



MEMORANDUM

To Ray Mueller, Councilmember
City of Menlo Park, California

FROM Eugene H. Clark-Herrera

DATE July 15, 2016

RE Regional Solution for Ravenswood Educational Equity

I. **PROBLEM STATEMENT: LOCAL RESOURCES INSUFFICIENT TO ADDRESS EDUCATIONAL FACILITIES NEEDS IN THE DISTRICT**

In 2015, the Ravenswood City School District (the “District”) completed a comprehensive facilities needs assessment and master plan (the “Master Plan”) that estimated a total cost of approximately \$330 million in capital improvements necessary to bring the District’s facilities up to modern standards, including technology infrastructure, structural safety, building systems and access for the disabled. Based on California law governing the financing of public school facilities and infrastructure, a school district’s financing capacity is a function of local taxable property assessed value. The District currently has capacity and, as of June 2016, voter authorization to undertake approximately \$26 million of capital repairs and improvements, and over the next ten years is projected to have capacity to finance approximately \$25 million of additional improvements (for a total of about \$51 million). Thus, the District’s local resources over the next decade account for roughly 14% of its total facilities improvement needs, leaving unfunded about 86% of the need.

For the District, the primarily residential properties within its boundaries have historically remained far lower in assessed property value as compared to residential properties in the neighboring school districts. The District’s capacity to finance needed facilities and infrastructure improvements stands in stark contrast to the capacity of its neighboring districts, such as Menlo Park City Elementary School District and Palo Alto Unified



School District, which enjoy significantly larger local assessed property tax bases and have spent or are currently spending tens or hundreds of millions of dollars for facilities improvements and infrastructure. For example, the District's per-pupil general obligation bond debt capacity is approximately 1/5 of the bond debt capacity of Menlo Park City Elementary School District. In order to better align regional educational opportunities in support of regional workforce development and economic growth, the District needs to secure additional resources and capital funding beyond its own local general obligation bonding capacity to address the highest priority facilities improvements identified in the Master Plan.

II. SOLUTION: THE COUNTY AND NEARBY CITIES PROVIDE SURPLUS RESOURCES TO ADDRESS EDUCATIONAL EQUITY IN THE DISTRICT

In recent years, the County of San Mateo (the "County"), the City of Menlo Park ("Menlo Park") and the City of Palo Alto ("Palo Alto", and together with the County and Menlo Park, the "Public Agencies") have either operated with surplus general fund budgets or otherwise realized surplus resources, including through redevelopment and revitalization activities, that could be dedicated to regional workforce and economic development issues. Certain stakeholders within these Public Agencies now seek to establish a mechanism by which a portion of such surplus funding could be utilized on a long-term basis to assist the District in achieving equitable educational outcomes for students, regardless of regional economic disparities.

California law allows the Public Agencies and the District to form a special purpose joint exercise of powers agency that could act as a vehicle for achieving certain educational objectives of the District. This memorandum describes (1) the constitutional and statutory authority of the Public Agencies to utilize their resources for the purpose of financing educational objectives within their collective geographic region through the creation of a joint powers authority, and (2) the characteristics of such a newly formed joint powers authority.

III. ANALYSIS: CONSTITUTIONAL AND STATUTORY POWERS OF THE DISTRICT, THE COUNTY AND NEARBY CITIES TO ACT JOINTLY

A. Constitutional Powers of General Law Cities

Menlo Park and Palo Alto are organized as "general law" cities, subject to the provisions of Article XI of the Constitution and Titles 4 and 5 of the Government Code. General law cities are municipal corporations acting as branches of the state government established by the Legislature in providing for the wants and welfare of the public within the territory for which they are organized.¹ Cities have wide latitude in deciding what municipal



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services they will provide.² Thus, cities may properly act to promote the purposes of the state government,³ including its obligation to provide a system of common schools.⁴ Finally, cities have implied powers to carry out their purposes using any methods deemed necessary and appropriate.⁵

