

**City of Santa Cruz v. Superior Court, 40 Cal.App.4th 1146**

**[No. H014128. Sixth Dist. Dec 6, 1995.]**

**CITY OF SANTA CRUZ et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CRUZ COUNTY, Respondent; BOMBAY CORPORATION, Real Party in Interest.**

**OPINION**

**COTTLE, P. J.**

**In this action challenging the City of Santa Cruz's )City's( adoption of a general plan, the trial court ordered City's planning director and commissioners to reveal in depositions "whether there was an agreement among the council and commission members to refuse to consider any zoning for the greenbelt properties other than agricultural, regardless of the facts or evidence presented."**

**We stayed the depositions on City's application for a writ of mandate/prohibition, to permit further consideration of the issues raised in the petition. As will appear, we agree with City that discovery into the subjective motives or mental processes of legislators is forbidden, and that this proscription may not be circumvented by deposing others about the factors that may have led to the legislators' votes. Accordingly, we have determined that the writ of prohibition should issue to prohibit the depositions of Celia Scott, Jeff Ringold, and Peter Katzlberger. [40 Cal.App.4th 1149]**

## Facts

Real party in interest, the Bombay Corporation )Bombay(, filed a petition for writ of mandate in the superior court, challenging City's approval of a general plan and the environmental impact report )EIR( prepared in support of it. In the petition, Bombay alleged that "City made an early decision as to the fundamental premise or approach for the General Plan, and screened out possible alternatives to that premise, without any disclosure in the EIR."

In order to obtain evidence that "City made an early decision" and "screened out possible alternatives," Bombay noticed the depositions of four individuals who were involved in the planning process. City objected to the taking of three of these depositions-those of former planning commissioners Celia Scott and Jeff Ringold and of former planning director Peter Katzlberger fn. 1 -and it filed a motion for a protective order in the superior court.

In support of its motion, City argued that "the burden, expense and intrusiveness of the depositions clearly outweighs [sic] the likelihood that they will lead to the discovery of admissible evidence, because: )1( judicial review is limited in this action to an examination of the record before the City Council at the time it made its decision certifying the EIR and adopting [40 Cal.App.4th 1150] the General Plan; and )2( to the extent that [Bombay] seeks, by noticing the aforementioned decisions, to inquire into the mental processes underlying those decisions, a long line of cases has held such an inquiry impermissible."

In opposition, Bombay argued that the administrative record did not reflect the actual basis for the general plan approval, that evidence

outside the record could be admitted if offered to show that City failed to consider "all relevant factors" in reaching its decision, and that the depositions did not seek to invade the thought processes or subjective decisionmaking of City officials.

Former City council member Louis Rittenhouse filed a declaration in support of Bombay's opposition to City's motion for a protective order. In the declaration, Rittenhouse states "that in considering the E.I.R. in the General Plan, members of the City Council and the Planning Commission made an early, non-public decision as to the fundamental premise or approach for the General Plan, eliminating from public review and consideration environmental consequences of a range of general plan alternatives with different fundamental approaches to long range planning for the City. The result of that decision was to concentrate development in the central City area and to permanently keep select land from the perimeter of the City )commonly referred to as the 'Greenbelt Properties'( as open space buffer by precluding or severely limiting their development."

At the hearing on the protective order, the court allowed extensive arguments by both sides. Following argument, the court announced its ruling, as follows: "All right. So I'm balancing everybody here. Here's what I'm going to do: I'm going to issue a protective order which allows the depositions to go forward, but prohibit inquiry into the subjective mental processes of the individuals deposed. Thus these depositions are allowed for the purpose of determining whether there was an agreement among the council and commission members to refuse to consider any zoning for the greenbelt properties other than agricultural, regardless of the facts or evidence presented. [Bombay] may inquire into any

communications or agreements between or among the council or commission members relating to that."

City then filed a writ petition in this court and a request for an immediate stay.

