

# **Bond Case Briefs**

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## **MUNICIPAL CONTRACTS - CALIFORNIA**

### **Torres v. City of Montebello**

**Court of Appeal, Second District, Division 3, California - February 13, 2015 - Cal.Rptr.3d - 2015 WL 632149**

In 2008, a candidate for the Montebello City Council approached the City's exclusive residential waste hauling franchisee about becoming the City's exclusive commercial waste hauling franchisee as well. The candidate won election to the Montebello City Council and, with his vote, the City Council approved a contract granting disposal company an exclusive residential and commercial waste hauling franchise.

In the weeks that followed, the Mayor of Montebello, who had voted against the exclusive franchise, refused to sign the contract. The City Attorney advised the Mayor that he had a ministerial duty to execute contracts passed by the City Council under Government Code section 40602. If the Mayor refused to do so, the City Attorney warned, he would be deemed "absent" under Government Code section 40601 and the Mayor Pro Tempore would be directed to execute the contract in his stead. More weeks passed without the Mayor signing the contract, until, at the apparent direction of the City Attorney, the Mayor Pro Tempore signed it.

Plaintiff filed a complaint against the City seeking a writ of mandate to invalidate the contract. The trial court entered judgment for plaintiff and issued the requested writ, ruling the contract void *ab initio* because it had not been executed by the Mayor as required by Government Code section 40602.

On appeal from the judgment as a real party in interest, disposal company principally contended that the Mayor was appropriately deemed "absent" based on his refusal to carry out his ministerial duty, and the Mayor Pro Tem was therefore authorized to execute the contract under Government Code section 40601.1

The Court of Appeal held that neither the City Attorney nor the Mayor Pro Tem had the authority to deem the Mayor "absent" under the Government Code, as the definition of "absent" was restricted to physical absence and did not include the refusal to perform a ministerial duty. Accordingly, the Mayor Pro Tem's signature was ineffective to enter the contract on the City's behalf, affirming the trial court's judgment on that basis.