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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PAUL COBB et al., **Plaintiffs and Appellants,** **v.** **JACK O'CONNELL,** **Defendant and Respondent.**	**A109101** **(Alameda County Super. Ct. No. RG04155879)**

Appellants are Oakland residents and taxpayers, who contend that the California Legislature's passage of special remedial legislation in 2003, which was designed to save the Oakland schools from financial insolvency, violated the "home rule" provisions of the California Constitution and the Oakland City Charter. We affirm the trial court's ruling, which rejected appellants' contentions.

I. FACTS AND PROCEDURAL HISTORY

We draw the relevant facts from appellants' first amended complaint. During the summer of 2002, the Oakland School District discovered that it had incurred a deficit of $31 million, due to errors in estimating expenses, failures of oversight, an outdated computer system, and other locally occurring problems. The Oakland schools also faced a projected deficit for the next year of over $50 million, although steps were put in place to reduce this projected deficit to $25 million in that year, and to achieve a projected balanced budget the following year.

The State of California took action to insure that this fiscal crisis in the Oakland schools did not deprive students of their educational opportunities. The California Legislature passed Senate Bill No. 39 (2003-2004 Reg. Sess.), Stats. 2003, ch. 14 (SB 39), emergency legislation authored by Senator Perata of Oakland in 2003.

In summary, SB 39 provides additional emergency funding to the Oakland schools in the total sum of $100 million. The legislation also provides that control of the Oakland schools would temporarily be assumed by the state.[1] The state's Superintendent of Public Instruction, respondent Jack O'Connell, was directed to appoint a state administrator to run the Oakland school system, for at least two fiscal years after the appointment of the administrator, or until the projected completion of a specified "improvement plan" to resolve the fiscal crisis and return the district to solvency, as per section (5)(e) of SB 39.

Pursuant to the enactment of SB 39, a state-appointed administrator assumed control of the Oakland schools in June 2003, displacing the supervisory control formerly exercised by the elected governing board of the Oakland school district, which continues to exist and act in an advisory role.

Appellants alleged that SB 39, by allowing a temporary state takeover of the local Oakland schools, constituted a violation of the "home rule" provisions of the California Constitution which provide for local control over certain local governmental functions, and conflicted with provisions of the Oakland City Charter providing for an elected school board.[2] Appellants' complaint further alleged that the respondent State Superintendent of Public Instruction was engaged in the "illegal waste and expenditure of public funds" by implementing the provisions of SB 39.

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[1] Section 3 of SB 39 provides: "The Legislature finds and declares that because of the fiscal emergency in which the Oakland Unified School District finds itself and in recognition of the March 27, 2003 request of the governing board of the district for a loan from the state, it is necessary that the Superintendent of Public Instruction assume control of the district in order to ensure the return to the district of fiscal solvency."

[2] When this action was filed, the Oakland City Charter called for the election of seven district school directors, and the appointment of three additional members by the mayor, but the provision for appointed members has since lapsed. As to the elected members, the charter provides that they "shall be elected at the times and in the manner in this Charter provided for members of the [City] Council and shall be required to have the same qualifications." (Oakland City Charter, Art. IV, § 404 (a).) The charter refers to the state Education Code for all other matters pertaining to the members of the school board and their duties, other than the manner of their election.

The trial court rejected appellants' claims as a matter of law, sustaining without leave to amend defendants' general demurrer, and entering judgment on their behalf.

I. DISCUSSION

A. STANDARD OF REVIEW

A demurrer "tests the legal sufficiency of the complaint . . . ." (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) On appeal from a dismissal following such an order, we assume the truth of all facts properly pleaded in the complaint and its exhibits or attachments, as well as those facts that may fairly be implied or inferred from the express allegations. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) "We do not, however, assume the truth of contentions, deductions, or conclusions of fact or law." (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

In reviewing such a ruling, we look "only to the face of the pleadings and to matters judicially noticeable . . . ." (*Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 239, fn. 2, italics omitted.) We are "not bound by the trial court's construction of the complaint . . . ." (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958.) Rather, we independently evaluate the complaint, construing it liberally, giving it a reasonable interpretation, if possible, and reading it as a whole, while viewing its parts in context. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).) We must determine de novo whether the factual allegations of the complaint are adequate to state a viable cause of action under any legal theory. (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 38.)

B. THE DEMURRER WAS PROPERLY SUSTAINED.

Our analysis starts with the "home rule" provisions of the California Constitution.