### Discussion

[1] It is fundamental that )1( the power to make laws is vested in the legislative department )Schaezlein v. Cabaniss )1902( 135 Cal. 466 [67 P. 40 Cal.App.4th 1151] 755)( and )2( the courts cannot interfere with the legislative process )O'Donoghue v. United States )1933( 289 U.S. 516, 530 [77 L.Ed. 1356, 1360, 53 S.Ct. 740] ["If it be important thus to separate the several departments of government and restrict them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the others-independent ... in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments."]; see also Santa Clara County v. Superior Court )1949( 33 Cal.2d 552, 559 [203 P.2d 1]; Johnston v. Board of Supervisors )1947( 31 Cal.2d 66, 70 [187 P.2d 686](. Ancillary to this separation of powers deference is the proposition that a court may not inquire into the motives of the Legislature in making its laws.

Hence, in *Soon Hing v. Crowley* )1885( 113 U.S. 703 [28 L.Ed. 1145, 5 S.Ct. 730], the United States Supreme Court stated the rule "with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may

be disclosed on the face of the acts, or [inferable] from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile." )Id. at pp. 710-711 [28 L.Ed. at p. 1147].(

The California Supreme Court expounded on the doctrine in *County of Los Angeles v. Superior Court* )1975( 13 Cal.3d 721 [119 Cal.Rptr. 631, 532 P.2d 495]. In that action, a taxpayer challenged the validity of a county ordinance establishing salaries and wages for the majority of county employees, alleging that the board of supervisors enacted the ordinance under the duress and coercion of a threatened illegal strike. While the hearing on the preliminary injunction was pending, the taxpayer deposed various board members, the director and deputy director of the personnel department, and the board's executive officer. She questioned them about discussions that took place during the executive sessions preceding negotiations with the employees' representatives. When the deponents refused to answer, the taxpayer moved for an order compelling them to answer. The trial judge granted the motion in part, ordering the deponents to reveal the contents of such discussions insofar as they involved strikes or threats of strikes. [40 Cal.App.4th 1152]

In reversing the trial court's discovery order ... [t]he court observed...that..."a more fundamental, historically enshrined legal

principle" applied which prohibited judicial inquiry into the subjective motives or mental processes of legislators. )13 Cal.3d at p. 725.( This fundamental principle was first discussed in a California opinion in 1855, just years after California achieved statehood, and it "has been reiterated in literally scores of California decisions." )Id. at p. 726.( The principle applies to local legislators as well as to members of state legislatures or Congress. )Ibid.( And it is, on one level, a corollary of the related principle that the validity of a legislative act does not depend on the subjective motivation of its drafters but on the objective effect of the legislative terms. )Id. at p. 727.(

Even where an ulterior purpose is relevant to the validity of the ordinance, the taxpayer must establish it by objective proof, the court stated, not by inquiry into motivation. )County of Los Angeles v. Superior Court, supra, 13 Cal.3d at p. 729, discussing *Stahm v. Klein* )1960( 179 Cal.App.2d 512 [4 Cal.Rptr. 137].(

The court concluded with the following quotation from Professor Bickel: " 'It is simply unthinkable ... that members of legislative majorities should from time to time be subject to cross-examination in various courts over the country regarding their state of mind when they voted. That is no more representative government than it would be judicial process for judges to be subject to cross-examination by legislative committees about their state of mind in deciding cases. It seems almost anticlimactic to add that legislatures whose members were subject to call for testimony in this fashion would be hard put to find the time to legislate.' " )County of Los Angeles v. Superior Court, supra, 13 Cal.3d at pp. 731-732, quoting Bickel, *The Least Dangerous Branch* )1962( p. 215.(

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As the court [in *County of Los Angeles v. Superior Court*] stated, "[E]ven assuming that the ulterior purpose behind the enactment is relevant to the ordinance's validity, the taxpayer still may not prove such ulterior purpose by requiring legislators to testify about their reasoning process or by questioning others about the factors which may have led to the legislators' votes."

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... questions seeking to learn whether Board members had arrived at their positions before the hearing are barred because they are irrelevant; such positions would not disqualify the supervisors from voting or invalidate their decision. Neither would the acquisition of information outside the hearing room concerning the proposed consolidation. [Citation.] *Board of Supervisors v. Superior Court*, supra, 32 Cal.App.4th at pp. 1626-1627. ([40 Cal.App.4th 1155])

Based on *County of Los Angeles v. Superior Court*, supra, and *Board of Supervisors v. Superior Court*, supra, we believe there is no question that the legislative privilege can and does apply to nonlegislators so long as the questioning goes to legislators' thought processes.