

COUNCIL MEETING
OCTOBER 6, 1982

HUTCHINS STREET SQUARE

A check in the amount of \$27,600 was presented to the Council on behalf of the Old LUHS Site Foundation by Chairman Ken Boyd. These monies represent revenues collected from the Field and Fair Day III Celebration and smaller donations and memorials that have been collected by the Foundation over the past few months.

Mr. Boyd also apprised the Council that the Foundation has also taken the initiative on the site to implement several public awareness projects, including the fund-drive thermometer, renovating the Hutchins Street Marquee and installing building signs. These projects have been paid for by the Foundation at a cost of \$1,600.00 and Mr. Boyd requested, on behalf of the Foundation, that this amount also be forgiven from the debt due.

On motion of Mayor Reid, Murphy second, Council forgave an additional \$1,600.00 of the site debt as requested by the Foundation.

Following a suggestion by Mayor Pro Tempore Murphy to forgive the entire debt, Mr. Boyd stated that "it's the feeling of the Foundation Board that they would like to continue with raising that money, that they would prefer that the debt not be forgiven; that they feel it might damage their credibility with the community at large".

Mayor Reid then proposed that the City match the Foundation dollar for dollar everytime the Foundation presents a check, which amount would go to the final detail plan. Mayor Reid stated that he knows right now that plans are needed on conduit to be placed before the sidewalks can be placed that were donated and that he believes the City should do that.

A very lengthy discussion followed.

On introduction of Councilman Snider, Council discussion followed regarding funding for the development of Hutchins Street Square, which discussion included the possibility of bonding the project or establishing an assessment district to cover the development.

Mayor Reid then moved that the City of Lodi match dollar for dollar any contributions by the Foundation toward the site debt payment, which amount is to be used for detail plan work to be prepared by the Lodi Design Group. The motion was seconded by Councilman Pinkerton and carried by unanimous vote.

At the suggestion of Council Member Olson, Council tacitly concurred to hold 4 study sessions a year with the foundation and the Lodi Design Group to discuss the Hutchins Street Square Community Center Project.



K23

COMMUNIQUE

TO: HUTCHINS AND OAK STREET / POST OFFICE BOX B-1 / LODI, CALIFORNIA 95241
Members, City Council

FROM: Charlene Lange, Community Relations Assistant

DATE: September 30, 1982

SUBJECT: Old Lodi Union High School Site Debt Payment

A check in the amount of \$27,600 will be presented to the Council on behalf of the Old LUHS Site Foundation by Chairman Ken Boyd. These monies represent revenues collected from our Field and Fair Day III Celebration and smaller donations and memorials that have been collected by the Foundation over the past few months. This donation leaves a remaining balance of \$180,000 on the near half-million dollar debt of the ten acre piece of property that is being rebuilt as "Hutchins Street Square".

The Foundation has also taken the initiative on the site to implement several public awareness projects, including the fund-drive thermometer, rennovating the Hutchins Street marquee and installing building signs. These projects have been paid for by the Foundation at a cost of \$1,600.00.

With the cooperation of the Parks and Recreation Department, there is a vast amount of activity on the site -- with most organizations signing yearly rental agreements for "as is space". These activities are:

- Lodi Art Center
- YMCA
- Lodi Boxing Club
- Square Dancing
- Jazzercise
- Aerobic Dancing
- Delta College Bricklayers Class
- private party rentals of the cafeteria/kitchen and the team room
- regularly scheduled soccer games on the playing field.

The Foundation recognizes volunteer labor as an important part of our rebuilding program. One of our most highly visible auxiliary activities includes the Labor Day Weekend, "Field and Fair Day" -- coordinated entirely by volunteers. This family activity was pulled together by nearly 5,000 hours of Lodi area individuals donating their time and services.

Currently, the Foundation is preparing a fall fund-drive to repay the remainder of the debt; this drive will be chaired by Foundation members Jerry Jones and Frank Johnson and should kick off at the end of October.

Two other specific projects that are being coordinated at this date by the Foundation and City staff include the King Memorial Walkway and the rennovation of the former music building to serve as a new home for the Tokay Players.



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EDWARD K. PURCELL
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Sacramento, California

December 7, 1992

Honorable Patrick Johnston
4134 State Capitol

School Districts: Maintenance
of Schools - \$15411

Dear Mr. Johnston:

QUESTION NO. 1

You have asked whether the governing board of a school district which determines that the district lacks adequate facilities for the education of its pupils, and which enters into a contract with another school district for the education of these pupils pursuant to the provisions of Section 37001 of the Education Code, is required to obtain the prior approval of the parents of pupils to be assigned to the schools of the other district.

OPINION NO. 1

The governing board of a school district which determines that the district lacks adequate facilities for the education of its pupils, and which enters into a contract with another school district for the education of these pupils pursuant to the provisions of Section 37001 of the Education Code, is not required to obtain the prior approval of the parents of pupils to be assigned to the schools of the other district.

