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## California Supreme Court Finds School Transportation Fees Do Not Violate the State's Constitution

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**Voiding Foreclosure Sale**

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foreclosure sale.

Also, the court noted that Congress did not intend to make a fixed percentage the sole determining factor of reasonable equivalence. Instead, the decision maker should consider other relevant factors, such as the bargaining position of the parties, the marketability of the property, and the context of a lawful foreclosure.

The court of appeals found that the lower court incorrectly presumed a foreclosure sale brought unreasonable prices if a foreclosing party fails to prove otherwise. Instead, the court noted, a lawfully conducted foreclosure sale is presumed to bring reasonably equivalent value. Furthermore, the foreclosure price-to-market value percentage is only one factor rebutting this presumption of reasonableness. Courts must also consider other factors, such as fair appraisal of the property, advertisement of the foreclosure sale, and competitive conditions surrounding the sale.

Accordingly, the court of appeals concluded that the Durrett 70 percent test should no longer be mistaken as the law of the Eleventh Circuit. Instead, the proper way to determine a property's reasonable equivalent value is to conduct a thorough investigation into all the relevant facts and circumstances.

**Competing Policy Concerns Now Met**

The Eleventh Circuit concluded that the totality of the circumstances test properly balanced the competing interests of the borrower's equity rights and the secured creditor's concerns. While depending solely on the Durrett Rule to void a foreclosure sale might advance bankruptcy policy, it violates the policy of protecting a secured creditor's rights. Courts, therefore, must conduct a thorough analysis of the facts and circumstances surrounding the foreclosure sale to ensure that a foreclosing party takes all commercially reasonable steps to protect the competing interests of both parties.

**Case Remanded Back To District Court**

Because the record contained no facts about the circumstances surrounding the foreclosure sale, the appellate court was unable to determine whether the foreclosure sale price was the reasonable equivalent of the property's value. For example, the court could not decide if the bank took the reasonable commercial steps necessary to protect the debtor's equity in the property. The record also contained no facts regarding the competitive conditions surrounding the sale or the bank's efforts to appraise the value of the property. Thus, the appellate court vacated both lower court orders and remanded the case to district court for further proceedings.

Sharon Hannaford

**California Supreme Court Finds School Transportation Fees Do Not Violate The State's Constitution**

In *Arcadia Unified School District v. State Department of Education*, 825 P.2d 438 (Cal. 1992), the Supreme Court of California concluded that charging fees for school transportation did not conflict with either the free school guarantee or the equal protection clause of the California Constitution.

**Taxpayer Wins Initial Suit**

In 1985, Francisco Salazar ("Salazar") filed a taxpayers' suit in Ventura County, California against the State Department of Education, the State Board of Education, the Superintendent of Public Instruction, and the Fillmore Unified School District ("Educators"). Salazar claimed that the Educators' implementation of §39807.5 of the California Education Code (Deering 1992), which authorized school districts to charge fees for student transportation, violated the free school guarantee and the equal protection clause of the California Constitution.

The Court of Appeals, Second District, Division Six, found it unnecessary to join the school dis-

tricts as parties to the litigation and concluded that §39807.5 violated both the free school guarantee and the equal protection clause of the California Constitution. The Supreme Court of California denied review of the appellate court decision and ordered that it not be officially published. On remand, the Ventura County Superior Court entered a judgment against the Educators.

**School Districts' Suit Involved Same Issue**

Following the superior court's order, the State Department of Education ("Department") notified all school districts that §39087.5 was unconstitutional and instructed them to discontinue charging for transportation. However, many school districts that were not parties to the original action did not follow the Department's directive because of their belief that §39807.5 was constitutional. Twenty-five school districts implemented an action in the Sacramento Superior Court against the Department to determine whether §39807.5 was constitutional on its face.

Salazar was permitted to be included as a party and moved to dismiss the lawsuit, arguing that the Department and the school districts, as agents of the Department, were bound by the prior decision in his taxpayer suit. The superior court denied the motion to dismiss and held that §39807.5, on its face, violated the free school guarantee of the California Constitution.

