

## Completion of Construction Did Not Render Suit for Violation of Public Bidding Laws Moot

A claim that a contract for construction of a school violated public bidding requirements did not become moot because the school district sought to recover monies paid to the contractor. *Davis v. Fresno Unified School District* (Davis)



Public

school construction contracts generally must be competitively bid under public bidding laws. The Fresno Unified School District sought to rely on an exception for contracts under which the school district leases out district-owned property in return for the lessee's agreement to construct a building for the use of the school district. Such a "lease-leaseback" arrangement, if properly structured, is exempt from public bidding laws. In *Davis v. Fresno Unified School Dist.*, 237 Cal.App.4th 261 (2015) (*Davis 1*), the court held that the District's lease-leaseback arrangement for construction of a \$36 million middle school did not qualify for the exemption because it did not create a true lease or include any financing component, both of which were essential statutory predicates to an exemption from public bidding laws. The court declared the construction contract invalid and sent the case back to the trial court for further proceedings. Our report on the case is available [here](#). On remand, the District argued that the case had become moot because the school had already been built. The trial court agreed, reasoning that invalidating the contract was no longer effective relief because the contract had been fully performed. It also concluded that because the lawsuit had been brought as a validation action — i.e., one focusing on the validity of the contract rather than on the rights of the parties — disgorgement of monies paid to the contractor was not available relief because California law does not allow disgorgement in a validation proceeding. The appellate court reversed. While acknowledging that plaintiff's suit included a validation action, the court found that the suit also could fairly be read to include a taxpayer action challenging illegal expenditure of public funds. The court rejected the District's argument that a validation action was the appropriate and exclusive method of challenging the validity of the school construction contract. The court reasoned that the validation statutes apply only to contracts "involving financing and financial obligations." Here, the court pointed out, it had concluded in *Davis 1* that the lease-leaseback agreement did *not* include any financing component, but rather contemplated that the District would pay for the school as it was completed. Indeed, that was a principal basis for the court's conclusion that the lease-leaseback arrangement did not exempt the transaction from the public bidding laws. Because the challenge was not subject to the validation statutes and because disgorgement of funds qualified as

effective relief despite the completion of the school, the taxpayer's action portion of the lawsuit was not moot and the trial court erred in dismissing the case on that ground.

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