B. Constitutional Powers of Counties

Pursuant to Article XI, Section 1 of the Constitution, the County exists as a legal subdivision of the State, operating pursuant to Titles 3 and 5 of the Government Code. County powers resemble but perhaps exceed those of cities in that, unlike cities which must cede power to the state in circumstances where the Legislature has pre-empted local municipal powers, counties exercise the powers of the state, granted by the state, and are created for the purpose of advancing the policy of the state at large.⁶ Thus, counties are directly involved in the administration of the state system of common schools.⁷

C. Marks-Roos Joint Powers Act as Mechanism for Collective Action

1. How JPAs Work

Under the Joint Exercise of Powers Act,⁸ two or more public agencies (each, a “member”) may enter into a joint powers agreement in order to jointly exercise any

¹ See, *City of Santa Monica v. Los Angeles County*, 15 Cal. App. 710 (1911).

² For example, cities may establish libraries, museums and hospitals, but are not required to do so (CAL. GOV. CODE §37542 and 37601, CAL. EDUC. CODE §18900), they may contribute to nonprofit educational radio or television stations, but are not required to do so (CAL. GOV. CODE §37110.5) and they may spend money on music or promotion, but are not required to do so (CAL. GOV. CODE §37110).

³ See, *Whitmore v. Brown*, 207 Cal. 473 (1929), 480 (“...notwithstanding the fact that the school system is of general [state] concern and not strictly speaking a municipal affair, nevertheless it may be made such an affair by the city when acting in promotion and not in derogation of the legislative school plans and purposes of the state”).

⁴ See, Constitution of the State of California, Article XI, Section 1, (“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement”).

⁵ *Ravettino v. City of San Diego*, 70 Cal. App. 2d 37 (1945), 47 (“In general, powers given to municipal corporations include the further power to employ such modes of procedure as are appropriate and necessary for their effective exercise”).

⁶ See, *County of Marin v. Superior Court* 53 Cal. 2d 633 (1960), 638.

⁷ For example, each county maintains an Office of Education overseeing local school district budgeting and a variety of other functions; and each County Treasurer acts as the *ex officio* treasurer of each school district within its boundaries, holding and managing all school funds.

⁸ CAL. GOV. CODE §6500, *et. seq.*



power common to the members if authorized by their governing bodies.⁹ A joint powers agreement must state its purpose or the power to be exercised and the method or manner in which the purpose will be accomplished and designate or establish an entity, which may be one of the members to the agreement, to administer the agreement in the manner or method set forth in the agreement.¹⁰ If the members elect to form a new entity or joint powers agency (an “authority”), the power(s) to be exercised by the authority are subject to the same restrictions placed upon the manner of exercising such power of a particular member that is designated in the joint powers agreement.¹¹ A joint powers agreement may provide for contributions from the treasuries, payment of public funds, advances of public funds (and repayments of such advances) or personnel, equipment or property of any of the parties to the agreement.¹²

2. Use of JPA by the County, the Cities and the District

In order to accomplish the mutual objectives of the District and the Public Agencies outlined in this memo, a new joint powers agency could be formed (the “Authority”). The Authority could exercise the powers conferred on each member public agency and delegated to it by such public agency under the Joint Exercise of Powers Act, including powers conferred by the state Constitution.¹³ For example, three essential functions could be undertaken by the members through the Authority: (1) payment of money from the Public Agencies to the Authority, (2) financing of construction or improvements to educational facilities by the Authority, and (3) transfer by the Authority to the District of improvements to its facilities. Other functions could include funding of educational programs or acquisition of educational tools and equipment.

First, the payments of unrestricted or other lawfully available funds by the Public Agencies to the Authority would be consistent with their respective powers to act in support of, and not in derogation of, the state’s provision of a system of common schools. Second, the Authority, acting under the Joint Exercise of Powers Act, possesses statutory authority to finance construction and improvement of public facilities, including the District’s facilities. Finally, the District may accept funds or resources from a source other than the state or local tax revenues, in support of its public purpose.¹⁴

⁹ CAL. GOV. CODE §6502.

¹⁰ CAL. GOV. CODE §6503 & 6506.