As a charter city recognized in the California Constitution (Cal. Const., art. XI, §§ 2, 3), Oakland is empowered to govern its own "municipal affairs." In this regard, article XI, section 5, subdivision (a), reads in relevant part: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and

limitations provided in their several charters and in respect to other matters they shall be subject to general laws." This constitutional "home rule" doctrine reserves to charter cities the right to adopt and enforce ordinances, provided the subject of the regulation is a "municipal affair" rather than being a subject of "statewide concern." (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 399 (*Johnson*); accord, *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45 (*Traders*).)

Appellants maintain that SB 39's requirement that a state-appointed administrator temporarily manage the Oakland schools conflicts with the "home rule" doctrine, as well as with provisions of the Oakland City Charter providing for the election of a local school board.

The relevant case law has identified the steps we must take in resolving this controversy. "First, a court must determine whether there is a genuine conflict between a state statute and a municipal ordinance. [Citations.] Only after concluding there is an actual conflict should a court proceed with the second question; i.e., does the local legislation impact a municipal or statewide concern?" (*Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1813; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 364; *Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1054.) Finally, if a genuine conflict is presented and the state statute qualifies as a matter of statewide concern, "we next consider whether it is both (i) reasonably related to the resolution of that concern, and (ii) 'narrowly tailored' to limit incursion into legitimate municipal interests." (*Johnson*, *supra*, 4 Cal.4th at pp. 404, 406, fn. 17.)

1. Is There a Genuine Conflict?

As we have noted, under California's Constitution, charter cities have been specifically granted the power to manage certain of their own affairs without interference from the state Legislature. (Cal. Const., art. XI, § 5, subd. (a).) In particular, subdivision (b) of this constitutional provision directly grants to charter cities the power and authority to legislate in four "core" areas "that are by definition, 'municipal affairs.' " (*Johnson*, *supra*, 4 Cal.4th at p. 398.) When a charter city's enactment falls within one of

these core areas, it supersedes any conflicting state statute. (See, e.g., *Ector v. City of Torrance* (1973) 10 Cal.3d 129, 132-133.) The "conduct of city elections" is one of the few specifically enumerated core areas of autonomy for home-rule cities. (Cal. Const., art. XI, § 5, subd. (b).) Additionally, Article IX section 16, subdivision (a) authorizes a charter city to provide for "the manner in which . . . and the terms for which the members of boards of education shall be elected or appointed . . . ."

Appellants claim that SB 39 conflicts with those provisions of the Oakland charter calling for the election of the Oakland school board. We perceive no such genuine, actual or direct conflict. The Oakland school board continues to be elected as it always was before the emergency legislation, and the hiatus in the exercise of its ultimate responsibility is only temporary, during which period the board continues to serve an advisory role. It cannot be said that SB 39 interferes with the election of members of the school board.

Most certainly, SB 39 does provide that the management of the school district is, temporarily, in the hands of a state appointed administrator until the present fiscal crisis may be dealt with and the district may be returned to definite solvency. But this temporary administration and goal of solvency does not conflict with any provision of the Oakland charter, or prevent the election of a local school board in the manner specified by the Oakland charter. (Cf. *Traders, supra,* 93 Cal.App.4th at p. 45.) We find no genuine conflict between SB 39 and the text of the Oakland charter regarding city elections. (*Ibid*.)

This conclusion would normally mean that our review is at an end, since in the absence of such a conflict, we need not proceed to the next portion of our analysis. (See *Barajas v. City of Anaheim, supra,* 15 Cal.App.4th at p. 1813; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Com., supra,* 21 Cal.4th at p. 364; *Rider v. City of San Diego, supra,* 18 Cal.4th at p. 1054.) Nevertheless, we choose to address the remaining relevant factors identified by the case law.

2. Statewide Concern or Local Concern?

It is well established, and even appellants do not dispute, that education is a matter of statewide concern, as is the need to rescue school districts from insolvency in order to continue the education of students. (*Butt v. State of California* (1992) 4 Cal.4th 668, 691-692 (*Butt*).) Our high court has specifically referred to the "State's plenary power over education" as affording an adequate basis for the complete takeover of an insolvent local school district which requires an emergency state appropriation. (*Id.* at p. 692.) Consideration of this factor does not support appellants' challenge to SB 39.

3. Serving a State Interest

The last step of our analysis is to compare the scope of the statute to the statewide concerns sought to be addressed. The California Supreme Court, in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1 (*CalFed*), summarized this step as ensuring that " 'the sweep of the state's protective measures may be no broader than its interest.' [Citation.]" (*Id.* at p. 25.)

