

THE VOID CONTRACT RULE AND THE CALIFORNIA EDUCATION CODE

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When a school district contract is modified by its superintendent without any evidence of approval by a duly passed motion of the board, that contract modification is void and unenforceable against the district. The Education Code prescribes the only mode by which the power to contract can be exercised. That mode is the measure of the power. A contract and/or contract modification made otherwise than as so prescribed is not binding or obligatory upon the school district. Statutes and court decisions that support this opinion are reviewed below.

RELEVANT PROVISIONS OF EDUCATION CODE

35035. Additional powers and duties of superintendent

The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him or her:

(a) Be the chief executive officer of the governing board of the district.

(b) Except in a district where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at the time it may direct, the budget of the district for the next ensuing school year, and revise and take other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. This power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that the transfer is in the best interest of the district.

(d) Upon adoption, by the district board, of a district policy concerning transfers of teachers from one school to another school within the district, have authority to transfer teachers consistent with that policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him or her to serve in the position to which he or she is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 39656.

(g) Submit financial and budgetary reports to the governing board as required by Section 42130.

35161. Powers and Duties Generally

The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and may delegate to an officer or employee of the district any of those powers or duties. The governing board, however, retains ultimate responsibility over the performance of those powers or duties so delegated.

35163. Official actions, minutes and journal

Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board, and the governing board of every school district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken.

35164. Vote requirements

The governing board shall act by majority vote of all of the membership constituting the governing board.

35200. Liability for debts and contracts

The governing board of any school district is liable as such in the name of the district for all debts and contracts, including the salary due any teacher, not made in excess of the school moneys accruing to the district and usable for the purposes of the debts and contracts during the school year for which the debts and contracts are made. The district shall not be liable for debts and contracts made in violation of this section.

For the purposes of this section, moneys transferred to the funds of a newly organized school district pursuant to Section 42623 are deemed school moneys accruing to the district and usable for the purposes of contracts made for the school year preceding the date the district became effective for all purposes.

39655. Payment of construction contracts

The governing board of any school district shall determine the method of payment for construction contracts, including progress payments for completed portions of the work or for materials delivered on the ground or stored subject to the control of the board and unused.

39656. Delegation of powers to agents; liability of agents

Wherever in this code the power to contract is invested in the governing board of the school district or any member thereof, such power may by a majority vote of the board be delegated to its district superintendent, or to such persons as he may designate, or if there be no district superintendent then to such other officer or employee of the district as the board may designate. Such delegation of power may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct; provided, however, that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, said approval or ratification to be evidenced by a motion of said board duly passed and adopted. In the event of malfeasance in office the school district official invested by the governing board with such power of contract shall be personally liable to the school district employing him for any and all moneys of the district paid out as a result of such malfeasance.

JUDICIAL DECISIONS

Section 39656 is a verbatim re-enactment of Section 15961, which was enforced in *Santa Monica Unified School District v. Persh*, 5 CA.3rd 945, 85 Cal. Rptr. 463 (1970). In that case, the trial court held a contract to buy real property could not be enforced in the absence of its ratification or approval by the district's board, as required by Ed. Code, sections 1002.5 and 15961. The court pointed out that persons dealing with a school district are chargeable with notice of the limitations on its power to contract, and though the property owner undeniably suffered hardship, the doctrine of estoppel was not available to him, since the principle does not apply to a municipal agency failing to comply with a statute measuring its power. The court stated at pages 952-953:

A school district acts through a board with powers limited both in scope and by the method of their exercise, and is bound by the action of its board only when the latter acts with respect to a matter within a power conferred and in conformance with required formalities. (*Osborne v. Huntington Beach Union High School Dist.*, 2 Cal.App.3d 16, 22 [82 Cal. Rptr. 256]; see also *Reams v. Cooley*, 171 Cal. 150, 153 [152 P. 293]; *Lipman v. Brisbane Elementary School Dist.*, 55 Cal.2d 224, 231 [11 Cal. Rptr. 97, 359 P.2d 465].) A contract which has not been approved or ratified pursuant to Education Code section 15961 does not comply with the required formalities, and is unenforceable against the District. (*Osborne v. Huntington Beach Union High School Dist.*, supra.) (5) Persons dealing with a school district are chargeable with notice of limitations on its power to contract. (*Miller v. McKinnon*, 20 Cal.2d 83, 89 [124 P.2d 34, 140 A.L.R. 570]; 47 Am.Jur., Schools, ' 48.)

Defendants contend that no statute sets forth a particular form or time sequence whereby a board of education must pass the motions which are required to approve or ratify a contract to purchase real estate. However, Education Code section 1596] clearly provides that approval of all contracts must be evidenced by a duly passed motion of the Board.