¹¹ CAL. GOV. CODE §6509.

¹² CAL. GOV. CODE §6504.

¹³ See, *Burbank-Glendale-Pasadena Airport Auth. v. Hensler*, 83 Cal. App. 4th 556 (2000) (finding that a joint powers agency possessed the power of eminent domain delegated to it by its members).

¹⁴ *Madsen v. Oakland Unified School District*, 45 Cal. App. 3rd 574 (1975), 581 (“Moreover, it may not be reasonably presumed that the Legislature intended that a school district with a temporary financial



One potential issue of concern regarding the payments from the Public Agencies to the Authority for this purpose could be whether such payments would be improper gifts of public funds. Payments by the Public Agencies to the Authority should not be treated as a gift of public funds, however, because by virtue of the formation of the Authority for the mutual benefit of its members in pursuing lawful objectives of regional importance, they would be transfers benefitting both the transferee (the Authority) and the transferor (the Public Agencies).¹⁵

IV. CHARACTERISTICS OF NEWLY FORMED JOINT POWERS AUTHORITY

A. Members

The governing boards of each member agency would be required to hold a public hearing and adopt a resolution authorizing the formation of the Authority, including the approval of a joint exercise of powers agreement and bylaws of the Authority. The five members of the Authority would be the District, the County, Menlo Park, Palo Alto and the City of East Palo Alto (“East Palo Alto”). It is worth noting that each member could participate in the Authority as a member, even if it were neither contributing nor receiving funding.

B. Purpose

Menlo Park and Palo Alto, together with certain other public agencies, have previously established the San Francisquito Creek Joint Powers Authority, a regional governmental organization created to accomplish the mutual objectives its various members being the coordinated management of the San Francisquito Creek watershed for public safety and conservation. In similar fashion, the purpose for the Authority would be to accomplish certain mutual objectives of the members; including:

(on the part of the cities and the County)

- Promote the health and welfare of the public;

problem, for whatever reason, could not accept funds from a source other than the State”) and 582 (“*Serrano*...actually supports the conclusion that a municipal **gift** to a school district is both permissible and proper. Speaking of the state system as it existed at the time, the *Serrano* court stated: ‘The poor [school] district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.’”).

¹⁵ *Golden Gate Bridge & Highway District v. Luehring*, 4 Cal. App. 3d 204 (1970), 209 (“It is not sufficient, therefore, that the appropriation here in question be for a public purpose. It must also be for a purpose which is of interest and benefit generally to the people of the [transferor entity]” [citing *City of Oakland v. Garrison* 194 Cal. 298 (1924)]).



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- Promote public safety;
- Promote economic development, including through promoting the existence of a highly trained, well-educated regional workforce;
- Promote high quality public education; and

(on the part of the District)

- Promote health and welfare of its students;
- Promote the safety of its students; and
- Provision of high quality education, which promotes regional economic development through a highly trained, well-educated regional workforce.

As regional public educational opportunity increases in quality, regional economic development will benefit from a more educated workforce. And, increased economic development leads to increased local property values, ultimately creating a virtuous cycle of mutual benefit for all members of the Authority. The members accomplish these mutual regional objectives through the exercise of the powers common to the members.

The legislative actions of the respective members approving the formation of the Authority should recite as the factual basis for the Authority's formation certain regional demographic and socio-economic conditions that animate regional economic development and the quality of public education, and make findings of public necessity in undertaking jointly, among the members, the purposes of the Authority.

V. CONCLUSION

California law provides local public agencies a tool for addressing regional policy objectives, including educational equity, through the creation and administration of joint powers authorities. The County, Menlo Park, Palo Alto, East Palo Alto and the District can utilize a joint powers authority to collaboratively and creatively respond to the growing regional economic disparities that negatively impact educational opportunities within the District. Surplus resources of the Public Agencies can be applied to support the educational objectives of the District through a joint powers authority, providing local policy makers with a mechanism for ensuring regional economic development positively impacts educational opportunity for all children irrespective of socio-economic conditions.



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