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ANNEXATION - CALIFORNIA

San Luis Obispo Local Agency Formation Commission v. City of Pismo Beach

Court of Appeal, Second District, Division 6, California - March 3, 2021 - Cal.Rptr.3d - 2021 WL 803740 - 21 Cal. Daily Op. Serv. 2067 - 2021 Daily Journal D.A.R. 2094

County's local agency formation commission and non-profit organization that reimbursed commission brought action against city and developer, seeking \$400,000 for attorney fees and costs incurred in defending an appeal brought by city and developer after the commission denied their application for annexation of real property, which contained an indemnity agreement.

The Superior Court granted city and developer judgment on the pleadings, and denied commission's request for leave to amend. Commission and non-profit organization appealed.

The Court of Appeal held that:

- Agreement was not supported by consideration, as required for a contract;
- Section of Cortese-Knox-Hertzberg Act authorizing local agency formation commission to charge fees does not apply to post-administrative matters; and
- Commission had no authority under Act to require agreement.

Provision contained in application for annexation of real property, stating that applicants agreed to indemnify county's local agency formation commission for attorney fees and costs incurred in connection with the application, was not supported by consideration, as required for a contract; commission's insertion of indemnity provision into application in exchange for not requiring applicants to pay anticipated attorney fees in advance was neither a benefit nor a detriment, because commission had no authority under the Cortese-Knox-Hertzberg Act to charge fees for post-administrative matters.

County's local agency formation commission, which was established under the Cortese-Knox-Hertzberg Act, had no authority under the Act to require applicants for annexation of real property to agree to indemnify commission for attorney fees and costs incurred after the conclusion of administrative proceedings; even if construed as broadly as possible, Act limited commission's authority to charge fees to the administrative process, not post-decision court proceedings.