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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF CARSON, Plaintiff and Appellant, v. CITY OF LA MIRADA et al., Defendants and Respondents.	B168849 (Los Angeles County Super. Ct. No. BC248284)

APPEAL from a judgment of the Superior Court of Los Angeles County, Emilie H. Elias, Judge. Reversed.

Burke, Williams & Sorensen, Steven J. Dawson and Darren C. Kameya, for Plaintiff and Appellant.

Stradling Yocca Carlson & Rauth, Douglas J. Evertz and Allison E. Burns, for Defendants and Respondents.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part 1 of the Discussion.

INTRODUCTION

What is a "big box retailer" as used by the Legislature in Health and Safety Code section 33426.7 and Government Code section 53084? Commonly known as AB 178, (Stats. 1999, ch. 462 (A.B. 178), §§ 3 & 2, respectively), these statutes prohibit a redevelopment agency from providing financial assistance to a "big box retailer" that is relocating from one community to another within the same market area.[1]

Plaintiff, City of Carson (Carson), appeals from the denial of its petition for writ of mandate. (Code Civ. Proc., § 1085.) Carson seeks to require the defendants, City of La Mirada, City Council of La Mirada, and the La Mirada Redevelopment Agency (together La Mirada) to comply with the requirements of AB 178 and share with Carson a portion of the sales tax revenue it receives from Corporate Express, Inc. (Corporate Express).

AB 178 was enacted by the Legislature for the express purpose of preventing competition between municipalities for businesses that generate large amounts of retail sales tax. The definition of "big box retailer," contained in the statute, is based on two criteria only: physical size and ability to generate retail sales taxes under the Revenue

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[1] At the time of the events leading to this lawsuit, AB 178 forbid financial assistance to a relocating big box retailer "unless the legislative body of the local agency [community] to which the relocation will occur offers the contract to the local agency [community] from which the relocation is occurring pursuant to this section." (Stats. 1999, ch. 462, (A.B. 178), §§ 2(a) & 3(a).) It is this version of the statute that governs this case.

In 2003, the Legislature amended AB 178 to, among other things, eliminate the authority of a local agency or redevelopment agency to provide any form of financial assistance to a relocating vehicle dealer or big box retailer. (Stats. 2003, ch. 781 (S.B. 114), §§ 1 & 2.) AB 178 now states: "Notwithstanding any other provision of this part, a redevelopment agency shall not provide any form of financial assistance to a vehicle dealer or big box retailer, or a business entity that sells or leases land to a vehicle dealer or big box retailer, that is relocating from the territorial jurisdiction of one community to the territorial jurisdiction of another community but within the same market area." (Health & Saf. Code, § 33426.7, subd. (a) Gov. Code, § 53084, subd. (a) [identical language applied to local agencies].)

and Taxation Code.[2] Based on the record, Corporate Express clearly falls within AB 178's definition of "big box retailer," and the efforts of Corporate Express to exact an economic package from La Mirada to move to that city were exactly what AB 178 was designed to prevent. Therefore, the trial court's interpretation and application of AB 178 was legal error. Accordingly, we reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The parties*.

There is no dispute about the facts in this case. Carson is a municipality located in the south bay area of Los Angeles County. La Mirada is located east of Carson. As with all municipalities in California, both cities rely upon sales tax revenue to fund local government and services.

2. *Corporate Express*.

The Southern California division of Corporate Express sells office products, furniture, and "computer consumable" supplies. Corporate Express's operations consist of 37 distribution centers throughout the United States. The company operates on a spoke-and-hub system. The hub is the distribution center, and spokes are sales, marketing, and customer service. In the greater Southern California area, Corporate Express sells its products from San Diego to Bakersfield, and east.

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[2] AB 178 defines "big box retailer" as ". . . a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code)." (Gov. Code, § 53084, subd. (b)(1); Health & Saf. Code, § 33426.7, subd. (b)(1).) The definitions in the Government Code and the Health and Safety Code cited here are identical except that the former statute applies to local agencies whereas the latter statute applies to redevelopment agencies.

