

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF JANUARY 27, 2021

REGULAR MEETING

TO: Tim Palmer, Vice-Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

AGENDA ITEM #11: DISCUSSION ON SUPPORTING SAN DIEGO LAFCO'S
INITIATIVE TO SPONSOR LEGISLATION ON GOVERNMENT
CODE 56133(e)

RECOMMENDATION

Staff recommends that the Commission

1. Give preliminary support to San Diego LAFCO on its initiative to sponsor legislation on Government Code 56133(e) that gives LAFCOs authority to determine whether a service extension is exempt under Government Code Section 56133(e); and
2. Give the Executive Officer permission to relay such support; and
3. Retain full support pending a review of the final bill language.

REASON FOR RECOMMENDED ACTION

While out of agency service agreements are rare in this county, and determinations of exemption under 56133(e) are even rarer, there is increasing "chatter" within the LAFCO community that LAFCOs should exert the exclusive authority to "make the call" on whether a service extension is exempt. It is more logical to have one impartial entity making such a determination than 50+ agencies doing the same. Last year your Commission adopted a local policy clarifying this issue for El Dorado County until State Law settles the issue. San Diego LAFCO has decided to take the lead on proposed legislation and is asking for support from its sibling agencies.

BACKGROUND

Among other things, Government Code 56133 states that local agencies may extend services outside their boundaries only under a contract that has been approved by LAFCO. The Commission may approve these “out of agency service agreements” under the following two scenarios:

- To territories within the agency’s sphere of influence in anticipation of a later change of organization; or
- To territories outside of the agency’s sphere of influence in order to respond to an impending threat to health or public safety.

Subsection (e) identifies several types of contracts or services that are exempt from these provisions. This means that in certain circumstances agencies may provide services via contract outside of its service area without LAFCO approval. Examples include contracts between two or more agencies providing similar services (with the exception of fire service contracts, those are subject to Government Code 56134) or the transfer of non-potable or non-treated water. Attachment A contains Government Code 56133 and it is included here for the Commission’s review.

The question of who gets to decide whether a contract is truly exempt under subsection (e) – whether an agency or agencies can decide for themselves or whether there should be some determination from LAFCO or its staff – is left unresolved in the Government Code. Over the years there has been chatter in LAFCO circles that the law should be clearer: LAFCO should be the arbiter. From a public policy standpoint, it would be better for each county to have a single, neutral body adjudicating the matter consistent with State Law and local policies rather than thousands of agencies making this decision on their own. For that reason alone, this Commission adopted a local policy settling the matter.

CALAFCO’s Legislative Committee has debated whether the statewide organization should sponsor legislation to resolve this matter statewide, but has deferred because of other priorities and lack of resources. The open secret is that tinkering with 56133 is politically sensitive in the Legislature and many stakeholders would balk at amending 56133, including other LAFCOs.

San Diego LAFCO has decided to take the lead and will sponsor such legislation. It is asking sibling LAFCOs to support them. The underlying policy goal has merit and staff recommends that the Commission give its preliminary support, pending a review of the final bill language. The safe assumption is that the language would closely mirror that of your Commission’ policy. At the very minimum the language would not be contrary to your policy, so there is little to lose. In addition, even if the bill language is contrary to your policy priorities, you can choose not to support the bill. But preliminarily backing the effort has its advantages. It would ensure that it can move forward, as it would signal to potential authors that there will be widespread support later as the bill advances through the legislative process.

If you support this effort, staff would pass along your preliminary support to San Diego LAFCO staff. It is not anticipated that there would be a significant time commitment on this LAFCO’s staff beyond writing the typical support letters and placing a few phone calls. San Diego LAFCO would spearhead the initiative.

Once the final bill language is received and analyzed by staff, it will return at a later date for this Commission to consider its potential support of the legislation. Should support letters be necessary, they can be written and dispatched quickly with your position known to staff.

Attachments

Attachment A: Government Code 56133

Attachment B: El Dorado LAFCO's Policies & Guidelines Section 6.8