

DEC - 3 2007

ENDORSED FILED

YUBA COUNTY SUPERIOR COURT
H. STEPHEN KONISHI
SUPERIOR COURT CLERK

BY L. SPARKS
Court Clerk

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA

HOFMAN RANCH, et al.,

Plaintiffs,

vs.

**LOCAL AGENCY FORMATION COMMISSION
OF YUBA COUNTY (YUBA LAFCO), et al.,**

Defendants.

Case No.: CVPT 06-0000487

STATEMENT OF DECISION

This case presents the narrow factual issue whether, on and before June 14, 2006, John Benoit was an independent contractor who was, and had been, functioning as an officer or employee of the Local Agency Formation Commission of Yuba County (LAFCO).

Despite the inherent inconsistency of the dichotomic concept of an independent contractor functioning as an officer or employee, that is the concept adopted by the legislature in enacting Government Code Section 54957, subdivision (b)(4) and it is one which the court must apply in deciding this case.

The *Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000* (Gov't.C.§56000, *et seq.*) includes Government Code Section 56384, subdivision (a) which directs a local agency formation commission to appoint an executive officer who shall conduct and perform the day to day business of the commission.

On February 8, 2006, LAFCO and John Benoit executed an "Agreement for Professional Services," which the court regards to be tantamount to the appointment of Benoit as LAFCO'S executive officer. Its first sentence describes it as an ..."Agreement for Executive

1 Officer Services...” and its first paragraph obligates Benoit to render to LAFCO certain services
2 which were specifically defined in attachment A, Provision A-1, of the agreement. That
3 provision defines 12 categories of services, none of which includes the definition “executive
4 officer” and none of which explicitly obligates Benoit to “conduct and perform the day-to-day
5 business of the commission” but all of which categories, taken together with the title of the
6 agreement and its first sentence are considered to define activity which reasonably can be
7 taken to define the duties of an executive officer of a local agency formation commission
8 authorized by Government Code Section 56384, subdivision (a).

9 The agreement does have explicit provisions (Attachment D, Provision D.1.1.) providing
10 that all acts of Benoit are to be performed as an independent contractor and not as an agent,
11 officer or employee of LAFCO and that the agreement is not intended to create the relationship
12 of employee.

13 The gist of the petition is that LAFCO conducted a closed session for the purpose of
14 evaluating Benoit’s performance as executive officer, in violation of the provisions of the
15 *Brown Act* (Gov’t.C. §54950, *et seq.*). The *Brown Act* does contain provisions requiring that all
16 meetings of the legislative body of a local agency must be open and public, and all persons
17 shall be permitted to attend any meeting of the legislative body of a local agency, except as
18 otherwise provided in the act (Gov’t.C. §54953, sub. (a)). A closed session during a regular or
19 special meeting of the legislative body may be held to consider the evaluation of performance
20 of a public employee (Gov’t.C. §54953, sub. (b)(1) and, for that purpose, the term “employee”
21 includes an independent contractor who functions as an officer or employee but does not
22 include any other independent contractor (Gov’t.C. §54947, sub. (b)(4).

23 Petitioner’s basis for complaining of LAFCO’S evaluation of Benoit’s performance in
24 closed session is that he was performing as an independent contractor but not as an officer or
25 employee and therefore, his evaluation in closed session was not authorized by the *Brown Act*.
26 The precise basis for this contention is the language of the agreement by which he was
27 appointed which explicitly provides that acts performed by him pursuant to the agreement are
28 to be performed as an independent contractor and not as an officer or employee. LAFCO’S

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare that I am a citizen of the United States, over the age
3 of eighteen years, and not a party to the within action. I am employed at Yuba County
4 Superior Court and my business address is 215 Fifth Street, Marysville, California.

5 On December 3, 2007 I served the within STATEMENT OF DECISION on the named
6 parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
7 prepaid, in the central depository for mail collection for Yuba County, located at 215 Fifth
8 Street, Marysville, California, addressed as follows:

9 THOMAS ERES
10 ATTORNEY AT LAW
11 4030 WINDING CREEK RD
12 SACRAMENTO CA 95864

Attorney for Petitioner's

13 ✓ P. SCOTT BROWNE
14 ATTORNEY AT LAW
15 131 SOUTH AUBURN STREET
16 GRASS VALLEY CA 95945

Attorney for LAFCO

17 JOHN GABRIELLI
18 ATTORNEY AT LAW
19 430 D STREET
20 DAVIS CA 95616

Attorney for Petitioner's

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on December 3, 2007 at Marysville, California.

23 H. Stephen Konishi
24 Clerk of the Superior Court

25 By: L SPARKS
26 Court Clerk

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