Since its enactment in 1999, AB 178 has been amended and renumbered. However, the definition of "big box retailer" has undergone no substantive change.

Corporate Express sells its products exclusively through a sales force. Corporate Express's customers are the end-users, not the retail sellers, of the products and are preferably businesses who have at least 35 white-collar workers. The company's direct competitors include Staples, Office Depot, and Boise Cascade. The company tailors its services to the customer's needs and volume. Hence, pricing is not standardized. Approximately 6,000 orders are processed per day, and some 99 percent of the orders are delivered by Corporate Express trucks.

Corporate Express does not accept orders from the general public. That is, the company's sales force solicits customers for whom they establish accounts. It is undisputed that Corporate Express services its customers by direct sales, purchase orders taken by telephone, facsimile, mail, and through the internet.

Corporate Express does not normally accept orders in person from its headquarters. Although its La Mirada facility contains a "will call" window where customers can pick up products, and a lobby with a receptionist to greet visitors, only employees with identification may enter the rest of the building, which is separated by security doors. Customers may only come to the "will call" window if they have existing accounts and have placed orders before arriving. The La Mirada site does not have cash registers.

The La Mirada facility contains a warehouse on the ground floor. The warehouse has 3.2 miles of conveyors, and loading docks on either side for shipping and receiving. There, the company receives products from manufacturers and selects individual items for sale to customers. The second floor, or mezzanine portion of the building, houses the administration and sales department. Forty-five employees work in the 60,000 square foot mezzanine. That area is a working showroom, where furniture is displayed while being used by the Corporate Express sales force. There is also a small display area where customers may browse and test the furniture and other products. According to Gary Gonsalves, president of Corporate Express's Southern California division, "quite often" clients are brought to the mezzanine to look at cubicle brands and furniture.

3. *Corporate Express's campaign to find a new location*.

Corporate Express maintained a sales and distribution facility in Carson from 1985 to 2002. As such, the company was one of the largest generators of retail sales tax for Carson. This is a significant amount given that approximately 38.4 percent of Carson's general fund income for fiscal year 2001-2002 was derived from retail sales tax. The company held leases in Carson, Compton, and Paramount, all of which were set to expire in July 2002. After a merger between BT Office Products and Corporate Express in 1999, the latter wanted to consolidate its operations, and commenced a search for a new location. Later, Corporate Express acquired U.S. Office Products, which had a distribution center and headquarters in Santa Fe Springs.

In 2000, Corporate Express considered the possibility of expanding at its existing Carson site. But, it determined that the site was neither large enough nor the right shape to expand. Eventually, Corporate Express began looking outside Carson.

In the fall of 2000, Corporate Express contacted La Mirada to express its interest in consolidating its operations and relocating there. Corporate Express's October 12, 2000, letter to La Mirada's Director of Finance indicated that the company was looking for a 250,000 square foot distribution center. The company specified that it anticipated $221 million in sales for 2001 of which approximately $187 million would be taxable and $172.8 million would directly relate to Southern California. Corporate Express explained that one percent of this amount, or $1.728 million "in sales tax [is] collected from the *point of sale which is currently Carson*." (Italics added.) More particularly, Corporate Express indicated that if it were to decide to relocate from Carson, it "would expect to reasonably partner with economic benefits gained by the City of La Mirada in a long term relationship as a result of $1.728 million in sales tax revenue for 2001 and approximately [$]1.9 million in the first full year in 2002."[3]

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[3] During trial in 2003, Corporate Express projected sales in excess of $250 million at its La Mirada location.

