

**Superior Court of California  
County of Sacramento**

Date & Time: 11/30/2006  
Judge: LOREN E. MCMASTER  
Reporter: None

Dept. No.: 53  
Clerk: T. West  
Bailiff: V. Carroll

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Case No. 06AS00775  
THE ZUMBRUN LAW FIRM  
VS.  
CA LEGISLATURE ET AL

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Present:

Nature of Proceedings: Motion Pursuant to Order to Show Cause  
Court's Ruling on Matter Taken Under Submission on 11/16/2006.

**TENTATIVE RULING:**

Plaintiff The Zumbrun Law Firm's Motion Pursuant to May 4, 2006 Order to Show Cause is denied.

Plaintiff seeks a preliminary injunction against the Legislature against continued unlawfulness and waste. Specifically, plaintiff challenges the Legislature's right to enter into contracts for the retrofitting of the State Capitol for security purposes, specifically the requirement that the contractors must be union members.

In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance of the injunction. The greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. *Butt v. State of California* (1992) 4 Cal.4<sup>th</sup> 668, 677-678.

Plaintiff contends that Article I, section 3(b) of the California Constitution renders the the Legislative Open Records Act ("LORA") unconstitutional.

Article I, section 3, subsection (b)(1) provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

However, subsection (b)(6) also provides that nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature. Article IV, section 7 provides that each house and the committees of the Legislature may have closed sessions "to consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature."

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Here, the Legislature entered into contracts to construct, maintain and improve the safety of the Capitol building in which it assembles. The Legislature reacted to the big rig truck driver who crashed his vehicle into the building in January 2001, and further to the attacks of Sept. 11, 2001, and made the determination to increase the safety of the Capitol building and the members of the Legislature.

There has been no violation of the Separation of Powers clause of the Constitution. The letting of contracts for building or repair work is not exclusively an executive function. Each branch of government is empowered to take appropriate measure to ensure its safety. Plaintiff's contention that in order to avoid a separation of powers problem, the executive branch must be given exclusive power to let contracts for repair or safety enhancing work is rejected. To order as plaintiff suggests would give the executive branch undue power over the judicial and legislative branches, and would itself result in a situation that may violate the separation of powers clause.

It must be borne in mind that under California's constitutional system, the Legislature has inherent power to act unless restricted from doing so by a provision of the California Constitution. *Ex parte McCarthy* (1866) 29 Cal. 395, 403. Further, the Legislature was given the responsibility for the State Capitol (Govt. Code sections 9108, 9149.7). The Joint Committee on Rules acted to protect the building, entering into an inter-agency agreement with the Dept. of General Services ("DGS"), as had been previously done for work on the Capitol. (Schmidt Dec., Exh. B.)

The Legislature is not subject to the State Contract Act, which applies to the *executive* branch of state government. Public Contract Code § 10295(c)(5); *Department of General Services v. Superior Court* (1978) 85 Cal. App. 3d 273, 280.

Since the Legislature is not required to follow the State Contract Act, it is not required to follow the competitive bidding procedures set forth in that code. Therefore, no California law precludes the Legislature from requiring an all-union work force on the Capitol project. Similarly, no federal law precludes such. 29 U.S.C. section 151, et seq.,

The Court therefore finds that the Legislature's requirement of an all union workforce is neither precluded by law or unconstitutional. In the absence of irreparable injury or the likelihood that the plaintiff will prevail, the request for injunctive relief is denied.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

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**COURT RULING:**

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The matter was argued and submitted. The matter was taken under submission.

**RULING ON SUBMITTED MATTER:**

Having taken the matter under submission, the Court now rules as follows:

The tentative ruling is vacated in its entirety and the Court now rules as follows:

Plaintiff The Zumbrun Law Firm's Motion for a permanent injunction pursuant to the May 4, 2006 Order to Show Cause is denied in all respects.

Plaintiff seeks a permanent injunction against the Legislature, pursuant to Code of Civil Procedure section 526a, to enjoin alleged continued unlawfulness and waste. Specifically, plaintiff challenges the Legislature's right to directly enter into contracts for the retrofitting of the State Capitol for security purposes, and imposing a requirement that the contractors must use an all union work force, while at the same time not requiring the contracts to be competitively bid as required by the State. Plaintiff also seeks a declaration that the Legislative Open Records Act (LORA) is unconstitutional, as interpreted by the Legislature.

The Legislature entered into contracts at issue here to construct, maintain and improve the safety of the Capitol building in which it assembles. The Legislature reacted to the big rig truck driver who crashed his vehicle into the building in January 2001, and further to the attacks of Sept. 11, 2001, and made the determination to increase the safety of the Capitol building and the members of the Legislature.

In deciding whether to grant injunctive relief, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance of the injunction. The greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. *Butt v. State of California* (1992) 4 Cal.4<sup>th</sup> 668, 677-678.

Plaintiff contends that Article I, section 3(b) of the California Constitution renders the the Legislative Open Records Act ("LORA") unconstitutional.

Article I, section 3, subsection (b)(1) provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

However, subsection (b)(6) also provides that nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature. Article IV, section 7 provides that each house and the committees of the Legislature may have closed sessions "to consider matters affecting the safety and security of Members of the

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Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature." The Court determines that the Legislature has not violated the constitution in its application of LORA.

