

**RELATED
AREAS OF PRACTICE**

Public Agency

WWW.KMTG.COM

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.

California Supreme Court Allows More Taxpayers to Sue Local Government to Stop Wasteful Expenditures

The California Supreme Court recently issued a decision in the case of *Weatherford v. City of San Rafael* (June 5, 2017, S219567) ___ Cal.5th ___, clarifying who may sue certain local government entities, including cities and counties, to enjoin allegedly wasteful or illegal expenditures. Code of Civil Procedure section 526a allows "taxpayers" to file such actions. Prior cases had suggested that only taxpayers who had paid property taxes to the entity could file such an action. The Supreme Court rejected this narrow interpretation.

Case Background

Plaintiff Cherrity Weatherford resides in the City of San Rafael, and filed an action challenging the City's practice of impounding vehicles under Vehicle Code section 14602.6. She filed the action under Code of Civil Procedure section 526a seeking to enjoin the City's allegedly illegal activity. Ms. Weatherford lives in a rented apartment, so she admittedly did not pay property taxes. She did allege payment of sales taxes, gasoline taxes, water and sewage fees and "other taxes, charges and fees routinely imposed" in the City. Both the trial court and Court of Appeal found that Ms. Weatherford lacked "standing" or the legal ability to maintain the lawsuit since she had not paid property taxes. The Supreme Court granted review to determine "whether section 526a requires an individual to have paid or to be liable for the payment of property taxes in order to have the necessary standing for a taxpayer action."

Court's Decision

The Legislature enacted Code of Civil Procedure section 526a in 1909 allowing for an action to restrain and prevent any illegal expenditure of, waste of, or injury to, the estate, funds or other property of a county, town, city or city and county. This section further provides that such an action may be maintained "either by a citizen resident therein, or by a corporation, who is

assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein." As noted by the Chief Justice in her concurring opinion, the statute consists of a single sentence containing 87 words and 19 commas, and "is not a model of clarity."

In interpreting the statute, the Court noted that section 526a represents a legislative decision to create judicial access to parties that would not otherwise be eligible to seek relief and provides a broader range of remedies than might otherwise be available including declaratory and injunctive relief. While the party need not have suffered a direct injury due to the entity's action, the party must be a taxpayer. However, the statute is not limited only to parties who paid property taxes as the Court of Appeal held. As the Court noted, "[I]miting individual plaintiffs' use of the statute to those who pay property taxes is simply incompatible with the recognized need to construe the statute broadly."

Since the payment of taxes is not limited simply to property taxes, the Court next queried "[w]hich taxes are sufficient to establish standing under the statute?" Ms. Weatherford broadly argued "that all forms of taxes assessed by state and local governments qualify so long as the plaintiff resides in the defendant locality." The City argued more narrowly that "plaintiff must be 'assessed for and liable to pay' a tax which the defendant imposes directly onto the plaintiff, and thus that the plaintiff pays directly into the defendant." In addressing this issue, the Court noted that section 526a applies where plaintiffs are directly taxed by the defendant locality, and "it is sufficient for a plaintiff to allege she or he has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the defendant locality." Unfortunately, the Court opted not to resolve the issue of what specific taxes qualify under section 526a, but returned the matter to the trial court for further proceedings. Some future

**RELATED
AREAS OF PRACTICE**

Public Agency

case may have to resolve this remaining issues since it appears that Ms. Weatherford may have moved out-of-state.

What This Means For You

As a result of this ruling, a broader range of taxpayers can sue cities, towns and counties seeking to enjoin allegedly wasteful or illegal government spending. Potential plaintiffs are not limited solely to those who have paid property taxes. Unfortunately, the types of taxes that qualify for "taxpayer standing" remains unresolved but could include payment of a variety of taxes including gasoline, utility and sales taxes. Resolution of this remaining issue will depend upon future court decisions or legislative action.

Questions?

If you have any questions concerning this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult:

William Chisum

wchisum@kmtg.com | 916.321.4500

WWW.KMTG.COM

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.