Concurrently, Corporate Express notified Carson that the company was seriously considering relocation concessions from La Mirada and Santa Fe Springs. The company reminded Carson *that all of its sales originate from its Carson facility, "as all of the orders are picked and shipped from this location*." (Italics added.) Corporate Express repeated its hope to "partner with economic benefits gained by the City of Carson in a long term relationship as a result of our sales tax base and employee count," and asked the Carson City Manager to provide the company "with specific program details and dollar amounts that would assist Corporate Express to continue its occupancy in the City of Carson versus relocating to La Mirada or Santa Fe Springs."

Carson's General Manager for Economic Development, Ronald E. Winkler, explained Carson's response to this request. Carson considered, inter alia, offering redevelopment tax increment money to the business, or a sales tax rebate. Carson understood itself to be in competition with La Mirada to offer assistance.

La Mirada was also eager to have Corporate Express move into that city and found a large parcel of land in an industrial area previously used as an oil refinery. The city preferred that Corporate Express be the tenant on this property, instead of a warehouse, which would not generate sales tax revenue. Originally, La Mirada had proposed offering Corporate Express a rebate of 50 percent of the sales tax. Ultimately, La Mirada increased the amount of the rebate to two-thirds of the sales tax revenue over a certain threshold amount for the first three years after its relocation; followed by 50 percent of the revenues in the following 12 years. Carson estimated that the total financial assistance given by La Mirada to Corporate Express would exceed $18 million over a 15-year period.

Carson offered to meet or exceed La Mirada's offer. By letter dated December 14, 2000, Carson offered two options: (1) a build-to-suit arrangement that Corporate Express would own, or (2) the retrofitting of an existing building under a lease agreement.

Unfortunately for Carson, two days earlier, on December 12, 2000, the La Mirada Redevelopment Agency and Corporate Express executed a participation agreement. Thereunder, La Mirada promised to assist Corporate Express in purchasing or leasing

land and constructing a 250,000 square foot facility there. The agreement placed restrictions and maintenance requirements on Corporate Express, in return for which La Mirada would provide a financial incentive agreement for a period of 15 years. As the financial incentive, La Mirada agreed to refund to Corporate Express a percentage of tax revenues as long as the company's minimum annual sales tax revenues reached a certain amount. That is, the financial incentives would be measured by the production of sales tax revenues from the property.

La Mirada was also aware that AB 178 might apply. Hence, included in the participation agreement was Article 3.3, entitled "Possible Claim by the City of Carson." That article stipulated, in the event a court determined that AB 178 applied to Corporate Express's relocation, that La Mirada would share its sales tax revenues with Carson and the financial incentive would be readjusted.

Corporate Express had completed its move to La Mirada by the time of trial.

4. *Carson's lawsuit*.

On April 6, 2001, Carson commenced the instant action against La Mirada to challenge the participation agreement as a violation AB 178. After amendment, Carson's lawsuit sought (1) the invalidation of the participation agreement; (2) an injunction to regulate the approval of the participation agreement; and (3) writs of ordinary and (4) administrative mandate to enforce the revenue sharing provisions of AB 178. By stipulation, the case was tried to the bench.

The trial court held that AB 178 does not apply to Corporate Express's La Mirada facility because that company is not a "big box retailer." After considering the legislative history, testimony, and extrinsic evidence submitted by both parties, the court concluded that the phrase "big box retailer" and "store" had specific meanings attributed by the Legislature. They are: retail establishments selling to the general public (with or without membership dues), having very large parking lots (4-5 parking spaces per 1,000 square feet of retail space), and catering to "auto-borne shoppers." Examples the trial court found repeatedly identified in the materials included Sam's Club, Home Base, Costco, Wal-Mart, and Office Depot.

Applying this definition to the evidence of Corporate Express's operations, the court concluded that the La Mirada facility "is not a large building located as an island amongst parking spaces." The court was influenced by the fact that Corporate Express did not accept orders from the general public. Rather, it is located in an area that is zoned heavy industrial, M-2, with 448 parking spaces for the 420 employees who work 24-hour-days. Corporate Express does not have large signs or a large area where products are displayed to customers. The court found that "[t]he Legislature specifically limited the scope of its enactment to 'stores' " and that Corporate Express's La Mirada facility was "not operating a 'store' within the meaning of the statute . . . ." Rather, the Corporate Express La Mirada building was a "warehouse/distribution facility" because it had loading docks where trucks are filled for delivery to customers. The court entered judgment in favor of La Mirada and Carson filed its appeal.

