

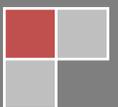
2012

Cities Merge?

A Workshop on Municipal Consolidations and Disincorporations

Discussion and legislative questions from a CALAFCO University Workshop held on
June 29, 2012.

7/30/2012



Introduction

It has been 40 years since Cabazon disincorporated through the LAFCO process. Over the past year cities throughout California have begun serious discussions of bankruptcy, disincorporation, and consolidation. Recently, three cities (Stockton, Mammoth Lakes, and San Bernardino) have taken action toward bankruptcy protection under Chapter 9 of the federal Bankruptcy Code. On June 29, CALAFCO hosted a workshop to discuss the implications of these actions and how the LAFCO processes of disincorporation and consolidation relate to bankruptcy proceedings. The discussion raised a number of high level questions to be considered by LAFCOs and technical questions for potential action by the CALAFCO Legislative Committee (advisory to the Board) and the State Legislature.

WHAT IS MUNICIPAL BANKRUPTCY?

Legal protection to financially-stressed municipality of its creditors through excusing or adjusting of debts.

WHAT IS DISINCORPORATION?

The dissolution, extinguishment, or termination of the existence of a city and the cessation of its corporate powers, except for the purpose of winding up the affairs of the city. (Government Code Section 56034)

WHAT IS CONSOLIDATION?

The uniting or joining of two or more cities located in the same county into a single new successor city... (Government Code Section 56030)

Course Framework

Attorney Michael Colantuono opened the workshop with an overview of municipal bankruptcies, disincorporations, and consolidations. The participants then broke into four groups to discuss the following processes for the above-mentioned LAFCO actions: (1) Initiation; (2) Process; (3) Terms and Conditions; and (4) Implementation. The discussion from each group is summarized below and several questions from each discussion are posed for future consideration.

Discussion

1. INITIATION

The first group discussed initiation of LAFCO proceedings for the consolidation or disincorporation of cities. The group's discussion ranged from reasons for disincorporation or consolidation to the threshold requirements for petitions for these actions by the general public, the limitations placed on LAFCO to initiate such actions and the payment of LAFCO fees.

WHY DISINCORPORATE?

- Budgetary or fiscal issues
- Ineffective management/political corruption
- Revenues & expenditures out of sync

WHY CONSOLIDATE?

- Better economies of scale
- Shared communities of interest
- Stabilize tax base
- Reduce competition of neighboring cities

A. PETITION THRESHOLDS

The Cortese-Knox-Hertzberg Act (Government Code 56000 *et seq.*) allows for registered voters to petition LAFCO to initiate proceedings for the disincorporation of a city and the consolidation of cities. The current threshold for disincorporation of a city is not less than 25% of the city's registered voters (G.C. 56765) and the threshold for consolidation of cities is not less than 5% of the registered voters from each of the affected cities (G.C. 56766). These levels suggest the Legislature's preference for consolidations.

Question:

- *Should the petition thresholds in G.C. 56765 and G.C. 56766 be changed to encourage or discourage consolidations and disincorporations?*

B. LAFCO-INITIATED ACTIONS

While LAFCO can raise awareness of fiscal instability and malfeasance through municipal service reviews, current law (G.C. 56375(a)(2)) does not provide the Commission with the authority to initiate the disincorporation or consolidation of cities.

Questions:

- *Should G.C. 56375(a)(2) be amended to allow LAFCO the authority to initiate proposals for disincorporation or consolidation?*
- *Should G.C. 56375 be amended to require LAFCO to initiate proposals for disincorporation or consolidation under specific criteria (i.e. negative audits for consecutive years)?*

C. BANKRUPTCY COURT & LAFCO

Municipal bankruptcies and disincorporations are not currently connected to each other under State law. The group discussed whether State law should be amended to require bankruptcy courts to consider input from LAFCO during their proceedings or conversely require LAFCO to consider the discussion and decision of a bankruptcy court.

