



Opinion No. CV 74-46—September 4, 1974

SUBJECT: COUNTY SERVICE AREA—A city may petition for the establishment of a county service area which would be completely outside of the city and would provide no services for city residents; requirements for such formation, law enforcement services, financing and boundaries also discussed.

Requested by: COUNTY COUNSEL, BUTTE COUNTY

Opinion by: EVELLE J. YOUNGER, Attorney General
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The Honorable Daniel V. Blackstock, County Counsel, Butte County, has requested an opinion on the following questions regarding the cities in Butte County:

"1. May a city request an establishment of a county service area the boundaries of which would be completely outside of the city and would not provide services for city residents?

"2. May the cities request a county service area which would not include any portion of the city for the purpose of defraying the costs of the presently existing law enforcement services from the Sheriff's Department in those unincorporated areas surrounding the cities which are urban in nature and including the unincorporated town of Paradise, the costs referred to herein being those services now provided by the Sheriff's Office, including neighborhood patrolling, crime investigations, etc.?"

"2(a). As a corollary to question number 2, where because of concentrated population and property, the Sheriff does conduct more extensive patrolling and other law enforcement services, could such services be construed as extended county services pursuant to Government Code Sections 25210.18, 25210.4, 25210.4(a) and 25210.5?"

"3. May a county service area or areas be established in the unincorporated areas around the cities to defray the costs of the County Planning Department and Planning Commission?"

"4. In the event the Board of Supervisors establishes a county service area, or in the event an election called pursuant to Government Code Section 25210.18(b) establishes a service area and yet the public involved in the service area decline to establish a tax rate as pursuant to AB 2008 of 1973 may the services be nonetheless paid for from the General Fund?"

"5. The cities of Oroville and Chico have submitted petitions to the Board of Supervisors, copies of which are attached hereto. The Local Agency Formation Commission has taken the attitude that it is incumbent upon the petitioner to set forth the boundaries of a proposed service area. The two cities believe that LAFCO should draw the boundaries for them. Who is correct?"

The conclusions are:

1. A city may petition for the establishment of a county service area which would be completely outside of the city and which would provide no services for residents of the city.

2. The cities in Butte County may petition for the establishment of a county service area or areas to consist of surrounding urban unincorporated territory, including the town of Paradise, with regard to the presently existing enumerated services of the sheriff's department. However, before such county service area or areas could actually be formed, the board of supervisors would be required to find that the existing law enforcement services in fact included "extended police protection" within the meaning of the County Service Area Law.

2(a). Conceivably, extensive patrolling and other law enforcement services in urban areas by the sheriff could be construed as extended county services within the meaning of the enumerated provisions of the County Service Area Law. However, in our view, such a factual finding would be the exception, and not the rule.

3. County service areas may not be established in the unincorporated areas around the cities of Butte County to defray the costs of the county planning department and the county planning commission.

4. A county service area may not be financed from the county general fund if the voters fail to set a maximum tax rate at an election held for such purpose.

5. The duty to set forth the boundaries of a proposed county service area is the obligation of the petitioning cities, and not the duty of the local agency formation commission.

ANALYSIS

Butte County has a population of approximately 110,000 people. About 77,000 reside in unincorporated territory. Of these, the vast majority reside in the unincorporated territory surrounding the cities of Chico, Oroville, Biggs, and Gridley, and in the unincorporated town of Paradise. The cities would like the county to establish a number of county service areas around the cities in order to aid in equalizing the taxes within the cities and the immediately surrounding unincorporated territory. In fact, both the cities of Chico and Oroville have filed petitions with the board of supervisors requesting the establishment of county service areas to perform various governmental services in unincorporated territory.

County service areas are formed pursuant to the County Service Area Law, section 25210.1 *et seq.* of the Government Code.¹ The law "... attempts to answer the problem of supplying governmental services to urbanize unincorporated areas. In a general way it permits a county to establish one or more 'county service areas' in portions of the county, to furnish particular public services to those areas and to levy special taxes therein to defray the cost of these services."² 22 Ops. Cal. Atty. Gen. 17 (1953). See also § 25210.1; 43 Ops. Cal. Atty. Gen. 267, 269 (1964);

¹ All section references are to the Government Code unless otherwise indicated.