CONTENTION

Carson contends the trial court erred in ruling that Corporate Express is not a "big box retailer" within the meaning of AB 178.

DISCUSSION

[[Begin nonpublished portion.]]

1. *The trial court's denial of La Mirada's motion to dismiss the lawsuit was not error.*

We address the procedural issue first. La Mirada contends that this appeal should be dismissed because Carson failed to timely serve its petition pursuant to the invalidation statutes. (Code Civ. Proc., §§ 863, 861.1.)

A. *Factual predicate*.

Carson filed its petition/complaint against La Mirada on April 6, 2001. Therein, Carson sought (1) invalidation of the participation agreement (Code Civ. Proc., § 863); (2) a writ of mandate (Code Civ. Proc., § 1085) requesting the trial court, inter alia, to direct La Mirada to share the sales tax revenue with Carson pursuant to AB 178; and (3) a writ of administrative mandate (Code Civ. Proc., § 1094.5) to prevent La Mirada from adopting participation agreements that do not comply with AB 178.

Specially appearing, La Mirada moved to dismiss the action arguing Carson failed to meet the time requirements prescribed by Code of Civil Procedure section 863[4] by failing to timely "serve[] [La Mirada] with [a] summons and complaint in the action," and failing to complete the mandated publication requirements "within 60 days from the filing of [the] complaint."

On June 7, 2001, Carson sought ex parte an order permitting service of summons by publication to all "interested persons" (Code Civ. Proc., § 861). On June 7, 2001, the trial court issued an order permitting service of summons by publication on interested person defendants. The summons was published on July 6, 13, and 20, 2001, advising all interested people that they had until July 31, 2001, to file a responsive pleading. Carson personally served La Mirada on August 2, 2001.

The trial court denied La Mirada's motion to dismiss. La Mirada then filed a petition for writ of mandate, seeking an order directing the trial court to enter an order granting La Mirada's motion to dismiss. We summarily denied that petition.[5] La Mirada now seeks to dismiss this appeal, raising the same contentions it did before.

B. *Application.*

" 'A validation action implements important policy considerations. "[A] central theme in the validating procedures is speedy determination of the validity of the public agency's action." [Citation.] 'The text of [Code of Civil Procedure] section 870 and cases which have interpreted the validation statutes have placed great importance on the need for a single dispositive final judgment.' [Citation.] The validating statutes should be construed so as to uphold their purpose, i.e., 'the acting agency's need to settle promptly all questions about the validity of its action.' " (*Friedland v. City of Long*

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4 Code of Civil Procedure section 863 provides, in the event that requirements of section 860 are not followed, that "the action shall be forthwith dismissed on the motion of the public agency unless good cause for such failure is shown by the interested person."

5 The Supreme Court denied review of our ruling.

Beach (1998) 62 Cal.App.4th 835, 842.) A key objective of a validation action is to "limit the extent to which delay due to litigation may impair a public agency's ability to operate financially." (*Id.* at p. 843.)

A litigant may be excused from strict compliance with the time limits for serving summons and publication, if " 'good cause for such failure is shown.' " (Code Civ. Proc., § 863; *City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 339; see also *Millbrae School Dist. v. Superior Court* (1989) 209 Cal.App.3d 1494, 1500.) In *City of Ontario v. Superior Court, supra*, at page 345, the Supreme Court equated "good cause" under Code of Civil Procedure section 473 with "good cause" under the validation statutes. The Court stated, "It is settled that an honest and reasonable mistake of law on [certain issues] is excusable and constitutes good cause for relief from default under Code of Civil Procedure section 473. [Citations.] The same test governs a claim of good cause under section 863 . . . ."

