



PUBLIC SECTOR

In denial

by Jonathan Holtzman

This month the California Legislature has devised a curiously effective way of addressing local fiscal emergencies — by trying to make it more difficult for local governments to recognize them. While that approach has a rich history at the state level, it doesn't work very well for local governments, which are obligated to have balanced budgets and provide most of the core services on which the public relies. Let's look at two cases on point.

First, in an absurdly misguided opinion, the Legislative Counsel Bureau has held that the emergency San Jose has yet to declare, and a ballot measure it has yet to adopt, wouldn't satisfy the requirements of a state law that isn't the basis of the potential emergency. The second is a bill that has now passed both chambers of the legislature and has been sent to the governor for his signature (or, hopefully, veto). The bill is intended to create a series of obstacles to declarations of fiscal emergency and bankruptcy — suggesting, in essence, that local agencies are better off cutting services than taking decisive measures to address their fiscal woes.

The opinion from the Legislative Counsel Bureau, which was requested by an assemblyman, purports to address the issue of whether “under the California Emergency Services Act, [the city of San Jose may] validly declare a local emergency based upon a chronic budget deficit caused by rising employee retirement costs, and use the emergency powers under the [A]ct to limit retirement benefits for current and future city employees and retirees.” When the question is framed that way, the opinion predictably says “no.”

There are a few problems, however. First, the opinion concedes that the Legislative Counsel has never reviewed the actual text of the proposed ballot measure, which, in any event, was a draft. Second, the opinion concedes that the Legislative Counsel knows nothing about the city's finances other than what it gleaned from a brief memo that doesn't purport to describe the factual basis of the emergency.

Third, the Legislative Counsel made no attempt to contact anyone in San Jose to find out what the city council actually intends to do or the factual basis of actions it has yet to take. And finally, the opinion is based on the erroneous assumption that if San Jose was to declare an emergency, it would do so under an obscure state law addressing physical disasters

rather than under the city's constitutional police powers. Had the Legislative Counsel inquired, it would have discovered that San Jose is facing eye-popping increases in its pension rates that, if not addressed, will decimate libraries, community services, and public safety departments.

The bill addressing fiscal emergencies and bankruptcies, **Assembly Bill 506**, is a wolf in sheep's clothing. The wool, provided in the *Legislative Counsel's Digest*, is that the bill would require that before a public agency could declare bankruptcy, it must participate in a “specified neutral evaluation process with interested parties” or declare a fiscal emergency upon a finding that “the financial state of the local public entity jeopardizes the health, safety, or well-being of residents . . . absent bankruptcy protections.”

On its face, that fluffy explanation sounds expensive and time-consuming but gives no real hint of the true hurdles to both bankruptcy and declarations of fiscal emergencies. Reading the fine print, the process described is, in essence, a state bankruptcy process to be completed before filing for federal bankruptcy protection, except that the public agency must pay not only for its bankruptcy lawyers but also 50 percent of the cost of the neutral evaluation. Under the bill, this process can be avoided if the public agency declares a fiscal emergency, but such an emergency can be declared only upon a finding that the public agency “is or will be unable to pay its obligations within the next 60 days.” In short, an emergency may be declared only if bankruptcy is imminent.

Aside from the circularity, the problem here is two-fold. First, the purpose of declaring an emergency ideally is to avoid bankruptcy. AB 506 reduces the declaration to a public notice that bankruptcy is imminent. Second, the test for a fiscal emergency should be whether critical public services are threatened, not whether bankruptcy is imminent.

Many public agencies can avoid bankruptcy by ceasing to provide critical services, but when a local government can no longer hire employees to protect the basic safety of its residents, that's an emergency in my book.



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