



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

Title	Agenda Item Type
Court Facilities: Lease of Chico Courthouse Pending Disposition and Confirmation of Authority for Leasing Other Closed Courthouses	Action Required
	Effective Date
	December 16, 2016
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	December 5, 2016
Recommended by	Contact
Facilities Policies Working Group	Eunice Calvert-Banks, 415-865-4048
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Executive Summary

The Facilities Policies Working Group (FPWG) recommends approving a short-term lease of the closed Chico Courthouse to the County of Butte pending the previously approved sale of the courthouse to the county. The proposed lease would, by its terms, shift all costs of operating and maintaining the property (a triple-net lease) to Butte County and thereby reduce the Judicial Council's continuing liability for that expense.

To augment the ability of the Administrative Director and council staff to act quickly and decisively in identifying and finalizing opportunities to reduce the cost of other closed court facilities, the FPWG further recommends confirming the authority of the Administrative Director or his designee to negotiate, document, and enter into triple-net leases or licenses with governmental entities of other closed California court facilities throughout the state with

governmental entities for terms not to exceed five years without Judicial Council review and approval of each such lease.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective December 16, 2016:

1. Approve a short-term triple-net lease of the closed Chico Courthouse with Butte County and confirm the authority of the Administrative Director or his designee to negotiate, document, and execute that lease; and
2. For court facilities throughout the state that are closed by their respective courts and that are unsuitable to the needs of the judicial branch, including those located in shared use buildings and subject to joint occupancy agreements (JOAs), confirm the authority of the Administrative Director or his designee to negotiate, document, and execute triple-net leases or licenses or JOA amendments with governmental entities for terms not to exceed five years without Judicial Council review and approval of each such lease, license or JOA amendments.

Previous Council Action

In April 2015, the Judicial Council authorized negotiation and execution of a short-term triple-net lease of the Plumas-Sierra Courthouse to an unrelated third party.¹

In October 2015, the Judicial Council approved a short-term triple-net lease of the Corning Courthouse to the County of Tehama pending the sale of that courthouse to the county.

In February 2016, the Judicial Council approved the final disposition of the Chico Courthouse in Butte County and the Corning Courthouse in Tehama County, and directed staff to obtain statutory authorization to dispose of the two facilities and to draft and negotiate purchase and sales agreements with the counties.²

Rationale for Recommendation

In the months since the Judicial Council approved the recommendation to dispose of the Chico Courthouse in February 2016, the judicial branch has continued to incur operations and maintenance expenses for this location at the rate of approximately \$6,800 per month. As noted above, Butte County wishes to purchase the courthouse, and in order to commence occupancy

¹ Unfortunately, the two promising lease opportunities failed and no appropriate replacement lessee has been identified.

² Staff was unsuccessful in its efforts to obtain that statutory authorization in the legislative session that ended in September 2016 but will renew its efforts in the upcoming session in 2017.

and use of the property as soon as possible, the county has indicated to Judicial Council staff its desire to enter into a triple-net lease pending legislative authorization of its sale to the county. Approval of that lease and confirmation of the authority of the Administrative Director or his designee to negotiate, document, and execute this triple-net lease to the County would eliminate the Judicial Council's ongoing operation and maintenance expenses, while at the same time meeting the needs of the county.

As stated below in more detail, the judicial branch is currently incurring ongoing operation and maintenance costs of closed court facilities located throughout the state. This expense can be eliminated by disposing of those closed facilities. While dispositions are pending, a lease or license (lease) for the closed court facilities on a triple-net basis could immediately reduce (or eliminate) the operation and maintenance costs. The grant of a lease for closed court facilities back to the counties or to other governmental entities reduces the risks of such transactions, and limiting the term to no more than five years is consistent with statutory guidelines for leases of executive branch real property. By confirming the authority of the Administrative Director or his designee to negotiate, document, and enter into such leases without specific Judicial Council review and approval of each such lease, the Judicial Council would be allowing the Administrative Director and council staff to act quickly and decisively in identifying and finalizing opportunities to reduce the cost to the council of closed court facilities.

Background

The Chico Courthouse located at 655 Oleander Avenue in Chico is an approximate 12,400 square foot building on 1.25 acres. The building contains two courtrooms, two chambers, and clerk and administrative space, and is situated between two county buildings. Except for a large closet in the courthouse that houses Butte County's IT system to which the county has access rights, the building was occupied exclusively by the court. It was closed in March 2015 when the Superior Court of Butte County moved to the new North Butte County Courthouse.

Currently throughout the state, other court facilities have been vacated by their respective courts as a result of budget related closures or new courthouse construction. As new courthouse construction projects are completed and courts move out of old facilities and into the new courthouses, additional court facilities will be vacated. Also, because of changes in court operations as a result of technological advances and the passage of time, additional facilities may be closed to the public and vacated.