Here, good cause was shown for Carson's failure to comply with the 60-day requirement for service of summons. In opposing La Mirada's motion to dismiss, Carson indicated that La Mirada had offered to enter into settlement negotiations and a "tolling agreement" with Carson, but that the two parties were unable to meet before the time in which to file the lawsuit. Carson reasonably delayed its attempt to comply with the validating statutes' procedural requirements during negotiations for a tolling agreement. Additionally, according to Carson, La Mirada would only discuss settlement after resolving issues it had involving the property designated for Corporate Express. Resolution of those issues were delayed because La Mirada was forced to commence eminent domain proceedings. La Mirada's inability to quickly resolve its property issues led Carson's counsel to believe there was no urgency that required speedy publication of summons and the speedy resolution under the validation procedure. (See *Friedland v. City of Long Beach, supra*, 62 Cal.App.4th at p. 842 [one purpose of the validating statutes is to allow the acting agency " 'to settle promptly all questions about the validity of its action' "].)

Although the trial court here found Carson had not demonstrated "good cause" for failure to comply with Code of Civil Procedure section 863, it then relied on section 473 to rule that the taxpayers of Carson should not be punished by its counsel's error. Hence, the court essentially found good cause, albeit by relying on a different basis than we do here. However, "[i]t is established that . . . 'a ruling or decision correct in the law will not be disturbed . . . merely because it was given for the wrong reason. If correct upon any theory of law applicable to the case, the judgment will be sustained regardless of the considerations that moved the lower court to its conclusion.' [Citations.]" (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216.) The motion to dismiss was properly denied.

[[End nonpublished portion.]]

2. *Corporate Express is a "big box retailer" as defined by AB 178 and contemplated by the Legislature*.

a. *Corporate Express's physical size and ability to generate sales tax revenue make it a "big box retailer."*

The sole substantive question before us is whether Corporate Express qualifies as a "big box retailer" as that term is used in AB 178, i.e., in Government Code section 53084, and Health and Safety Code section 33426.7.

In interpreting a statute, we apply long-established principles: " 'The fundamental rule . . . is to ascertain the intent of the Legislature in order to effectuate the purpose of the law. . . . In doing so, we first look to the words of the statute and try to give effect to the usual, ordinary import of the language, at the same time not rendering any language mere surplusage. The words must be construed in context and in light of the nature and obvious purpose of the statute where they appear. . . . The statute " 'must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the Legislature, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity. . . .' " ' [Citations.]" (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 997; *Dyna-Med, Inc. v. Fair Employment & Housing Com*. (1987) 43 Cal.3d 1379, 1386-1387.) "Thus, '[t]he

intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 899.)

Construction of a statute is a question of law which appellate courts review de novo. (*California Ins. Guarantee Assn. v. Liemsakul* (1987) 193 Cal.App.3d 433, 438.)

Looking first to the words of AB 178, it defines "big box retailer" as ". . . a *store* of greater than *75,000 square feet of gross buildable area* that *will generate sales or use tax* pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code)." (Gov. Code, § 53084, subd. (b)(1); Health & Saf. Code, § 33426.7, subd. (b)(1), italics added.) Revenue and Taxation Code sections 7200 et seq. refer to the determination and computation of *sales and use tax*.[6] AB 178 clearly and unambiguously defines "big box retailer" by two factors, namely, (1) physical size and (2) ability to generate sales tax.

The words of AB 178 define Corporate Express's La Mirada facility. First, the building is far more than 75,000 square feet of gross buildable area. The mezzanine alone, where the sales are made, is 60,000 square feet. Second, Corporate Express generates retail sales tax revenue. By its own estimate, Corporate Express produced approximately $1.728 million "in sales tax collected from the point of sale" in 2000, and anticipated $1.9 million in 2002.[7] This amount made Corporate Express one of the

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[6] Section 7202 of the Revenue and Taxation Code provides that a "sales tax portion of any sales and use tax ordinance adopted under this part shall be imposed for the privilege of selling tangible personal property at retail, and shall include provisions in substance as follows: [¶] A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the county at the rate of 1 1/4 percent of the gross receipts of the retailer from the sale of all tangible personal property sold by that person at retail in the county." (Rev. & Tax. Code, § 7202, subd. (a).)