² The issuance of bonds is also authorized, section 25211.1 *et seq.*, to be paid from taxes levied. Also, the county may fix a charge in the area in lieu of, or supplemental to tax revenues. § 25210.7/a.

31 Ops. Cal. Atty. Gen. 73 (1958). Or as stated in *Byers v. Board of Supervisors*, 262 Cal. App. 2d 148, 153 (1968), apparently the only reported case involving this law: "... The state Legislature, in order to provide for the growing needs of development in unincorporated areas of the state, enacted the County Service Area Law..."

County Service areas may be established to provide extended police protection, structural fire protection, local park facilities, extended library services, television translator services and "miscellaneous extended services." The latter are "... [A]ny other governmental service[s] . . . which the county is authorized by law to perform and which the county does not also perform to the same extent on a countywide basis both within and without cities. . . ." including, but not limited to, water service, sewer service, pest control, street and highway lighting, refuse collection, ambulance service, area planning, soil conservation and animal control. §§ 25210.4 and 25210.4(a).

A county service area may be established to include all or any part of the unincorporated territory of a county, sections 25210.10 and 25210.4c, and with a city's consent, may include all or any part of a city. §§ 25210.10a; 25210.80a.

Proceedings are instituted for the establishment of such areas (1) by the board of supervisors on its own initiative, or (2) on the request of two supervisors, or (3) on the request of the governing body of a city in counties with less than four million population, or (4) by petition of voters in the area. § 25210.11. Local agency formation commission approval is a condition precedent to the institution of formation proceedings. § 25210.13. A protest hearing is held. If there is no majority protest, the board may either abandon the proceedings on its own motion, or declare the area formed, subject to (1) a confirmation election by the electors of the area or (2) a possible referendum election at the instance of the voters. §§ 25210.16-25210.18, 25210.21-25210.23.

In a hope of redistributing the tax burden for various governmental services, cities in Butte County have requested formation of county service areas in unincorporated territory. This action by the cities has also apparently given rise to the questions presented.

1. Establishment of a County Service Area Outside of a City but Upon the Request of the City.

The first question presented is whether a city may request the establishment of a county service area which lies completely outside of the city limits and which will provide no services to the city. It is our conclusion that a city may do so.

Prior to July 1, 1973, a county service area could be established only at the instance of the board of supervisors or a petition of voters in the area. However, Statutes of 1972, Chapter 734, which became operative on July 1, 1973, amended section 25210.11 to read as follows by changing subdivision (b) to subdivision (c) and adding the italicized portion:³

³ Requisite conforming procedural changes to sections 25210.13 and 25210.14 were also enacted by this legislation. They are immaterial to our consideration herein.

"Proceedings for the establishment of a county service area may be instituted by the board of supervisors on its own initiative and shall be instituted by the board when:

(a) A written request therefor, signed by two members of the board, describing the boundaries of the territory which is proposed for inclusion in the area and specifying the type or types of extended county services already provided or to be provided within the area, is filed with the board; or

(b) *A written request therefor in the form of a resolution adopted by a majority vote of the governing body of any city in the county is filed with board of supervisors; provided that, proceedings under this subdivision shall be available only to the governing body of a city located in a county with less than 4,000,000 population; or*

(c) A petition requesting the institution of such proceeding and signed by the requisite number of registered voters is filed with the board. The petition may consist of any number of separate instruments, each of which must comply with all the requirements of a petition, except as to the number of signatures."

As already noted at the outset, a county service area may consist of all or any part of the unincorporated territory of a county, and *may include* all or any part of a city with the city's consent. Thus, a county service area may consist of only unincorporated territory. Was the amendment to section 25210.11, *supra*, permitting cities to request establishment of such areas, intended to limit a city's request only to those which would include all or part of the city? Or stated otherwise, is the authority to request the formation of county service areas consisting of only unincorporated territory, and which would provide no services to the city, to be excepted from the city's power specified in subdivision (b) of section 25210.11? We conclude that no such limitation or exception exists.

