Bond Case Briefs

Municipal Finance Law Since 1971

SCHOOL FINANCE - CALIFORNIA

Davis v. Fresno Unified School District

Court of Appeal, Fifth District, California - October 22, 2026 - Cal.Rptr.3d - 2026 WL 3168346 - 2026 Daily Journal D.A.R. 9389

Taxpayer brought action against school district and contractor, alleging their lease-leaseback agreements for construction of middle school violated California's competitive bidding statutes and conflict of interest laws.

The Superior Court sustained district's and contractor's demurrers to the pleadings. Taxpayer appealed. The Court of Appeal reversed. Following remittitur, the Superior Court, granted district's and contractor's motion for judgment on the pleadings. Taxpayer appealed. The Court of Appeal reversed. District's and contractor's petition for review was granted.

The Supreme Court affirmed and remanded. Court trial was held, and the Superior Court entered judgment in favor of district and contractor. Taxpayer appealed.

The Court of Appeal held that:

- Contractor had no duty to engage in public contracting on school district's behalf, and thus was not a public officer or employee subject to statute prohibiting public officials or employees from being financially interested in any contract made by them in their official capacity on such basis;
- Contractor did not have duties to advise on public contracting that it was expected to carry out on district's behalf, and thus was not a public officer or employee subject to conflict of interest statute on such basis;
- Contractor's participation in making of lease-leaseback agreements was not in an official capacity;
- Lease-leaseback arrangement did not include a contractor-financing component, and thus did not qualify for exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings;
- As a matter of first impression, the "reasonable cost of services furnished by the contractor" that are recoverable under safe harbor provision limiting a contractor's disgorgement when an instrument is found invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings includes a reasonable portion of the contractor's overhead costs;
- Contractor could not retain net profit portion of the $36 million in lease payments it received from district; and
- Contractor's formula for allocating portion of its overhead to project to build school building was reasonable.

Contractor that was hired by school district to construct new school building under lease-leaseback agreement after having performed under preconstruction agreement with district had no duty to engage in public contracting on school district's behalf, and thus contractor was not a public officer or employee subject to statute prohibiting public officials or employees from being financially interested in any contract made by them in their official capacity on such basis; although contractor made agreements with subcontractors to complete project, subcontracts were made on contractor's

behalf, not district's behalf, and contractor had no authority to enter into contracts in name of district, had no authority to approve contracts in name of district, did not decide on behalf of district whether to enter into agreement to construct project, and did not decide on behalf of district whether to enter into or approve phase two leases.

Contractor that was hired by school district to construct new school building under lease-leaseback agreement after having performed under preconstruction agreement with district did not have duties to advise on public contracting that it was expected to carry out on district's behalf, and thus was not a public officer or employee subject to statute prohibiting public officials or employees from being financially interested in any contract made by them in their official capacity on such basis; preconstruction contract between contractor and district, under which contractor provided district with advice and recommendations on constructibility, value engineering, scheduling, and other matters, was negotiated at arm's length and in good faith, with expectation that contractor would negotiate lease-leaseback arrangement for construction, and lease-leaseback agreement had to be approved by school board.

Contractor's participation in making of lease-leaseback agreements with school district for construction of new school building, under its preconstruction agreement with district to provide advice and recommendations on constructibility, value engineering, scheduling, and other matters related to project, was not in an official capacity, and thus statute prohibiting public officials or employees from being financially interested in any contract made by them in their official capacity did not apply to contractor's participation; contractor was not a public officer of employee of school district.

Court of Appeal's determination that statute providing exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings required a true lease, rather than traditional construction contract designated a lease by parties, in order for statute to apply was the law of the case and thus binding in taxpayer's appeal of trial court's judgment finding that school district's lease-leaseback agreement with contractor for construction of school did not violate competitive bidding requirements; after Court of Appeal adopted its interpretation, Supreme Court denied review of that decision and subsequently acknowledged split of authority on applicability of exception, but declined to resolve it.

Lease-leaseback arrangement between school district and contractor for construction of new school building on land leased by district to contractor, in return for contractor's lease of building to district, did not include a contractor-financing component, and thus did not qualify for exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings; although payment to contractor was in form of lease payments, construction of building was fully funded by proceeds raised by sale of bonds and paid for as it was completed, which was traditional method of financing school construction.

Delays in payments owed to contractor that constructed new school building under lease-leaseback agreement with school district, under which district leased land to contractor to build school and contractor leased school building back to district, did not constitute "financing" provided by contractor that would have qualified project for exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings; delays in payments did not alter source of funds used to pay for construction, which was bond proceeds that were obtained before lease-leaseback arrangement was created, delays in payment were not what caused district to be able to afford paying for construction, and portion of delayed payments involving release of retainage from an escrow account did not provide any economic benefit to district, but was standard practice in construction industry.

The “reasonable cost of services furnished by the contractor” that are recoverable under safe harbor provision limiting a contractor’s disgorgement when an instrument is found invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings includes a reasonable portion of the contractor’s overhead costs.

Under safe harbor provision limiting a contractor’s disgorgement when an instrument is found invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings, the trial court has the discretionary authority to determine whether the contractor should be paid any of its reasonable costs of the labor, equipment, materials, and services furnished.

Contractor that constructed new school building under lease-leaseback agreement with school district, which did not qualify for exception to competitive bidding requirements for lease-leaseback agreements, could not retain net profit portion of the $36 million in lease payments it received from district, under safe harbor provision limiting a contractor’s disgorgement when an instrument is found invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings; although court had discretion to determine which particular items of costs to include in an allowed payment under safe harbor, it was subject to mandatory limit of the lease payments made, less net profit, and guaranteed maximum price for project included amounts to cover contractor’s overhead expenses and provide a profit.

Contractor’s formula for allocating portion of its overhead to project to build school building under lease-leaseback agreement with school district, which was later declared invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings, was reasonable as a matter of law and fact and was not arbitrary and capricious, thus supporting limitation of contractor’s disgorgement of overhead under safe harbor provision applicable in such circumstances; contractor allocated 16.59% of its general and administrative expenses for contract period to project, using Eichleay formula that was generally accepted by federal courts when determining recovery of home office overhead as element of damages for government-cause delay, and taxpayer that challenged contractor’s agreement with district failed to identify any alternative method of allocating overhead.

Payments allowed under safe harbor provision limiting a contractor’s disgorgement when an instrument is found invalid because it fell outside exception to competitive bidding requirements for lease-leaseback agreements to construct school buildings were for a “public purpose,” and thus did not violate constitutional prohibition on gifts of public funds; safe harbor addressed leases that required the lessee to construct buildings for use of a school district, educating children provided a public benefit, school districts providing education were serving a public purpose, school districts needed buildings to be able to perform the function of educating children, and payment for construction was only allowed if school districts determined the construction was satisfactory.

Court of Appeal would award taxpayer 50% of costs he incurred in appealing trial court’s judgment for school district and contractor on his claims for violation of conflict of interest statute and violation of competitive bidding statute with regard to lease-leaseback agreement for construction of school building, as taxpayer was successful on his claim under competitive bidding statute, but school district and contractor were successful on conflict of interest claims, and remedy on conflict of interest claims would have been more extensive than just disgorgement of net profit that was proper remedy for violation of competitive bidding statute.

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com