[7] La Mirada's argument on appeal that "Corporate Express has no point of sale capability" is specious. In a letter to La Mirada in 2000, Corporate Express touted its $1.728 million "in sales tax collected from *the point of sale* which is currently Carson." Nor are we influenced by the argument that Corporate Express's facility is located in an industrial area without the amount of parking found near a Costco or Home Base store. Those factors are not relevant under the definition of "big box retailer" in AB 178.

largest producers of sales tax income for Carson. Indeed, Corporate Express marketed itself to Carson, La Mirada, and Santa Fe Springs on the basis of its capacity to produce significant amounts of sales tax income for these cities. It was this revenue-generating ability that compelled La Mirada to offer and then sweeten the deal with Corporate Express. Thus, the two elements of AB 178's definition of "big box retailer" apply to Corporate Express.

b. *Corporate Express's La Mirada facility is a "store."*

The parties dispute whether Corporate Express is a "store" as that word is used in AB 178. Webster's Dictionary defines "store" as "a business establishment where usu[ally] diversified goods are kept for *retail* sale" (Webster's 9th New Collegiate Dict. (1983) p. 1162, italics added) and "a place of deposit for goods esp[ecially] in large quantities." (Webster's 3d New Internat. Dict. (1966) p. 2252.) Black's Law Dictionary defines "store" as "[a]ny place where goods *are deposited and sold* by one engaged in buying and selling them." (Black's Law Dict. (6th ed. 1990) p. 1420, italics added.)

Based on these definitions, Corporate Express is a store. The company buys large quantities of office and computer supplies and furniture, which products are kept in the warehouse and then repackaged and sold to customers. No one disputes that Corporate Express's customers are the end-users of the products the company sells. (See *Modern Paint & Body Supply, Inc. v. State Bd. of Equalization* (2001) 87 Cal.App.4th 703, 710 [courts look to primary intent of purchaser in determining whether product purchased at retail or for resale].) Thus, regardless of the fact its customers are by account only and are businesses, Corporate Express's sales are *retail sales.* (See Rev. & Tax. Code, § 6007 ["A 'retail sale' or 'sale at retail' means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property"].) The company's building contains a showroom and display area. Its competitors are Staples, Office Depot, and others who are in the business of retail sale of office supplies. Although the warehouse and mezzanine are not customer-friendly atmospheres, the La Mirada building is where the company *sells* its products to the ultimate consumer.

We are not persuaded by La Mirada's argument that Corporate Express's La Mirada facility is really a warehouse, not a store. La Mirada describes Corporate Express's facility as a "highly mechanized warehouse-distribution facility, with large stacks of products, fork lift trucks moving through aisles, and conveyor tracks to move products in bulk from shelves to trucks for shipping." Apart from the obvious fact that the definitions of store include the *deposit of goods as well as their sale*, the relevant factor in AB 178 is the *generation of sales tax*. Hence, the facility can be both warehouse and store and still fall within the meaning of "big box retailer."[8] While a large portion of Corporate Express's La Mirada facility warehouses its products, the building is also, by Corporate Express's own admission, a place where goods are sold. (Cf. Rev. & Tax. Code, § 7205 ["retail sales are consummated at the place of business of the retailer"].) In fact, La Mirada admits Corporate Express's "operations . . . generat[e] . . . sales tax." Other than physical size, that is how the statutes define "big box *retailer*." (Gov. Code, § 53084, subd. (b)(1); Health & Saf. Code, § 33426.7, subd. (b)(1).) In any event, La Mirada has always been fully aware of the likelihood that Corporate Express would fit within the statutes' definition of "big box retailer." It chose to attract Corporate Express rather than a warehouse exactly because Corporate Express generated sales tax, and then it included in the participation agreement the Article 3.3 contingencies in case Carson brought suit to enforce its rights under AB 178. Corporate Express is a store.

