

# **Bond Case Briefs**

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## **BONDS - CALIFORNIA**

### **Bates v. Poway Unified School District**

**Court of Appeal, Fourth District, Division 3, California - September 29, 2022 - Cal.Rptr.3d - 2022 WL 4545805**

Property owners who had paid special tax bonds for construction of new elementary school in school district filed a petition for a writ of mandate and a complaint for declaratory and injunctive relief challenging school district's failure to allocate state funds to retire local bonds or toward uses permitted by local bonds.

The Superior Court denied petition. Property owners appealed.

The Court of Appeal held that:

- Clear and unambiguous language of regulation limited a school district's use of state reimbursement funds by imposing a savings requirement to reward school districts by allowing them to retain any savings achieved during school construction for any future high priority capital outlay expenditures;
- Informal correspondence in e-mails between school district and employees of Office of Public School Construction (OPSC) was not relevant to interpretation of regulation;
- Opinions offered by OPSC program analyst were entitled to full weight;
- Informal correspondence between school district and OPSC employees regarding interpretation of regulation was not entitled to presumptive deference;
- Executive order (EO) report was relevant;
- EO report did not clarify whether SAB imposed a savings requirement in regulation; and
- Extrinsic evidence of voter-approved bond initiative was not relevant to interpretation of regulation.

Clear and unambiguous language of regulation promulgated under the Leroy F. Greene School Facilities Act limited a school district's use of post-construction state reimbursement funds by imposing a savings requirement to reward school districts by allowing them to retain any savings achieved during school construction for any future high priority capital outlay expenditures, such that only school districts that reported a savings after completing the approved project could retain state funds for other construction projects, and therefore if a school district failed to realize any savings during construction, it was required to use all of state's money toward uses permitted by the local bond or completely retire the local bonds funding the project.

Informal correspondence in e-mails between school district and employees of Office of Public School Construction (OPSC), an arm of the California Department of General Services, was not relevant to consideration of State Allocation Board's (SAB) intent in drafting regulation supporting Leroy F. Greene School Facilities Act, or purpose of regulation, with respect to question whether savings on construction was required for school district's use of post-construction state reimbursement funds; communications did not directly answer question, but rather were focused on theoretical possible uses of funds.

Opinions offered by program analyst for Office of Public School Construction (OPSC), an arm of the California Department of General Services, that when there were no project savings with respect to construction of a school, the school district was limited to using post-construction state reimbursement funds for local bond uses or paying off debt on project, were entitled to full weight when determining State Allocation Board's (SAB) intent in drafting regulation supporting Leroy F. Greene School Facilities Act, or purpose of regulation, even though program analyst had told school district she would refer matter to audit team member because she was not as familiar with expenditure reporting; lack of expertise on how to report expenditures to SAB did not mean program analyst lacked understanding of regulation's requirements and restrictions.

Informal correspondence between school district and employees of Office of Public School Construction (OPSC), an arm of the California Department of General Services, regarding interpretation of regulation supporting Leroy F. Greene School Facilities Act was not entitled to presumptive deference that would ordinarily be due to an administrative agency on a statutory construction issue, when deciding legislative intent with respect to school district's use of post-construction state reimbursement funds; employees did not claim to have any expertise with respect to legal or regulatory issues, and did not suggest State Allocation Board (SAB) previously interpreted the regulation in any particular way.

Executive order (EO) report prepared for a State Allocation Board (SAB) meeting at which SAB agreed to enact regulation supporting Leroy F. Greene School Facilities Act clarified appropriate uses of state bond funds used to reimburse local funding, clearly reflected SAB's intention that school districts use the grant money to reimburse original source of funding, and contradicted school district's claim that funding was unencumbered, and thus report was directly relevant so as to be admissible for court's evaluation of regulation's purpose, when deciding whether school district's use of post-construction state reimbursement funds was limited to local bond uses or paying off debt on school construction project; report stated that goal was to make sure school districts could not misuse state bond funds used to reimburse local funding, and agency understood it needed regulation to address how to best safeguard intent of local and state bond funds.

Executive order (EO) report prepared for a State Allocation Board (SAB) meeting at which SAB agreed to enact regulation supporting Leroy F. Greene School Facilities Act did not clarify whether SAB imposed a savings requirement in regulation to reward school districts by allowing them to retain any savings achieved during school construction for any future high priority capital outlay expenditures; report did not mention any specific part of proposed regulation or suggest any preference for new capital outlay expenditures, and the only suggested preferences stated in report was to make sure the money was used to reimburse local funding, avoid violating intent of local and state bond funds, and ensure bonds maintained a certain tax-exemption status.

Extrinsic evidence of voter-approved bond initiative was not relevant to supply insight into statutory purpose of Leroy F. Greene School Facilities Act enacted 17 years prior, or supporting regulation enacted 12 years prior, with respect to question whether school was required to use all post-construction state reimbursement funds toward uses permitted by the local bond or completely retire local bonds funding project, absent savings during construction; initiative did nothing to alter Act's express restrictions on expenditures beyond approved construction of new school, voters were aware limited exception to rule applied only in cases where school district achieved a savings, and if creators of initiative wished to make sure specific bond funds were available for new capital expenditures, beyond those mandated by Act, they needed to have explicitly stated so in the proposed legislation.