Except perhaps to avoid absurd results, *People v. Earl*, 19 Cal. App. 69, 72 (1912), exceptions are not to be read into a statute. As stated in *Stockton Theatres, Inc. v. Palermo*, 47 Cal. 2d 469, 476 (1956):

"The general rule is that a court is not authorized in the construction of a statute, to create exceptions not specifically made. If the statute announces a general rule and makes no exception thereto, the courts can make none...."

This general rule should apply. We discern no absurdity in letting a city request establishment of a county service area completely outside the city with the possibility, at least, of effectuating a more equitable distribution of the tax burden between city residents and their neighbors in unincorporated territory. In so holding, we note that the final determination regarding such matters still lies with the board of supervisors and the county taxpayers and residents in that they have the

final say as to whether the area should be established. §§ 25210.17-25210.18a; 25210.21-25210.23.

2. and 2(a). Establishment of a County Service Area in Unincorporated Territory to Defray Costs of Existing Sheriff's Services

The second question presented is whether the cities in Butte County may request the establishment of county service areas to defray the cost of *existing* sheriff's services in urban unincorporated territory surrounding the cities, including the unincorporated town of Paradise. The sheriff's services alluded to would include such services as neighborhood patrolling and crime investigations. We conclude that the cities could so petition. However, before such county service areas could actually be formed, the board of supervisors would be required to find that the existing law enforcement services in the areas in fact included "extended police protection" within the meaning of the County Service Area Law.

As already noted at the outset, "extended police protection" is one of the services for which a county service area may be formed. § 25210.4. That this "extended police protection" contemplates sheriff's services is clear. §§ 25210.40-25210.47; see also 38 Ops. Cal. Atty. Gen. 49 (1961). That the sheriff's services which may be included in "extended police protection" includes the usual type of law enforcement services such as neighborhood patrolling and crime investigation also appears to be clear. That this is so may be deduced as follows: All expenses of the sheriff in the detection of crime, other than Vehicle Code misdemeanors (excluding section 23102 violations), are proper county charges. § 29601; see however, § 26613 re Vehicle Code enforcement in large counties. The exception as to vehicle code enforcement is to prevent a wasteful duplication of effort between the sheriff and the highway patrol. See 38 Ops. Cal. Atty. Gen. 49, 51 (1961), *supra*. This being so, no convincing argument could be made that the "extended police protection" contemplated by the County Service Area Law merely applies to a type of service the sheriff normally does not perform. Therefore, as to sheriff's services, "extended police protection" must contemplate an increased *level* of service over and above that performed under the sheriff's normal county-wide duties as chief law enforcement officer of the county, such as neighborhood patrolling and crime investigations. See §§ 26600-26603 re sheriffs' duties.

That this is the case is also evident from the County Service Area Act itself. Whereas sections 25210.4 and 25210.4a, enumerating types of extended services speak in terms of such services as "structural fire protection," "water service," and "sewer service," as to police protection the act speaks in terms of *extended* police protection, thus presupposing that a certain level of mandated services already exists in the area which may be increased if the residents want to pay the costs.

Having determined that the usual "type" of sheriff's services can be "extended police protection," we address the question whether existing sheriff's services could be construed as extended services. This is placed in the context of urban areas surrounding cities in Butte County, and in the unincorporated town of Paradise.

The County Service Area Law presupposes that extended services requested may actually exist *de facto*. Section 25210.20 requires the officer who will be responsible for providing proposed extended services to estimate the costs thereof for the board of supervisors. Such estimate ". . . shall also include the cost of providing any services of the same type which in his opinion are *already being furnished* within the area to the extent that such services are being furnished on an extended basis." (Emphasis added.) The request for the establishment of an area must specify ". . . the type or types of extended county services *already provided* or to be provided within the area. . . ." (Emphasis added.) § 25210.11. See also section 25210.4c, permitting formation of county services areas to provide services to all unincorporated territory at same or similar level to those which are currently being provided.