c. *Competition amongst municipalities is exactly the evil AB 178 was designed to prevent.*

Our interpretation is consistent with the express intention of the Legislature. (*Klajic v. Castaic Lake Water Agency*, *supra*, 90 Cal.App.4th at p. 997.) AB 178 was enacted in response to a state-wide fiscal crisis and resulting battle for sales tax revenue. In the face of a severe budget crisis in fiscal years from 1992 to 1994, the state began

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8 La Mirada's characterization of Corporate Express as "hostile to would-be shoppers" is disingenuous because the company's own President testified Corporate Express seeks fortune 500 customers, and "quite often" brings in customers to its facility's mezzanine to look at and test products.

"shifting" local property tax dollars to meet state obligations. This shifting "exacerbated the already crumbling state/local fiscal relationship and forced local governments into fierce competition with each other over business developments that generate sales tax." (Assem. Com. on Housing & Community Development, analysis of Assem. Bill No. 178, as amended May 3, 1999.) As the Assembly's Committee on Housing and Community Development observed, "[b]ig box retailers began to hold bidding wars between local governments to determine which could provide the greatest subsidy for the business' location. These bidding wars have become particularly damaging when a business threatens to relocate to a nearby city if the current municipality fails to come up with an incentive package for it to stay."[9] (See also, Senate Local Government Com. analysis of Assem. Bill No. 178, as amended July 12, 1999.) While the bill was amended during the legislative process, the legislative goal remained constant and the bill enjoyed wide-ranging support both in the Legislature and from organizations ranging from California Business Properties Association to the Sierra Club.

The unambiguous manifestation of the Legislature's intent concerning the purpose of AB 178 is found in its ensuing uncodified preamble, which states, "The Legislature finds and declares that *the provision of financial assistance by local agencies to automobile dealerships and big box retailers* that seek to obtain public funds from local agencies as subsidies for their relocation, *results in the loss of public funds available for public purposes*, impedes the implementation of good planning, *encourages unfair competition between local agencies,* and does not result in a public benefit to the people of the state. [¶] (b) The Legislature further finds and declares that *limiting this*

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9 Assembly member Torlakson cited an example. The Ventura city officials agreed to give away all of the increases in sales tax revenue generated over a 15-year period by shopping mall anchors lured from nearby Oxnard. The revenue was used, not for public resources for activities that enhanced the region's economic activities, or to create jobs, but to a developer who bankrolled a parking garage and a series of road improvements to move two stores three miles. Torlakson wanted to "ensure that local governments have the broadest flexibility to fund services for taxpayers and that public resources are not given away to extremely profitable retail giants."

competition for sales tax revenues is an issue of statewide concern and therefore it is necessary to apply the provisions of this act to all cities and counties in the state." (Stat. 1999, ch. 462, § 1, italics added.)

Looking to the goals of the statutes, as explained by AB 178's author, Assembly Member Torlakson, "[t]here are many examples of the divisive competition that pits cash-strapped local governments against each other to attract, at the public's expense, 'big box' retailers. We should ensure that local governments have the broadest flexibility to fund services for taxpayers and that public resources are not thrown away to extremely profitable retail giants." Torlakson explained that the revenue sharing was limited to auto dealers and "big box retailers" because "they generate large amounts of sales taxes to city general funds and are the businesses that have been playing off cities against each other. [These two types of businesses] are often 'stand alone' businesses -- that is not part of some larger development project -- which is why they can negotiate in this manner. [¶] Often auto dealers and big box retailers negotiate for assistance, which is a percentage of the sales tax they will generate -- not on the basis of real economic needs."

