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Re: ***Court of Appeal Decision Dramatically Undercuts Municipal Home Rule For Charter Cities***

The First District Court of Appeals' decision in *Green Valley Landowners Association v. City of Vallejo*, (2015) ___ Cal.App.4th ___ , 2015 WL 6121779 (Case No. A142808, filed Oct. 16, 2015, certified for publication) has major adverse ramifications for all 121 charter cities in California.

The issue in *Green Valley* was whether the general laws of the State of California are *binding* upon a charter city in a matter of municipal affairs in the absence of a contrary charter provision or municipal ordinance.

The answer should have been clear.

In the 1800's and early 1900's, courts routinely subjugated charter city laws and actions to the general laws of the State. In 1914, the California Constitution was amended for the express purpose of granting charter cities complete independence of the State's general laws, at least with respect to matters of municipal concern.

This amendment, known as municipal "home rule", and is codified in Article XI, Sec. 5 of the California Constitution. It provides:

> Cities . . . organized under charters . . . are . . . empowered . . . to make and enforce all laws and regulations in respect to municipal affairs, *subject only to restrictions and limitations provided in their several charters* and in respect to other matters[1] they shall be subject to and controlled by general laws (italics added).

The *Green Valley* decision fundamentally undercuts municipal home rule as it has existed for 101 years. In *Green Valley*, the Green Valley Landowners Association, acting as the lead plaintiff in a putative class action against the City of Vallejo, alleged that Vallejo breached

[1] The "other matters" language refers to matters of state-wide concern, as opposed to municipal affairs. The Court of Appeal mistakenly interpreted the "other matters" language to mean matters *other than those matters in the charter*.

implied-in-fact contracts with 810 non-resident water customers of Vallejo's historic "Lakes Water System."

As the Court of Appeal correctly observed, Vallejo's charter does not require a written contract, nor does it have a single ordinance requiring a written contract. The Court of Appeal also correctly observed that the manner and mode of entering into a contract is unquestionably a municipal affair.

From these undisputed conclusions, under the home rule doctrine, Vallejo may enter into a contract in any matter it chooses, free from any interference from the general laws of the State.

The Court of Appeal disagreed, holding that Government Code §40602, a general law statute which purportedly requires a written contract, is binding on the City.

Relying on dicta from the obscure case of *McLeod v. Board of Pension Commissioners* (1970) 14 Cal.App.3d 23, 29-30, the Court of Appeal held that "If a city's charter is silent as to a particular matter, even one concerning a municipal affair, . . . the matter will be subject to the general laws of this state."

The Court of Appeal added that *McLeod* "follows well established principals in addressing charter cities and the effect of state statutes on such municipalities when their charter does not provide specific guidance on a matter of municipal affairs."

In support of its reasoning, the Court of Appeal relied upon *Civil Center Assn. v. Railroad Comm.* (1917) 175 Cal. 441, a decision which was interpreting the pre-1914 version of the California Constitution. The Court of Appeal also relied upon *Hyde v. Wilde* (1921) 51 Cal.App. 82, a case where the charter of San Diego (at the time) expressly provided that the general laws of the state would apply to a particular matter of municipal concern.

Arguably, there is vague language in the Court of Appeal's decision suggesting that a city ordinance might trump a general law statute. However, the Court of Appeal nevertheless rejected the proposition that charter cities are not bound by and subject to the general laws of the state on matters of municipal affairs. The court reasoned that until a charter city adopts a charter provision or (perhaps) an ordinance which conflicts with the general laws of the State, that the charter city is *bound by* the general laws.

Charter cities may be weary of facing liability on an implied-in-fact contract as alleged by the plaintiff in *Green Valley*. The simple solution is to adopt a charter provision or ordinance requiring all contracts to be in writing (something many charter cities have already done). A charter city can also adopt Government Code §40602, a general law statute which purportedly requires a written contract.

Regardless of the specific outcome in the *Green Valley* case, every charter city in the State should be alarmed by this decision. Any attorney representing a charter city would wisely

advice their client to dramatically expand the scope of their charters and ordinances to cover every conceivable topic concerning all municipal affairs. Their failure to do so, under *Green Valley*, subjects them to the general laws of the state.

The Green Valley Landowners Association intends to appeal the decision to the California Supreme Court. We welcome amicus letters urging the Supreme Court to accept the petition. We caution that given the existence of the *McLeod* decision, simply de-publishing the *Green Valley* decision is not enough as its reasoning and citation of *MeLeod* and other cases can be used against a charter city in future cases.