ANALYSIS NO. 1

Under the provisions of Article 1 (commencing with Section 37000) of Chapter 1 of Part 22 of the Education Code,* except as provided in that article, any regular day school required to be maintained by the governing board of any school district must be maintained within the boundaries of the district (Sec. 37000). Section 37001, however, authorizes a school district to maintain alternate school facilities under specified circumstances. Section 37001 provides as follows:

"37001. Whenever the governing board of a school district is unable to maintain the school or schools in the district because of its inability to secure a teacher or teachers, or because of lack of facilities, the board may, with the approval of the county superintendent of schools having jurisdiction, maintain the school or schools of the district elsewhere than within the district or contract for the education of the pupils of such school or schools with the governing board of another district."

In addition, the provisions of Article 1 specify that the maintenance of a school by a school district outside the boundaries of the district or the making of a contract by a governing board for the education of its pupils in another district, as provided in Section 37001, shall be deemed for all purposes to be or have been the maintenance of a school within the boundaries of the district (Secs. 37005, 37006). Moreover, Section 37006 prescribes the manner in which the attendance of pupils under a contract executed under Section 37001 shall be reported and credited for purposes of computing attendance allowances.

We note, however, that there are no provisions of Article 1 which expressly require that a school district providing for the instruction of its pupils in district schools outside of the school district under Section 37001

* Hereafter referred to as Article 1. All section references are to the Education Code, unless otherwise indicated.

obtain the prior approval of the parents of pupils to be assigned to those schools. Similarly, there are no statutory provisions which require the approval of parents prior to the assignment of pupils to the schools of another school district.

Generally, judicial decisions analyzing the authority of school districts to assign pupils to particular schools have held that education, including the assignment of pupils to schools, is plainly a state function (San Francisco Unified Sch. Dist. v. Johnson, 3 Cal. 3d 937, 951), and that the education of the children of the state is an obligation which the state has assumed through the adoption of the state constitution (Piper v. Big Pine School Dist., 193 Cal. 664, 669). Accordingly, in order to carry out this responsibility, the state has created local school districts, whose governing boards function as agents of the state (Hall v. City of Taft, 47 Cal. 2d 177, 181), and has conferred upon these governing boards the general authority to initiate and carry on any program, activity, or to otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established (Sec. 35160), and the authority to prescribe rules for the government and discipline of schools under its jurisdiction (Sec. 35291).

We note that the only statutory provision which requires a school district governing board to secure parental consent in connection with pupil attendance at a particular school is found in Section 35350, which specifies that no governing board of a school district shall require any student or pupil to be transported for any reason without the written permission of the parent or guardian. However, this section has been interpreted to do no more than to prohibit school districts from compelling pupils, without parental consent, to use the means of transportation furnished by the district, but does not operate to prohibit a school district governing board from assigning pupils to a particular school without parental consent, even if the assignment would involve busing (see San Francisco Unified Sch. Dist. v. Johnson, supra, at p. 960). We think, therefore, that Section 35350 would have the effect of prohibiting a school district governing board which decides to provide for the transportation of pupils assigned to another district under Section 37001 from requiring that these pupils utilize the means of transportation provided by the district. However, we do not think that this section would be construed to prohibit the governing board under these circumstances from making pupil assignments without parental consent.

It is our opinion, therefore, that the governing board of a school district which determines that the district lacks adequate facilities for the education of its pupils, and which enters into a contract with another school district for the education of these pupils pursuant to the provisions of Section 37001 of the Education Code is not required to obtain the prior approval of the parents of pupils to be assigned to the schools of the other school district.

QUESTION NO. 2

You have asked whether the phrase "lack of facilities," as used in Section 37001, would be interpreted to encompass a determination by the governing board that the schools of the district are overcrowded.

OPINION NO. 2

The phrase "lack of facilities," as used in Section 37001, would be interpreted to encompass a determination by the governing board of a school district that the schools of the district are overcrowded.

ANALYSIS NO. 2

As previously discussed in Analysis No. 1, Section 37001 operates as an exception to the general statutory requirement that school districts maintain its regular day schools within the boundaries of the district, by authorizing the governing board of the district, with the approval of the local county superintendent of schools to maintain schools elsewhere than within the district or to contract for the education of its pupils with another school district whenever it determines that it is unable to maintain the school or schools of the district because of its inability to secure teachers, or because of a lack of facilities.

Although the phrase "lack of facilities," as used in Section 37001, is not expressly defined, and has not been the subject of judicial interpretation, we would conclude that the phrase would encompass a situation involving the overcrowding of a district's schools if the board has determined that it is otherwise unable to provide adequate school facilities and has secured the approval of the local county

superintendent of schools as required under Section 37001. In this regard, it is a fundamental rule of statutory construction that the intent of the Legislature should be ascertained so as to effectuate the purpose of the law (LaBorde v. McKesson & Robbins, Inc., 264 Cal. App. 2d 363, 370; Select Base Materials, Inc. v. Board of Equalization, 51 Cal. 2d 640, 645). In addition, it is established that in ascertaining the intention of the Legislature, statutes must be given a reasonable and commonsense construction in accordance with the apparent purpose and intention of the lawmakers--one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity (City of Costa Mesa v. McKenzie, 30 Cal. App. 3d 763, 770).

