

CLIENT NEWS BRIEF

Appellate Court Orders Publication of Decision on Lease-Leaseback, Making it Binding Precedent

On May 4, the Second District Court of Appeal in *McGee v. Balfour Beatty Construction, LLC, et al. (McGee)* ordered publication of its decision upholding the validity of a lease-leaseback arrangement. Publication of the decision means that it now serves as precedent on which school districts and others may rely.

In *McGee*, the court reviewed the validity of a lease-leaseback arrangement that was challenged on the grounds that the arrangement did not comply with Education Code § 17406. The party challenging the lease-leaseback arrangement relied heavily on the Fifth District's decision in *Davis v. Fresno Unified School Dist.* (2015) 237 Cal.App.4th 261 (*Davis*), which held that a valid lease-leaseback arrangement under Section 17406 must include a "financing component" and a "genuine lease." (For a further discussion of the *Davis* decision, see [Client News Brief No. 30, June 2015](#).)

On April 12, the *McGee* court issued its decision to uphold the validity of the lease-leaseback arrangement. *McGee* also rejected *Davis'* interpretation of Section 17406 and *Davis'* attempt to improperly add requirements into the statute. Specifically, *McGee* disagreed with *Davis'* conclusion that a valid lease-leaseback arrangement must contain elements of a "genuine lease," which *Davis* understood to include occupancy of the premises during the lease term and a financing component. (For a further discussion of the *McGee* decision, see [Client News Brief No. 25, April 2016](#).)

On behalf of the California Association of School Business Officials (CASBO), Lozano Smith filed a request for partial publication, and sought to have the court publish the portion of the decision specific to Education Code § 17406 and the lease-leaseback construction delivery method. CASBO also requested that the court refrain from publishing a portion of the decision concurring with *Davis* that a third-party taxpayer may have standing to allege a conflict of interest under Government Code § 1090 when applied to the conduct of independent contractors. Although CASBO sought only partial publication, the *McGee* court granted publication of the entire decision, including the portion relating to a conflict of interest under Section 1090 (the court, however, has at least made it clear that application of Government Code § 1090 to independent contractors is very dependent on the specific facts). As a result of the publication order, the entire *McGee* decision is now precedent and can be relied on outside the Fifth District Court of Appeal, where *Davis* still controls. Legislation has recently been proposed which could again address lease-leaseback issues. We will be tracking all such legislation.

If you have any questions about this decision or the lease-leaseback construction delivery method, or about other project delivery methods, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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Harold M. Freiman
Partner
Walnut Creek Office
hfreiman@lozanosmith.com



Travis E. Cochran
Associate
Monterey Office
tcochran@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.