Thus, a proposal does not appear to be restricted to proposing new services. We therefore conclude that if *in fact* urban areas in Butte County are receiving extended sheriff's services, and the board of supervisors so found, section 25210.18, a county service area or areas could be formed to defray the costs of the existing services *insofar as they constituted "extended police protection."*

However, the caveat to such conclusion which we would feel constrained to make is anticipated by question 2(a). As a corollary to question 2, we are asked whether where, because of concentrated population, more extensive patrolling and law enforcement services are being performed, if these could be construed as "extended county services" within the meaning of various provisions of the act, specifically sections 25210.18, 25210.4, 25210.4(a) and 25210.5.⁴

The sheriff, as the chief law enforcement officer of the county must provide service countywide. However, he must also render the services where they are needed. His services would normally be needed more in urban areas of concentrated population than in remote rural areas. Since crime and requisite law enforcement are necessarily related to population, it necessarily follows that more extensive patrolling and law enforcement would be required in populated areas than in rural areas under the sheriff's basic mandate to preserve the peace, to investigate public offenses and to arrest criminals. See Cal. Const., Art. V, § 13, §§ 26600-26603. Or stated otherwise, uniform law enforcement throughout the county normally requires more extensive enforcement in populated areas.

Thus, a certain basic level of law enforcement must be provided. Each area of the county would be entitled to its "share," that is, the share required to maintain this level uniform throughout the county. If, however, a particular area is receiving more than its share, *then* it could be said to be receiving "extended police protection." A finding as to such existing services would be a matter for factual determination by the board of supervisors. We would hypothesize that a finding to this effect would be unusual in California's counties due to tax and budgetary limitations. However, the County Service Area Law permits "extended police

⁴ We presume the requestor means section 25210.15. Section 25210.5 defines "structural fire protection." Section 25210.15 relates to the requirements of the resolution requesting establishment of a county service area.

protection" for an area if the area is willing to pay for it. Conceivably such "extended police protection" could already exist *de facto*.

3. Possible Use of County Service Areas Around Cities to Defray Costs of County Planning Department and Planning Commission

The third question presented is whether county service areas may be established in the unincorporated area around the cities of Butte County to defray the costs of the county planning department and the county planning commission. We conclude that they may not be so established in Butte County or any other county.

The question posed again highlights the desire of the cities not to have to pay for a county service they feel is not of direct benefit to the residents of the city, and the costs of which are duplicative of similar costs incurred within their corporate boundaries. The question is somewhat analogous to that just discussed with regard to sheriffs' services in that both involve services which the law mandates to be performed countywide at the requisite level in unincorporated territory. A major distinction exists, however, in the context of the County Service Area Law itself. As to sheriffs' services, such law presumes that the mandated level will be provided, and paid for from countywide taxes, in that it provides for county service areas for "extended police protection." Thus, a county service area could not be established to provide the mandated level of services, as already noted. However, the County Service Area Law makes no provision for "extended planning services." Therefore, the legal issue presented is whether basic, mandated planning services fall within the scope of "miscellaneous extended services" within the meaning of sections 25210.4 and 25210.4a.

The purposes for which county service areas may be established were set forth at the outset of this opinion. Certain basic services are provided for in section 25210.4, such as extended police protection, fire protection, and park and recreational services, and additionally "miscellaneous extended service," defined as:

"(d) Any other governmental services, hereinafter referred to as miscellaneous extended services, which the county is authorized by law to perform and which the county does not also perform to the same extent on a countywide basis both within and without cities, . . ."

Additionally, section 25210.4a sets forth a list of "miscellaneous extended services" which is not intended to be exclusive, and which includes "[a]rea planning by an area planning commission established pursuant to Article 11 (commencing with Section 65600)." The latter is the only allusion to planning services in the act, and was added in 1972 to a list which otherwise appears to have been restricted to municipal-type services such as water service, lighting and garbage collection instead of services which are more in the nature of "administrative-type services."⁵

⁵ Area planning commissions are provided for in the laws governing local planning in sections 65600-65604. They contemplate a planning area consisting of two or more cities and counties with an independent planning commission and personnel, and with functions, operations, and financing which shall be mutually agreed upon by the participating entities.

