issue confronting the trial court was whether section 526a could be liberally construed to extend a right of action against school districts. Generally such a statute would be interpreted strictly, on the theory that had the legislature intended to include school districts it would have done so. However, petitioners relied upon the construction of section 526a in *Blair v. Pitchess*,<sup>72</sup> which involved a taxpayers' action to enjoin the Los Angeles County Sheriff's Department from using the remedy of claim and delivery on the ground that such actions wasted time and constituted an illegal expenditure of public funds. The California Supreme Court stated that "California courts have consistently construed section 526a liberally. . . . Indeed, it has been held that taxpayers may sue *state* officials to enjoin such officials from illegally expending state funds."<sup>73</sup> The Los Altos Property Owners argued that a school district is an agency of the state; accordingly, under *Blair*, they had a right to sue the LASD and the governing board for waste of public funds pursuant to section 526a. The trial judge declined to rule favorably on the applicability of section 526a to school districts absent an appellate ruling to that effect.<sup>74</sup> The Los Altos Property Owners have filed an appeal seeking judicial determination that section 526a applies to school districts.<sup>75</sup>

There is a case which appears to be dispositive of the issue of the applicability of section 526a to school districts. *Duskin*

---

69. *Los Altos Property Owners v. Hutcheon*, Civ. No. P 28316 (Santa Clara Super. Ct., Aug. 14, 1975), *appeal docketed*, No. 38,366, Cal. Ct. App., 1st Dist., Feb. 25, 1976.

70. 30 Cal. App. 3d 199, 106 Cal. Rptr. 154 (1973).

71. CAL. CIV. PRO. CODE § 526a (West Supp. 1976).

72. 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).

73. *Id.* at 269, 486 P.2d at 1249, 96 Cal. Rptr. at 49, *citing* California State Employees' Ass'n v. Williams, 7 Cal. App. 3d 390, 86 Cal. Rptr. 305 (1970), and Ahlgren v. Carr, 209 Cal. App. 2d 248, 25 Cal. Rptr. 887 (1962).

74. *Los Altos Property Owners v. Hutcheon*, Civ. No. P 28316 (Santa Clara Super. Ct., Aug. 14, 1975), *appeal docketed*, Cal. Ct. App., 1st Dist., Feb. 25, 1976.

75. *Los Altos Property Owners v. Hutcheon*, No. 38,366, Cal. Ct. App., 1st Dist., Feb. 25, 1976.

*v. San Francisco Redevelopment Agency*<sup>76</sup> involved a taxpayers' action against a state redevelopment agency based on the disposition of public property at a price far below the fair value requirement. The taxpayers contended that such an action was *ultra vires* and sued under section 526a. The San Francisco Redevelopment Agency demurred to the complaint on the ground that no cause of action could be stated under section 526a because that statute limits taxpayers' actions to suits against officers and agents of cities and counties, and the respondent agency is an administrative arm of the state of California, not a local agency of the City and County of San Francisco. The court of appeal reversed the trial court's order sustaining the demurrer:

Although, strictly speaking, the officers of the Redevelopment Agency are not state officials, the individual respondents are nevertheless officials of an agency created by state law. . . . Thus, the rationale in *Blair v. Pitchess* would clearly be applicable. . . . It follows that the Agency's general demurrer could not be properly sustained on the basis of Code of Civil Procedure section 526a.<sup>77</sup>

That a school district is an agency of the state was clearly established in *Hall v. City of Taft*<sup>78</sup> and *Town of Atherton v. Superior Court*,<sup>79</sup> which are still good law despite modification by the California Government Code sections previously discussed.<sup>80</sup> The *Duskin* case should establish the right of a taxpayers' group such as the Los Altos Property Owners to bring an action against a school board under section 526a.

#### CONCLUSION

Legal problems attending the sale of public schools will likely be a growing area of concern in California.<sup>81</sup> Because sale of a school site\* may be considered a proprietary activity and because surplus school property would most likely not be used for classroom facilities after sale, it is improbable that a school district could avail itself of the provisions in the exemption

---

76. 31 Cal. App. 3d 769, 107 Cal. Rptr. 667 (1973).

77. *Id.* at 773-74, 107 Cal. Rptr. at 670, following *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).

78. 47 Cal. 2d 177, 302 P.2d 574 (1956).

79. 159 Cal. App. 2d 417, 324 P.2d 328 (1958).

80. CAL. GOV'T CODE §§ 53090-95 (West Supp. 1976).

81. See notes 1 & 3 *supra*.

statute<sup>82</sup> when it sells a former school site. However, taxpayers should have standing under section 526a<sup>83</sup> to challenge a school closing if the facts evince evidence of waste, fraud, or an *ultra vires* action.

*Patricia Paulson White*

---

82. CAL. GOV'T CODE § 53094 (West Supp. 1976).

83. CAL. CIV. PRO. CODE § 526a (West Supp. 1976).