Questions:

- *Should G.C. 53760 be amended to require (or strongly encourage) communication between LAFCO and the bankruptcy court during the initial stages of municipal bankruptcy proceedings?*
- *Should G.C. 56668 be amended to specifically require LAFCO to consider the bankruptcy court discussion and decision as part of the disincorporation or consolidation proposal?*

D. PAYMENT OF LAFCO FEES

Government Code Section 56383 states that LAFCO can set fees for the processing of proposals for reorganizations such as disincorporations and consolidations. The group discussed the potential inability of agencies exploring disincorporation or consolidation to pay for LAFCO fees.

Questions:

- *Should a new Government Code Section similar to G.C. 56383(g) for incorporations be established for disincorporations and consolidations to allow a city to borrow the necessary funds from the general fund to be repaid upon approval or denial of the disincorporation or consolidation by LAFCO?*
- *Should G.C. 56886 be amended to authorize the Commission to condition approval of disincorporations or consolidations on the requirement to pay the LAFCO fees or administrative costs from residual funds within the boundary of the former city?*

2. PROCESS

The second group discussed the procedural aspects of disincorporations and consolidations. The group discussed issues including: the requirements of the California Environmental Quality Act (Public Resources Code Section 210000 et seq.), the formation of stakeholder working groups, property tax transfers and employees of the disincorporating city or consolidating cities.

A. CEQA (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

CEQA was enacted to provide guidance for public agencies and private parties working on projects which may impact the environment. Many LAFCO proposals are considered “projects” under CEQA and require specific review and consideration. The group discussed the implications of CEQA on consolidations and disincorporations.

Question:

- *Should section 15300 of the CEQA Guidelines be amended to specifically exempt consolidations?*

B. STAKEHOLDER WORKING GROUPS

In preparation for disincorporation or consolidation, the affected city or cities would work with County staff and other service providers to develop a plan for services, which is a required component of the LAFCO application (G.C. 56653). The group discussed whether a stakeholder process should be formalized in CKH and whether additional stakeholders (i.e. Community and business leaders) should be encouraged to participate in the discussions.

Questions:

- *Should the proposed amendment described above mandate or encourage the establishment of a stakeholder working group or advisory board to work with LAFCO to advise the Commission on local issues and interests during disincorporations and consolidations?*
- *Should Government Code Section 56653 be amended to require the city and county “meeting and agreement” described in G.C. 56425(b) or the “reorganization committee” concept identified in G.C. 56823 for disincorporation and consolidation proposals?*

C. PROPERTY TAX TRANSFER

As a part of the required process for review, the question of the requirement for negotiation of property tax was reviewed (Revenue and Taxation Code Section 99 applicability to disincorporation and consolidation proposals). The group discussed the implications of transferring the property tax process for disincorporation from the Revenue and Taxation Code to Cortese-Knox-Hertzberg.

Questions:

- *Should Government Code Section 56810 be amended to require that a disincorporation and/or consolidation fall under Government Code Section 56000 et seq. rather than the Revenue and Taxation Code?*
- *Should the law be amended to require property tax transfers for disincorporation and consolidations to be determined pursuant to Government Code Section 56810 rather than Revenue and Taxation Code Section 99?*

D. EMPLOYEES

Employee contracts, Memorandums of Understanding and other contracts with service providers should be fully considered as part of a city disincorporation or the consolidation of cities.

Questions:

- *Should G.C. 56653 be amended to require submission of all employment and service related contracts to the Commission as part of the plan for providing services?*
- *Should a city be required to disclose to prospective and current contractors/vendors or employees/unions that a proposal for disincorporation has been submitted.*

3. TERMS & CONDITIONS

The third group discussed the ability of LAFCOs to place terms and conditions on the approval of disincorporation or consolidation proposals. Government Code Section 56885 provides LAFCO with

broad discretion to impose terms and conditions on proposals. Terms and conditions imposed under these sections supersede the general provisions in Part 5 of Cortese-Knox-Hertzberg (Section 57300 *et seq.*). The group discussed possible revisions to the Government Code and issues relating to the enforcement of LAFCO terms and conditions.

A. RESTRICTIONS ON CITY COUNCIL ACTIONS

Government Code Section 56885.5(a)(4) authorizes the Commission to place specific limitations on the actions of the city council of a disincorporating city and the governing bodies of agencies involved in a consolidation. LAFCO terms and conditions occur at the end of the process and become binding upon approval by the Commission and recordation of the Certificate of Completion with the County Clerk.