Since the County Service Area Law does not provide the answer to the question presented, pertinent provisions of our planning laws should be examined.

Each city and county is required to have a planning agency. A county planning agency must include a planning commission. Additionally, a county may provide two or more area planning commissions which may be the planning agencies for certain portions of the county. § 65100.⁴ A planning agency must develop and maintain a general plan and develop specific plans to implement the general plan. It also must periodically review the capital improvement program of the city or county and perform other functions provided by the legislative body. § 65101. Ultimately, specific plans are adopted by the legislative body to effectuate the master plan in the area. § 65500 *et seq.* The planning functions of a city or county encompass at least the territorial boundaries of the city or county. § 65300. A city or county may establish a planning department, section 65200, which may, along with the planning commission, be a component of the planning agency. § 65100. As to financing planning functions, section 65250 states that "[t]he county or city legislative body shall provide the funds, equipment and accommodation necessary for the work of the planning agency of the county or city."

Thus, much the same as a basic uniform level of mandated sheriffs' services must be supplied which cannot be considered *extended* police services, it is our view that planning services, which are mandated by the planning laws to be performed on a countywide basis at a minimum requisite level, cannot be considered "miscellaneous extended services." Even though urban areas may require more planning than rural areas, this again, like police protection, is a function of population. The rendition of more planning service to urbanized areas does not mean such areas are receiving more than their share. They are merely receiving the countywide service the law contemplates and requires. They are receiving nothing in addition thereto. The costs therefor are to be provided by the legislative body—not by the residents of certain areas on a proportionate basis. See § 65250, *supra*. As stated in 31 Ops. Cal. Atty. Gen. 73 (1958):

"The County Service Area Law . . . provides authorization for a county to furnish extended or additional governmental services within unincorporated areas of the county which desire and are in need of services *in addition to those furnished throughout the county generally*. . . ." (Emphasis added.)

Planning services furnished throughout the county on a uniform basis by the county planning commission and county planning department do not, in our view, constitute "additional" services. See also § 25210.1.

Finally, the supplying of mandated services such as basic county planning through the establishment of county service areas appears to run counter to the underlying concept in the act to give the board of supervisors and the electorate a

⁴ The area planning commissions contemplated by section 65100 appear to be different from the area planning commissions contemplated by section 65600, and incorporated by reference in section 25210.4a. See note and text, at note 5, *supra*.

choice as to whether specific services should be supplied to an area which will be paid for by that area alone.

Insofar as it might be argued that section 25210.4(d), *supra*, which defines "miscellaneous extended services" is broad enough to include basic planning services, we point out that such section speaks in terms of any governmental service a county is "authorized by law to perform," not services which a county is *required* by law to perform.

4. Possible Financing of a County Service Area from General Fund if Electors Decline to Establish a Tax Rate

The fourth question presented is whether the county general fund may be used to finance a county service area if the electorate declines to establish a maximum property tax rate pursuant to the provisions of Chapter 358, Statutes of 1973 (A.B. 2008). Chapter 358, *inter alia*, added Chapter 3 (commencing with section 2201) to Part 4 of Division 1 of the Revenue and Taxation Code relating to maximum property rates for local agencies. Section 2263.2 of the Revenue and Taxation Code, as added, provides in part:

"... the formation of a special district shall not be effective for property tax purposes unless a maximum property tax rate has been established by the voters of the district pursuant to the provisions of Article 6 (commencing with Section 2285)..."

A county service area is a special district within the meaning of these provisions. Rev. & Tax. Code, § 2215. Likewise, Article 6, comprising sections 2285 through 2289 of the Revenue and Taxation Code provides in section 2286(a):

"(a) No local agency formed after the effective date of this chapter shall levy, or have levied on its behalf, any property tax rate unless a maximum property tax rate has been approved for such agency. If an election is held on the formation of a local agency, the maximum property tax rate for such agency shall be included in describing the local agency on the ballot in the formation question."

