

FEB 27 AMB

City of Belmont FEB 23 1967

February 21, 1967

The Honorable W. Howard Hartley  
 Judge of the Superior Court  
 Hall of Justice and Records  
 Redwood City, California

re: Weiner et al vs. City of Belmont et al  
 No 127750

Dear Judge Hartley:

I am in receipt of a copy of a letter dated February 13, 1967, submitted to you by Mr. Glenn E. Pollock. It is not my intention to engage in a bombardment of the Court with letters; however, I feel that it is my duty as the City Attorney for the City of Belmont and as an officer of the Court to point out to you, the errors in reasoning contained in Mr. Pollock's letter.

The City of Belmont does not contend that Sections 36933 and 36937 of the California Government Code eliminates the duty of the City Clerk to post the ordinance involved herein. It is the contention of the City of Belmont that a failure to publish or post a Zoning Ordinance within the 15 day period does not invalidate said ordinance for the reason that such an ordinance is expressly excluded from the invalidation provisions of said Section 36933. It is the contention of the City of Belmont that a Zoning Ordinance is an ordinance which is "covered by particular provisions of law prescribing the manner of its passage and adoption" and therefore goes into effect immediately pursuant to the provisions of Government Code Section 36937(e). (Title 7, Chapter 4, Article 2 of the California Government Code sets forth the particular provisions of law prescribing the manner of passage and adoption of zoning regulations). The City's position in this regard is based upon, and supported by, the memorandum of points and authorities and supplemental memorandum of points and authorities heretofore filed with the Court.

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Section 36937 of the Government Code has its parallel in Division 4, Chapter 3, Article 2 of the Elections Code entitled Referendum wherein Section 4050 provides, in part:

No ordinance shall become effective until 30 days from and after the date of its final passage, except:

(d) Other ordinances governed by particular provisions of state law prescribing the manner of their passage and adoption. (emphasis ours)

Mr. Pollock argues that a zoning ordinance does not take effect immediately upon adoption because Sections 65854 to 65857, inclusive, do not state that a Zoning Ordinance takes effect immediately. This argument is without merit and merely begs the question involved herein. When the legislature adopted Section 36937 of the Government Code and provided that an ordinance takes effect immediately if it is an ordinance "covered by particular provisions of law prescribing the manner of its passage and adoption" it meant just that and no more. If the legislature intended additional requirements as Mr. Pollock suggests, it would have so provided. The legislature did not so provide.

It is an established rule of statutory construction that "there can be no intent in a statute, not expressed in its words, and there can be no intent upon the framers of such statute which does not find expression in their words". (Ex Parte Goodrich, 160 Cal 410, 411). Moreover, the courts may not indulge in mere speculation to the effect that the legislature meant something other or less than what is said. (Bakersfield Home Building Company v. J.K. McAlpine Land & Development Company Ltd., 26 Cal App 2d 444, 448; 79 P. 2d 410; Chapman v. Aggeler, 47 Cal App 2d 848) Further, a Court does not have the power to rewrite a statute to make it (the statute) conform to an intention not expressed therein. (Armstrong v. Smith, 49 Cal App 2d 528, 536; 122 P. 2d 115). Thus in Seaboard Acceptance Corp. v. Shay, 214 Cal 361, 5 P 2d 882, the Court stated at page 366:

It is elementary that there can be no intent in a statute not expressed in its words; that the intention of the legislature must be determined from the language of the statute. (citations).

Mr. Pollock cites Section 65858 of the Government Code in favor of his contention. Again Mr. Pollock's reasoning is in error. Section 65858 provides for an interim ordinance, effective for a limited period of time and said Section 65858 provides that such interim ordinance may be adopted "without following the procedure otherwise required preliminary to the adoption of a Zoning Ordinance". Section



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65858 provides for a special type of ordinance which specifically is not to be adopted in the manner set forth in Sections 65854 to 65857, inclusive.

Mr. Pollock and his 'ghost writer' cite Johnston v. The City of Claremont, 49 Cal 2d 826, in support of their argument that zoning ordinances are subject to referendum and therefore they do not go into effect for 30 days. Their argument is without merit and they have miscited Johnston v. The City of Claremont supra. The court in Johnston v. The City of Claremont, supra, states at page 837:

Whenever the Council acts in its legislative capacity the action it takes is subject to the constitutional right of referendum, unless such action falls into one of the exceptions provided for in the constitution.

The issue before the Court in Johnston v. The City of Claremont, supra, was whether the adoption of an ordinance rezoning property constituted a legislative or administrative act. The Court therein held that the adoption of such an ordinance was legislative and therefore subject to referendum. The ordinance involved in that case was not adopted as an urgency ordinance and therefore no issue was before the Court concerning the effective date of the ordinance in question or whether said ordinance was excepted from the referendum procedure by the State Constitution. Further, the Johnston case was decided on the law existing prior to the effective date of the amendment of Section 36933 of the Government Code.

Very truly yours,

KENNETH M. DICKERSON

KMD:c  
cc-A. Brandow, City Manager  
cc-each plaintiff in above action

2/27/67 Mayor Vallerza  
Cm. Zucca

~~Henry~~  
Fitzgerald  
Podolsky