Turning to the public contract issue, the question presented is whether the competitive bidding requirement of the State Contract Act (SCA) applies to the State Legislature when it appropriates funds for the purpose of entering into contracts to provide security for the Legislative Branch of Government. Here, the Legislature entered into an inter-agency agreement with the Department of General Services to administer and oversee the contract. However, the Legislature, and not the Department of General Services, was the contracting party with respect to contracts entered into with third party contractors.

There is no dispute that the Legislature is not subject to the State Contract Act, which applies to the *executive* branch of state government. Public Contract Code § 10295(c)(5); *Department of General Services v. Superior Court* (1978) 85 Cal. App. 3d 273, 280. There also is no dispute that the "all union workforce" provisions of the contracts at issue are no doubt inconsistent with the competitive bidding requirements of the SCA. Here, because the contracting party was the Legislature, the competitive bidding requirements of the SCA are inapplicable. The "all union workforce" provisions of the contracts at issue here cannot be deemed to violate the SCA, notwithstanding that the Legislature contracted with DGS to administer and oversee the contract.

The evidence before the Court establishes that the Joint Committee on Rules of the Legislature, acting as the administrative arm of the Legislature, approved the entering of a contract with "a local professional architect" for construction of a perimeter barrier around the State Capitol. Schmidt Declaration, ¶ 3 and Exhibit A thereto. The Legislature entered into an inter-agency agreement with DGS. Schmidt Declaration, Exhibits B - G. The Legislature acting through the Senate Rules Committee, and not DGS, entered into the contracts with the private contractors for the security improvements to the Capitol authorized by Joint Committee on Rules.

Since the Legislature, and not the Department of General Services, was the contracting party, the State Contract Act does not apply. DGS's role was limited to overseeing the implementation of the contracts entered into by the Legislature. Such involvement by DGS in the project did not trigger the application of the SCA to the Legislature.

While plaintiff's contention that the Legislature's requirement of an all union workforce on the part of the contractor may result in a contract that has not been competitively bid (since contractors using a nonunion workforce would be excluded) may be correct, it is not up to this Court to direct the Legislature what provisions to include or exclude from its contracts.

The Court disagrees with plaintiff's contention that a contract of the Legislature that is exempt from the SCA, becomes covered by the Act if it enters into an interagency agreement with DGS to administer and oversee such contract. No new legislation need be passed by the Legislature and

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signed by the Governor to ensure that the SCA does not apply to the Legislature. Indeed, the opposite would be true, namely, new legislation would be required to be passed by both houses of the legislature and signed by the Governor, before the SCA could be deemed to apply to contracts entered into by the Legislature.

The Court also disagrees with plaintiff's contention that the Department of General Services unlawfully delegated its contracting power to the Legislature. In this instance, General Services had no contracting power to delegate; that power resided exclusively with the Legislature. It was the Legislature that delegated authority to the Department of General Services, not the other way around. As noted above, the Legislature lawfully delegated to the Department of General Services the authority to administer and oversee the contracts that were entered into by the Legislature.

There has been no violation of the Separation of Powers clause of the Constitution. The letting of contracts for building or repair work is not exclusively an executive function. Each branch of government is empowered to take appropriate measures to ensure its safety. Plaintiff's contention that in order to avoid a separation of powers problem, the executive branch must be given exclusive power to let contracts for repair or safety enhancing work is rejected. To order as plaintiff suggests would give the executive branch undue power over the judicial and legislative branches, and would itself result in a situation that may violate the separation of powers clause.

It must be borne in mind that under California's constitutional system, the Legislature has inherent power to act, unless restricted from doing so by a provision of the California Constitution. *Ex parte McCarthy* (1866) 29 Cal. 395, 403. Further, the Legislature was given the responsibility for the State Capitol (Govt. Code sections 9108, 9149.7), The Joint Committee on Rules acted to protect the building, entering into an inter-agency agreement with the Dept. of General Services ("DGS"), as had been previously done for work on the Capitol. (Schmidt Dec., Exh. B.)

Since the Legislature is not required to follow the State Contract Act, it is not required to follow the competitive bidding procedures set forth in that act. That is an action within the discretion of the Legislature. No California law precludes the Legislature from requiring an all-union work force on the Capitol project. Similarly, no federal law precludes such. 29 U.S.C. section 151, et seq..

The Court therefore finds that the Legislature's requirement of an all union workforce is neither precluded by law nor unconstitutional. In the absence of irreparable injury or the likelihood that the plaintiff will prevail, the request for injunctive relief is denied.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

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Certificate of Service by Mailing Attached.

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By: T. West  
Deputy Clerk

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**Certificate of Service by Mailing  
(C.C.P. Sec. 1013a(4))**

**ZUMBRUN, RONALD A. / TEH, MARK A.  
THE ZUMBRUN LAW FIRM  
3800 WATT AVE., STE 101  
SACRAMENTO, CA 95821**

I hereby certify that I am not a party to the within action and on this date I mailed a copy of this minute order to each party or attorney listed herein in a sealed envelope with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Dated: 11/30/2006

By: T. West  
Deputy Clerk

**ZUMBRUN, RONALD A. / TEH, MARK A.  
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