Clearly, then, unless the voters of a county service area approve a maximum tax rate, no taxes may be levied under the provisions of the County Service Area Law to finance the area. The issue, then, is whether alternatively, the county general fund would be available to pay for the extended services to be provided.⁷ We conclude that the county general fund is not available to pay for a county service area if the voters decline to establish a maximum property tax rate for the area.

A county has only those powers expressly granted or those which are necessarily implied from those granted. § 23003; *McCafferty v. Board of Supervisors*, 3 Cal. App. 3d 190, 192 (1969). The County Service Area Law expressly sets

⁷ This would appear to presuppose a formation without the necessity of a formation election, as the board of supervisors may do. § 25210.18(a).

forth the means of financing county service areas. The law specifically provides for the levy of taxes in the area or the collection of a service charge for the services as the manner of supporting such areas.⁸ §§ 25210.6-25210.9c; 25210.41-25210.46; 25210.51a-25210.56; 25210.62a-25210.67; 25210.72-25210.77; 25210.77a, 25210.77b; 25210.78ba-25210.78g; 25211.17. The above cited sections also demonstrate that when general funds may be used for county service area purposes, e.g., salaries, such is only an interim use, and the general fund is to be reimbursed from county service area taxes or other funds belonging to a county service area.

Thus, no express authority exists to pay for a county service area from the county general fund. Also we see no way of implying such authority from any express powers granted in the County Service Area Law.

5. Setting the Boundaries of a County Service Area

The fifth and last question presented is whether a city which requests the formation of a county service area must set forth the boundaries thereof, or whether the Local Agency Formation Commission should draw the boundaries for the city. It is our conclusion that the city, as the petitioner, should draw the boundaries.

Section 25210.11, as amended in 1972 regarding the institution of proceedings for county service areas is set forth again in full. It reads:

"Proceedings for the establishment of a county service area may be instituted by the board of supervisors on its own initiative and shall be instituted by the board when:

(a) A written request therefor, signed by two members of the board, describing the boundaries of the territory which is proposed for inclusion in the area and specifying the type or types of extended county services already provided or to be provided within the area, is filed with the board; or

(b) A written request therefor in the form of a resolution adopted by a majority vote of the governing body of any city in the county is filed with board of supervisors; provided that, proceedings under this subdivision shall be available only to the governing body of a city located in a county with less than 4,000,000 population; or

(c) A petition requesting the institution of such proceeding and signed by the requisite number of registered voters is filed with the board. The petition may consist of any number of separate instruments, each of which must comply with all the requirements of a petition, except as to the number of signatures."

It is to be recalled from the discussion of question 1, *supra*, that subdivision (b) was added in 1972, and previous subdivision (b) became subdivision (c).

⁸ A minor exception is found in section 25210.78i providing certain sales and use tax revenues may be used for extended library facilities and services.

It is to be noted that only subdivision (a) refers to the describing of boundaries. However we note also that only subdivision (a) refers to specifying the type of extended services to be provided in the area. It appears clear that each of these is intended to be implicit in subdivisions (b) and (c). Also section 25210.12 provides that a petition requesting institution of proceedings shall describe the boundaries. Thus, a request from a city council must describe the boundaries.

However, a petition or request to form a county service area may not even be considered by the board of supervisors until it is reviewed by LAFCO. § 25210.13. That it is not the obligation of LAFCO to draw boundaries is clear from the Knox-Nisbet Act, section 54773 *et seq.*, which establishes and regulates local agency formation commissions. A local agency formation commission has the power to review and approve or disapprove "proposals" for the formation of district. § 54790. A county service area is included within the term "district." § 54775(m). Section 54791 requires that "... [A]ny legislative body ... desiring to initiate proceedings [for the formation of a district, see § 54775(j)] shall submit an application with the executive officer [of LAFCO]. ..." Section 54792 states that the application shall contain both a description of the boundaries and a map showing such boundaries.

Clearly, the boundaries of a proposed county service area are to be drawn before application is made to LAFCO for approval. It, therefore, is not the duty of LAFCO to draw such boundaries.