Applying these rules of statutory construction, and taking into consideration the broad powers conferred upon school district governing boards over the administration of the schools under their jurisdiction by the Education Code, we think that it was the intent of the Legislature, in enacting Section 37001, that school district governing boards would be authorized to maintain alternative school facilities whenever the governing board reasonably determined that the district is unable to provide adequate school facilities within the district. Thus, we think that the phrase "lack of facilities" would be interpreted to include situations involving the overcrowding of a school district's schools.

It is our opinion, therefore, that the phrase "lack of facilities," as used in Section 37001, would be interpreted to encompass a determination by the governing board of a school district that the schools of the district are overcrowded.

QUESTION NO. 3

You have asked whether the term "uninhabited territory," as used in Section 35700, may be defined by reference to the definitions of that term employed in Section 35038 or 56045 of the Government Code.

OPINION NO. 3

The term "uninhabited territory," as used in subdivision (b) of Section 35700, may not be defined by reference to the definitions of that term employed in Section 35038 or 56045 of the Government Code, but, rather, refers to territory which is, literally, uninhabited.

ANALYSIS NO. 3

Preliminarily, we note that the provisions of Chapter 4 (commencing with Section 35700) of Part 21 prescribe the statutory procedures for the reorganization of school districts. Under Section 35700, an action to reorganize one or more districts is initiated upon the filing of a petition to reorganize one or more districts which is signed in a designated manner. Section 35700 provides as follows:

"35700. An action to reorganize one or more districts is initiated upon the filing, with the county superintendent of schools, of a petition to reorganize one or more school districts signed by any of the following:

"(a) At least 25 percent of the registered voters residing in the territory proposed to be reorganized if such territory is inhabited. Where the petition is to reorganize territory in two or more school districts, the petition shall be signed by at least 25 percent of the registered voters in such territory in each such district.

"(b) The owner of the property, provided such territory is uninhabited and the owner thereof has filed a tentative subdivision map with the appropriate county or city agency.

"(c) A majority of the members of the governing boards of each of the districts which would be affected by the proposed reorganization." (Emphasis added.)

An analysis of the provisions of Section 35700 and a review of the other applicable provisions of the Education Code reveals, however, that the term "uninhabited territory," as used in Section 35700, is not expressly defined. Moreover, although this term is defined by Sections 35038 and 56045 of the Government Code as involving territory in which there are 12 or fewer registered voters, we conclude that these definitions may not be applied to Section 35700.

In this regard, we note that the provisions of Part 2 (commencing with Section 35000) of Division 2 of Title 4 of the Government Code establish the procedures which must be followed in the organization and reorganization of municipalities. Although the provisions of Section 35038 of that part provide a definition of "uninhabited territory" for purposes of that part, an analysis of these provisions reveals that they are inapplicable to school districts. Therefore, in the absence of a collateral reference to the definition of uninhabited territory, as used in Section 35038 of the Government Code, in Section 35700, we think that this definition may not be used to define uninhabited territory for purposes of Section 35700.

Similarly, a review of the provisions of Part 1 (commencing with Section 56000) of Division 1 of Title 6 of the Government Code which establish the procedures to be followed in the reorganization of specified districts, leads us to conclude that the definition of uninhabited territory provided by Section 56045 of that part is also inapplicable. We note that Section 56039 of the Government Code, which defines the term "district" for purposes of that part, expressly excludes school districts. Thus, absent an express reference to the definition of uninhabited territory found in Section 56045 of the Government Code, we think that the definition provided by Section 56045 of the Government Code may not be used to define that term as used in Section 35700.

Therefore, in order to ascertain the intent of the Legislature with regard to the definition of "uninhabited territory," as used in Section 35700, we think that it is necessary to apply the rule of statutory construction which specifies that a reviewing court will give effect to statutes according to the usual, ordinary import of the

language employed in framing them (see Moyer v. Workmen's Comp. Appeals Bd., 10 Cal. 3d 222, 230). Thus, we think the ordinary meaning of the term "uninhabited territory" would be indicated by the following accepted definition:

"Uninhabited ... [n]ot inhabited; unoccupied; not used as a regular dwelling place by human beings ..." (Webster's Third New International Dictionary (1971) at p. 2499).

Applying this rule of statutory construction, and taking into consideration the express provisions of Section 35700, we think that subdivisions (a) and (b) of Section 35700 prescribe alternative methods by which a petition to reorganize school districts may be submitted. Under this statutory scheme, in any territory in which there are registered voters, under subdivision (a), an action to reorganize districts may be initiated by submitting a petition signed by at least 25 percent of those present in that territory. In comparison, under subdivision (b), in any territory which is uninhabited, indicating territory in which there are no inhabitants, an action to reorganize districts may be initiated by the owner of the property affected who has met the minimum requirements for the filing of a tentative subdivision map.

It is our opinion, therefore, that the term "uninhabited territory," as used in subdivision (b) of Section 35700, may not be defined by reference to the definitions of that term employed in Sections 35038 or 56045 of the Government Code, but, rather, refers to territory which is, literally, uninhabited.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Henry J. Contreras
Deputy Legislative Counsel

HJC:jdg