Questions:

- *Should the Government Code be amended to clarify when (i.e. upon application filing, commission approval, post-election) the restrictions commence?*
- *Should the Government Code Section be amended to clarify that it applies to city consolidations?*
- *Can LAFCO modify the restrictions by exempting future actions that are authorized by the prospective successor agency?*

B. CONDITIONING PROPERTY TAXES

The Commission has the authority to use specific terms and conditions to ensure the County, as the successor agency, is financially capable of winding down the affairs of the former city.

Question:

- *Should Government Code Section 56886(b) be amended to specifically authorize LAFCO to condition the approval of disincorporations on the enactment of the necessary revenues (i.e. property taxes) by the County Board of Supervisors?*

Disincorporation should be the option of last resort. Efforts should be made to exhaust all remedies in order to maintain the city as a viable entity.

Question:

- *Can LAFCOs condition a disincorporation on the failure of a city tax/assessment measure or measurers?*

4. IMPLEMENTATION

The fourth group discussed the actual implementation of disincorporation according to Cortese-Knox-Hertzberg. The implementation or “effect” of disincorporation is articulated in Government Code

Section 57400 *et seq.* The group focused on how portions of the law were written prior to the enactment of Proposition 218 – creating conflict between two areas of State law. The group discussed various implications of current State law and offered ways to improve current law to reduce or remove contradicting direction.

A. PAYING OF CITY DEBT

Government Code Section 57409 requires the County Board of Supervisors to levy a tax on the territory formerly included within the city to pay the indebtedness of the former city. This appears to contradict current state law under Proposition 218.

By definition the levy of taxes to pay city indebtedness within the territory formerly included within the city is a “special tax” under Article XIIC of the California Constitution. Section 1(c) requires taxes to be submitted to the electorate and approved by a two-thirds vote.

Questions:

- *How can State law be revised to align the intent of 218 with the necessities of Government Code Section 57409 to allow County boards of supervisors the necessary tools (special taxes) to pay the indebtedness of the disincorporating city?*
- *Should Government Code Section 56886 be amended to require LAFCO to condition approval of disincorporation or consolidation on the voter approval of the taxes necessary to repay existing indebtedness?*

B. REQUIRE BANKRUPTCY

There is no requirement for bankruptcy proceedings to occur prior to submission of a disincorporation proposal. Given the Legislature’s preference for consolidations discussed earlier, the group discussed the relative merits of bankruptcy as a legislatively required precursor to disincorporation proceedings.

Questions:

- *Should the Government Code be amended to require cities (G.C. 56654) to have entered bankruptcy proceedings prior to filing for disincorporation with LAFCO?*
- *Should the Government Code be amended to require petitioners (G.C. 56652(a)) to obtain a resolution from the City that it is entering bankruptcy proceedings as part of the petition and application materials for disincorporation?*
- *Should bankruptcy laws (and CKH) be amended to allow a successor agency to file bankruptcy on behalf of a disincorporated city (when there are insufficient assets or revenue streams to meet obligations)?*

C. ORDINANCES AND LAND USE

Part 5 of the Cortese-Knox-Hertzberg Act (Government Code Section 57300 *et seq.*) includes provisions regarding ordinances, including zoning ordinances, for incorporations (G.C. 57376) and city consolidations (G.C. 57479). There are no similar provisions for disincorporation.

Questions:

- *Should G.C. 57450 et seq. be amended to address the effect of city vs. county ordinances, including zoning within the territory of a disincorporation?*
- *Should G.C. 57450 et seq. be amended to require the affected county to prezone the territory of a disincorporation?*
- *Should G.C. 57450 et seq. be amended to clarify jurisdictional authority over land use and development proposals that are in process at the time of disincorporation?*
- *Are amendments to planning law needed to ensure that development agreements are still valid after disincorporation? Dependent on when they are executed?*

Policy Questions

Lastly, the groups raised a few general policy questions for consideration:

- *Should LAFCOs adopt local guidelines for disincorporation/consolidation until CKH is clarified?*
- *What public agencies other than the County are appropriate successors to administer City services?*