AB 178 must be interpreted to promote the legislative intent and to " 'effectuate the purpose of the law.' " (*Klajic v. Castaic Lake Water Agency, supra,* 90 Cal.App.4th at p. 997.) "[T]he object which a statute seeks to achieve and the evil which it seeks to prevent are of prime consideration in the statute's interpretation [citation] . . . ." (*Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 669.) With the enactment of AB 178, the Legislature targeted a problem of "statewide concern," namely, the predatory competition among municipalities for sales tax revenue and the resulting squandering of public money spent to lure large revenue-producing stores away from neighboring municipalities. AB 178 targeted auto dealers and "big box retailers" expressly because they generate large amounts of sales taxes for municipalities' general funds.

The fiscal policy ill that AB 178 was designed to cure is exactly the malady that occurred in this case. Corporate Express played Carson, La Mirada, and Santa Fe Springs against each other in an effort to secure the best financial incentive package

possible. The effect was to deprive Carson of critical general-fund money for public services, while La Mirada depleted its public funds to confer a subsidy on a private business in the estimated amount of $18 million over a 15-year period.

Given our interpretation of the statutes, the trial court erred in ruling that Corporate Express was not a "big box retailer" under AB 178. The trial court used enterprises such as Costco, Sam's Club, Home Base, and other giant retail chains as the model for its definition of "big box retailer." To support its position that the Legislature only had these name-brand stores in mind when it considered Corporate Express, the trial court cited as evidence, among other things, newspaper articles from such sources as the Los Angeles Times and the Sacramento Bee, and book chapters found in the legislative materials submitted by the parties. However, because the legislative intent is clear and the words of the statutes are unambiguous, the trial court was not required to reach out to other sources.

The court characterized "big box retailer" as a retail store that requires large parking lots, huge pylon signs, and that "cater[] to auto borne shoppers." Yet, there is no mention in AB 178 of parking, signage, zoning, or the manner in which shoppers make their purchases. The trial court's reliance on physical characteristics ignores the stated goal of the Legislature in enacting AB 178, namely, to remedy a problem of *fiscal policy and economic incentives*, not zoning or blight.

Any focus on the so-called brick and mortar definition of "big box retailer" overlooks the fact that sales are increasingly being made by telephone, facsimile, and the internet.[10] Such trade has been generating sales tax revenue for Corporate Express for years. Ignoring sales that occur by telephone, facsimile, or through the internet, renders surplusage the reference in the statutes' definition to the ability to generate sales and use tax.

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10 Carson's expert, Glenn Desmond, testified that these days businesses are evolving towards electronic purchases and so there is no requirement that there be a cash register at the location for it to be deemed a store.

Finally, we reject La Mirada's argument that AB 178 does not apply to Corporate Express because that company did not "relocate" from Carson to La Mirada. La Mirada quotes from the statute's definition of "relocating" as "the closing of [a] . . . big box retailer in one location and the opening of [a] . . . big box retailer in another location within a 365-day period . . . ." where there is a unity of ownership between the closing and opening retailers. (Gov. Code, § 53084, subd. (b)(5) & Health & Saf. Code, § 33426.7, subd. (b)(5).) La Mirada argues that Corporate Express consolidated its operations by closing four locations and consolidating them in La Mirada, with the result it did not "relocate" so much as consolidate. Semantics aside, what occurred in this case was a relocation. There is a unity of ownership, here, as all four locations were Corporate Express facilities. Also, the portion of Corporate Express's facility containing the point of sale capability to "generate sales tax" revenue was originally in Carson and *relocated* to La Mirada.

To summarize, Corporate Express is a "big box retailer" as that term is defined in AB 178. Its La Mirada facility is larger than 75,000 square feet of gross buildable area and generates sales tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law. (Gov. Code, § 53084, subd. (b)(1); Health & Saf. Code, § 33426.7, subd. (b)(1).) Therefore, the trial court erred in denying Carson's writ petition.

DISPOSITION

The judgment is reversed. Respondent to pay costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.