As we have pointed out, under SB 39, the management of the school district is, *temporarily*, in the hands of a state appointed administrator, until the present fiscal crisis may be dealt with and the district may be returned to definite solvency. Such a *temporary* administration during the period necessary to return the school district to long term financial stability does not appear overbroad, and seems narrowly tailored to the fiscal emergency faced by the Oakland school district, and the need to insure that the additional state funds being provided are not wasted. (See *CalFed*, *supra*, 54 Cal.3d at p. 25; *Butt*, *supra*, 4 Cal.4th at p. 692; cf. *Traders*, *supra*, 93 Cal.App.4th at p. 45.)

Appellants urge that there was a more narrow option available to the Legislature. The Legislature could have funded Oakland's debt, without insisting on new fiscal oversight measures that gave temporary control of the district to a state appointed administrator. For instance, emergency legislation could have provided for the appointment of a state "trustee," possessing a more limited power to suggest or veto the actions of the elected board. We cannot say that the option appellants propose would have sufficiently dealt with the fiscal problems facing the Oakland school district. We are unable to second guess the Legislature's judgment in this regard, especially where the

Legislature is exercising the state's "plenary power" to rescue a local school district experiencing a self-induced financial emergency. (See *Butt, supra*, 4 Cal.4th at p. 692.)

It appears that none of the relevant factors identified in the case law would support appellants' challenge to SB 39, and the trial court was correct to conclude as a matter of law that SB 39 is not unconstitutional. (See *Traders, supra,* 93 Cal.App.4th at p. 45.)

4. Waste of Public Funds?

According to appellants' complaint, compliance with the statutory mandates of SB 39 would result in "waste" of public funds. In particular, appellants charge that respondent State Superintendent of Public Instruction was involved in a "waste" of the local public funds insofar as these funds were expended for the election of a local school board. It is alleged that the election of a school board was a "nullity," since the school district was actually under the temporary administration of the state administrator.

However, although appellants alleged they were residents and local taxpayers of the City of Oakland, they failed to plead that respondent State Superintendent of Public Instruction was an officer of the City of Oakland, who could be subject to a charge of "waste" of the local tax funds in issue. In fact, the complaint alleges that respondent is an officer of the State of California, not of the City of Oakland, and thus it appears that such an allegation could not be made. (See *Blank, supra*, 39 Cal.3d at pp. 318-319.) The fact that appellants disagree with the political solution reached in this instance does not establish an illegal "waste" of public money. (See *Lucas v. Santa Maria Public Airport Dist*. (1995) 39 Cal.App.4th 1017, 1026-1027.)

At bottom, appellants have failed to properly plead circumstances that demonstrate the unconstitutionality of SB 39, or an illegal "waste" of public funds. (See *Blank, supra*, 39 Cal.3d at pp. 318-319.) For these reasons, the trial court acted properly in sustaining the demurrer. (*Ibid*.)[3]

[3] Consequently, we need not address the additional arguments of the parties as to whether the provisions of SB 39 are severable, i.e., whether Oakland could receive the $100 million in funding provided by SB 39, if SB 39 was unconstitutional. These contentions are moot, because the trial court properly rejected appellants' claims that SB 39 was unconstitutional.

III. DISPOSITION

The judgment of dismissal is affirmed.

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Stevens, J.

We concur:

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Jones, P.J.

_____
Gemello, J.

Filed 11/18/05

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PAUL COBB et al., **Plaintiffs and Appellants,** **v.** **JACK O'CONNELL,** **Defendant and Respondent.**	**A109101** **(Alameda County Super. Ct. No. RG04155879)** **ORDER MODIFYING OPINION AND CERTIFYING OPINION FOR PARTIAL PUBLICATION**

THE COURT:

1. On page 1, the following sentence is added to the first full paragraph:

"In the published portions of this opinion, we address appellants' claims of a conflict with provisions of the California Constitution and the Oakland City Charter. In the final, unpublished portion of this opinion, we address appellants' claims of a waste of public funds."

2. On page 3, the roman numeral "I" before the DISCUSSION heading is changed to a roman numeral "II."

There is no change in the judgment.

The opinion in the above-entitled matter filed on October 25, 2005, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be partially published in the Official Reports and it is so ordered.

JONES, P.J.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part II.B.4.

Trial Judge:	Hon. James A. Richman
Trial Court:	Alameda County Superior Court
Counsel for Plaintiffs and Appellants:	Dan Siegel, Siegel & Yee
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