

The background of the slide is a warm, golden-yellow image. It features a rolled-up document, possibly a contract or legal agreement, with a signature in blue ink visible on the surface. A pencil is also present, with its tip pointing towards the bottom right. The overall aesthetic is professional and legal.

**Summary of Legal Challenge to
Sweetwater Union High School District
Award of \$17.4 Million Lease-Leaseback
School Construction Contracts**

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Status of Lease Leaseback School Contracting

- As a result of their financial, marketing and political efforts, a small group of consultants and general contractors are profiting tremendously from the lack of full and fair competition associated with lease-leaseback contracting by California school districts.
- Lease-leaseback is overtaking traditional competitive bidding as the primary contracting method for public school construction in California.
- This is effectively shutting out the vast majority of general contractors and subcontractors that would ordinarily bid on school work in the open market and driving up construction costs for school districts due to reduced competition.
- More than 30 of the 42 school districts in San Diego County are reported to be using lease-leaseback.
- Statewide the proportion appears to be similar as more and more school district governing boards and administrations abdicate their fiduciary obligation to fairly, wisely and prudently spend their taxpayers' dollars.

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Summary of Sweetwater Validation Pleadings

- On May 30, 2012 Sweetwater Union High School District filed a validation lawsuit seeking Court approval of the District's April 16, 2012 no-bid award of a \$17.4 million lease-leaseback construction contract relative to Montgomery Middle School.
- The Carlin Law Group, APC filed Answers on behalf of a school building general contractor and a taxpayer in response to Sweetwater's validation lawsuit.
- Our clients contend the proposed Sweetwater lease-leaseback contracts are illegal because they do not comply with multiple legal requirements. Their Answers assert the following affirmative defenses:
 - Failure to Competitively Bid Leaseback Contract
 - Failure to Have DSA Approved Plans & Specs Prior to Contract Award**
 - Failure to Require Listing of Subcontractors in Proposals
 - Lease Obligation Exceeds Debt Limits of Education §17423
 - Failure to Comply with Competitive Bidding Obligations of Bonds
 - Breach of Fiduciary Obligation
 - Conflict of Interest Laws Preclude Sweetwater From Entering Into These Contracts

** On 8/16/12 Attorneys for the Contractor produced documents showing DSA approval was issued in June 2011. This fact begs the question why Sweetwater did not solicit competitive bids to establish a means of evaluating the proposed cost of the Contractor's leaseback proposal.

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The Law & Public Policy

Support Our Clients' Challenge

- The legal, moral and public policy correctness of our clients' position is consistent with more than 100 years of legal precedent in California.
- As stated by the California Court of Appeal in Ghilotti Construction Co. v. City of Richmond, (1996) 45 Cal. App.4th 897, 907-908, the purpose and public benefit of requiring governmental entities to use competitive bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition.
- According to the California Courts the importance of maintaining integrity in government contracting and the ease with which the above referenced public policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with all legal requirements applicable to public contract bidding.
- According to the Courts, this preventative approach is applied even where it is certain there was in fact no corruption or adverse effect on the bidding process and/or deviations would save a government entity time or money.

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California Courts Invalidate Public Contracts Awarded Without Strict Compliance With Bidding Requirements

- Under long standing California law, public works contracts awarded without strict compliance with all legal requirements will be set aside as illegal, void and unenforceable even if they are alleged to be faster, cheaper and/or better for the public owner.
- California Courts say this protective approach is necessary because of the potential for abuse arising from deviations from strict adherence to standards which promote the public benefits articulated in Ghilotti above.
- One need look no further than the recent past of the Sweetwater Union High School District (as detailed in numerous news articles, Court filings, and the contemporaneous documents and emails that are the basis of the current criminal indictments of two of the sitting Governing Board Members who voted for the no bid lease-leaseback contracts being challenged) to know the \$17.4 million dollar contract for Montgomery Middle School should not have been awarded without full and fair competitive bidding open to all interested bidders.

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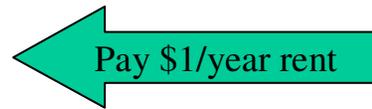
Summary of the Lease-Lease Back Contracting Process

- The lease-leaseback method of contracting requires two contracts between a school district and a contractor.
- The first contract is a site lease agreement whereby the district leases to the contractor a site owned by the district to give the contractor the legal right to occupy and perform construction work on the district's property.
- Under the site lease agreement the contractor pays a nominal fee to the district, usually a dollar a year, to gain title and access to the property upon which the project will be constructed.
- The second contract is a sublease agreement whereby the school district leases back from the contractor the project site by making periodic payments up to the agreed upon cost of construction.
- It is through the sublease agreement that the school district pays the contractor the cost of construction.

SCHOOL DISTRICT LEASE-LEASEBACK CONTRACTING

1. Site Lease

District
(Landlord)



Education Code 17406



Contractor
(Tenant)

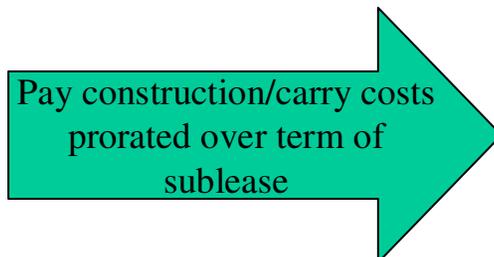
- No competitive bidding required because Contractor pays District

2. Sublease

District
(Tenant)



Education Code 17417



Contractor
(Landlord)



- Competitive bidding required because District pays Contractor.

- Competitive bidding ensures District gets best deal and pays least amount.

Summary of Legal Dispute

- Sweetwater asserts Education Code § 17406 exempts it from competitively bidding the sublease construction agreement for Montgomery Middle School.
- Sweetwater's assertion is legally incorrect because Education Code § 17406 only applies to the lease of the site from the district to the contractor (competitive bidding not required because contractor pays district).
- Education Code § 17417 applies to the sublease of the site from the contractor back to the district (competitive bidding required because district pays contractor).
- Sweetwater did not solicit proper competitive bids on its sublease agreement from all interested contractors and award the contract, if at all, only to the lowest responsive and responsible bidder as required by Education Code § 17417.
- For this reason Sweetwater's award of the sublease agreement is illegal.

Education Code § 17406

- (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.
- (b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

Education Code § 17417

- After the governing board of a school district has complied with Section 17402, it shall, in a regular open meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article. The resolution shall describe, in any manner to identify it, the available site upon which the building to be used by the district shall be constructed, shall generally describe the building to be constructed and state that the building shall be constructed pursuant to the plans and specifications adopted by the governing board therefore, shall, if that is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed, and shall state the maximum number of years for which the school district will lease the building or site and building, as the case may be, and shall state that the proposals submitted therefore shall designate the amount of rental, which shall be annual, semiannual, or monthly, to be paid by the school district for the use of the building, or building and site, as the case may be. The resolution shall fix a time, not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to enter a lease or agreement with the school district will be received from any person, firm, or corporation, and considered by the governing board. Notice thereof shall be given in the manner provided in Section 17469.
- At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to enter a lease or agreement and which are made by responsible bidders, the proposal which calls for the lowest rental shall be finally accepted, or the board shall reject all bids. The board is not required to accept a proposal, or else reject all bids, on the same day as that in which the proposals are opened.