Although defendant Persh has undeniably suffered hardship, the doctrine of estoppel is not available to him. He actually obligated himself on the three promissory notes involved in the purchase of the Oklahoma property prior to this acceptance of any contract to purchase the

Malibu property. Moreover, the principle of estoppel is not applicable to a municipal agency which has not acted in compliance with a statute which is the measure of its power. (*Miller v. McKinnon*, 20 Cal. 2d 83, 90 [124 P.2d 34, 140 A.L.R. 570].) In *Reams v. Cooley*, supra, 171 Cal. 150, a case where a contractor sought to recover in quantum meruit for labor and materials furnished to a school district on a contract let in violation of a statute requiring competitive bids, the court said (at pp. 153-154): ". . . But while the doctrine of implied liability applies where general power to contract on a subject exists and the form or manner of doing so is not expressly provided by charter or statute, the decided weight of authority is to the effect that when by statute the power of the board or municipality to make a contract is limited to a certain prescribed method of doing so and any other method of doing it is expressly or impliedly prohibited, no implied liability can arise for benefits received under a contract made in violation of the particular prescribed statutory mode. Under such circumstances the express contract attempted to be made is not invalid merely by reason of some irregularity or some invalidity in the exercise of a general power to contract, but the contract is void because the statute prescribes the only method in which a valid contract can be made, and the adoption of the prescribed mode is a jurisdictional prerequisite to the exercise of the power to contract at all and can be exercised in no other manner so as to incur any liability on the part of the municipality. Where the statute prescribes the only mode by which the power to contract shall be exercised the mode is the measure of the power. A contract made otherwise than as so prescribed is not binding or obligatory as a contract and the doctrine of implied liability has no application in such cases." See also, *Merco Constr. Engineers, Inc. v. Los Angeles Unified School Dist.*, 274 Cal.App.2d 154, 160 [72 Cal.Rptr. 23].

See also the earlier decision of *Uhlman v. Alhambra City High School Dist. of Los Angeles County*, 221 Cal.App. 2d 228; 34 Cal. Rptr. 341 (1963). This decision affirms a lower court's judgment for defendant school district which denied the claim of a real estate broker for a commission for services rendered to a school board concerning the sale of real property owned by the district. The court held that section 16062 of the Education Code did not provide for apportionment of the commission. In issue, the court reviewed the powers of a public school district on p. 234 as follows:

A public school district is a public entity with limited powers. "a board of school trustees is an administrative agency created by statute and invested only with the powers expressly conferred by the Legislature [citation] and cannot exceed the powers granted to them." (*Paterson v. Board of Trustees*, 157 Cal.App.2d 811, 818 [321 P.2d 825].) "where the statute prescribes the only mode by which the power to contract shall be exercised the mode is the measure of the power." (*Reams v. Cooley*, 171 Cal. 150, 154 [152 P. 293, Ann. Cas. 1917A 1260].) Section 16051 of the Education Code provides: "the governing board of any school district may sell . . . any real property belonging to the school district which is not . . . needed by the district . . . *The sale . . . shall be made in the manner provided by this article . . .*" (Italics added.) The mode or method to be followed in selling the property was specified by statute.

Additional judicial authority is found in the following cases:

Miller v. McKinnon (1942) 20 Cal.2d 83 [124 P.2d 34, 140 A.L.R. 570]; *Reams v. Cooley*, (1915) 171 Cal. 150 [152 P.293]; *Zottman v. San Francisco* (1862) 20 Cal. 96; *Greer v. Hitchcock* (1969) 271 Cal.App. 2d 334 [76 Cal. Rptr. 376]; *Gamewell F.A.T. Co. v. Los Angeles* (1919) 45

Cal.App. 149 [187 P. 163]); *Valley Crest Landscape, Inc. v. City Council*, 41 Cal. App. 4th 1432, 1443 (1996); and *South Bay Senior Housing Corporation v. City of Hawthorne*, 56 Cal.App. 4th 1231, 66 Cal. Rptr. 2d 99 (1997).

In the event it should be claimed that members of a school district Board of Trustees, during casual or informal conversations, informally approved contract modifications, the California Supreme Court decision in *Lipman v. Brisbane Elementary School District*, 55 Cal.2d 224; 11 Cal. Rptr. 97 (1961) rejects any such claim. The Lipman case concerned an action by a school district superintendent against the school district, its trustees and others. The court affirmed the trial court's judgment for defendant school district and stated on pages 230-231 as follows:

A school district, however, may be liable for breach of contract where its governing body, acting as such and complying with required formalities, either expressly repudiates a contract or does some act which under generally accepted principles of law prevents the performance of the other contracting party. [citations omitted]

Where, as here, the alleged repudiation or prevention of performance arises out of asserted affirmative action of trustees, the district is not liable unless it appears that they have acted as a board and have complied with all the formalities required by law. Section 2204 of the Education Code provides, "The governing board of any school district shall: . . . (b) Transact its business at regular or special meetings called for the purpose . . . ," and section 2204.2 provides, "Not action authorized or required by law shall be taken by the governing board of a school district except in a meeting open to the public." In the analogous case of *Barnhardt v. Gray*, 15 Cal.App.2d 307, 309 et seq. [59 P.2d 454], decided before the adoption of section 2204.2, it was held that in order to employ a teacher there must be a regular or special meeting of the board of trustees, that "the board must act as a board and not as individual members," and that two members of a board consisting of three members had no power, when meeting casually on the street or elsewhere, to employ a teacher. Plaintiff concedes that none of the alleged improper conduct consisted of or resulted from formal action of the board as such, and it is apparent that the complaint cannot be amended to cure the defect. (Cf. *Lemoge Electric v. County of San Mateo*, 46 Cal.2d 659, 662, 664 [297 P.2d 638].)

In the absence of compliance with the statutory requirements there was no authority for the acts complained of by plaintiff insofar as concerns the alleged breach of contract, and it is obvious that the district cannot properly be held liable for acts which have not been duly authorized.

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