The Court of Appeals, Third District, unanimously reversed, holding that the school districts were not bound by the judgment in the earlier action. The appellate court found that the public interest mandated such a conclusion and therefore, did not reach the issue of whether the school districts were agents of the Department. The appellate court also ruled that §39807.5, on its face, did not violate either the free school guarantee or the equal protection clause of the California Constitution. This decision was appealed to the California Supreme Court.

### School Districts Not Bound By Prior Decision

The California Supreme Court upheld the appellate court's conclusion that the school district suit was not barred by the judgment in Salazar's previous case. The court determined that when the issue involves only a question of law, not a question of fact, a prior judgment is not determinative if the result is unjust or if the public interest dictates relitigation of the issue.

Because the prior decision was not officially published, no source of legal authority existed. The result was uncertainty among the school districts concerning the constitutionality of §39807.5. The court found that the public interest of the students, taxpayers, and school districts mandated that the issue be resolved to provide uniformity in the school districts. As support for this conclusion, the court reasoned that an erroneous decision in Salazar's case could deny the school districts revenue they were statutorily entitled to raise. Consequently, school districts could be forced to eliminate transportation if they were unable to afford it without the revenue authorized by the statute.

Moreover, in the original action, evidence of the unconstitutionality of the statute was presented. However, the school districts, which were not parties to the action, did not have an opportunity to defend the constitutionality of the section.

#### No Violation of Free School Guarantee

The California Supreme Court determined that §39807.5 did not violate the free school guarantee of the California Constitution, which provides for a free school in each district for at least six months every year after the first year in which a school has been established.

The court began its analysis by attempting to examine the intent of the framers of the California Constitution but found little guidance as to whether it was permissible for school districts to charge a fee for transportation. The court noted that the framers did not consider transportation to be a part of the school system, support-

ing the view that transportation was not part of the free school guarantee.

Next, the court examined its own decisions and those of other states interpreting similar provisions. In doing so, the court adopted the standard from a previous California case that the free school guarantee only extends to "necessary elements of any school's activity."

In applying this standard, the court refused to adopt Salazar's argument that bus transportation is a necessary element of any school's activity. The court's analysis focused on the fact that, without bus transportation, students were not denied an opportunity to receive an education. Bus transportation was not an integral part of the education system; while transportation may provide convenience for students, the court noted that all students were not required to use the same mode of transportation.

The court also reasoned that transportation was not an expense unique to education, such as textbooks and teachers' salaries. Further, school districts are not required by law to provide bus transportation for students. Therefore, the court declined to find that bus transportation was within the scope of the free school guarantee of the California Constitution.

#### Section 39807.5 Survives Equal Protection Analysis

The supreme court further held that §39807.5 did not facially violate the equal protection clause of the California Constitution. The court rejected the argument that the section discriminated against poor students by creating a classification based on wealth that affected the fundamental right to education. The court pointed out that students who are unable to pay the transportation fees are exempt from payment under the section.

The supreme court also rejected the argument that the section promoted inequality in the treatment of students in different school districts, depending on whether the district charged for transportation and how the district determined the level of indigency that exempt-

ed a child from paying the transportation fee. The court found that these differences did not necessarily result in a violation of the equal protection clause.

When a school district provided transportation without charge, it was available to all students. In districts that charged for the transportation, those students who could not afford it would still have access to transportation. Therefore, in either case, poor students would have access to transportation if their school district chose to provide it.

#### The Dissenting Opinion

As the lone dissenter, Justice Mosk concluded that §39807.5 violated the free school guarantee of the California Constitution. The reasoning behind his conclusion was that such fees would threaten the opportunity for children who could not afford transportation to receive an education. He also believed that those who did not meet the definition of indigent imposed by the school district still might not be able to afford transportation, which could effectively deny students access to an education. In finding §39807.5 violative of the free school guarantee clause, he did not reach the issue of whether it conflicted with the equal protection clause of the California Constitution.

Barbara L. Gallagher

### Baltimore City Kosher Laws Require Intent To Defraud Consumers And Do Not Violate Maryland's Constitution

In *Barghout v. Mayor*, 600 A.2d 841 (Md. 1992), the Maryland Court of Appeals held that Baltimore City kosher laws, which prohibit fraud in the sale of kosher products, do not violate the Maryland Constitution. Furthermore, no individual who sincerely believes his conduct conforms to kosher requirements can be convicted of violating kosher laws,

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