The Judicial Council remains financially responsible for the ongoing costs of operations and maintenance of closed facilities that the respective courts have already indicated support for disposition. Entering into occupancy agreements (leases, licenses, or other agreements³) for the vacant space will save the judicial branch these operational and maintenance expenses.

³ The relationship of the Judicial Council to a user of a closed court facility could be as landlord/tenant under a lease or as licensor/licensee under a license agreement though with substantially the same terms and conditions as a triple-net lease. In a shared use building subject to a joint operating agreement (JOA), an agreement giving the county the

Judicial Council as landlord

The Judicial Council has statutory authority to enter into leases of closed court facilities. Under the Trial Court Facilities Act of 2002 (as amended, hereafter the Act), the Legislature granted the Judicial Council broad authority over trial court facilities. Specifically, Government Code section 70391(a)⁴ provides that the Judicial Council shall “[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities.”

This broad and unqualified language confers on the Judicial Council an authority coextensive with that of an owner upon the Judicial Council, except where expressly limited by statute. Other than the requirement that the Judicial Council dispose of surplus court facilities (§70391(c)), nothing in the Act or elsewhere expressly prohibits the Judicial Council from entering into an out-bound lease of all or a portion of a closed court facility with an unrelated third party while it carries out its disposition duty.

The Legislature’s use of the phrase “as an owner would have” to describe the nature and scope of the Judicial Council’s authority over court facilities is significant. Under California’s Civil Code, “[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others” (§ 654). Ownership is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; and when the use is restricted. (Civil Code § 680). Otherwise, it is absolute, meaning that the owner “has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.” (Civil Code §§ 678-679). “Ownership is a bundle of rights and privileges,” and an owner may enter into a lease agreement conferring on the tenant the rights of exclusive possession of the property against all other parties, including the owner (*Union Oil Co. v. State Bd. of Equal.* (1963) 60 Cal.2d 441, 447).

Based on the foregoing, the Judicial Council has the requisite authority under California law to enter into leases of closed court facilities.

Under the Trial Court Facilities Act, the Legislature also gave Judicial Council staff certain specific responsibilities and authority including the obligation to “provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts, if the responsibility for the facility has been transferred to the Judicial Council pursuant to [the Act].”⁵

right to use the closed court facility could be framed as an amendment to the JOA. Hereafter, to simplify, the three kinds of relationships will be referred to as landlord/tenant under a lease though in fact the relationship could be framed as a lease, a license, or as an amendment to a JOA depending on the circumstances.

⁴ All future statutory references are to the Government Code unless otherwise noted.

⁵ Section 70392(a).

Although that grant of responsibilities and authority provides support for Judicial Council staff to negotiate and document leases of closed court facilities this proposal seeks confirmation of that authority.

Lease terms

Ownership of real property carries certain risks and liabilities that to a large extent may be shifted to the tenant through a properly drafted lease, and managed through careful tenant selection. Costs of operating and maintaining the leased premises would be shifted to the tenant through standard commercial, triple-net lease provisions.

Although such lease provisions can minimize risks and liabilities to the Judicial Council resulting from leasing out a court facility, disputes might arise. To minimize the risk of disputes, due diligence would be undertaken to determine the creditworthiness and stability of the tenant and to that end, the recommendation in this report is limited to leases of closed court facilities to other governmental entities.

Finally, although existing law gives no clear guidance as to how long the term of a lease of a closed court facility can be, the Government Code gives some guidance with respect to real property under the jurisdiction of the Department of General Services (DGS). Under section 14670, DGS has authority to lease state-owned real property for up to five years without additional legislative action. Application of a five-year limitation (consistent with the limitation imposed by the Legislature on DGS with respect to executive branch property) to leases of closed court facilities by the Judicial Council seems prudent.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff previously received written communication from the Superior Court of Butte County in support of the sale of the Chico courthouse.

Alternative actions considered

An alternative to the recommended courses of action with respect to the proposed lease of the Chico Courthouse to the County is to leave it closed and unoccupied prior to its sale to the County and to continue to bear the cost of its ongoing operation and maintenance. This alternative is not recommended because it is not fiscally prudent.

The alternative to confirmation of the authority of the Administrative Director or his designee to complete short-term triple-net leases of closed court facilities to governmental entities is to bring each such proposed lease to the Judicial Council for review and approval. This alternative is not recommended because the Judicial Council's extended review and approval process would increase the amount of time needed to execute the lease and could cause the prospective transaction to fall through (similar to the lease of the Plumas-Sierra Courthouse).

Implementation Requirements, Costs, and Operational Impacts

Staff will need to negotiate final lease terms, a routine task for Judicial Council Real Estate staff. Prior to leasing out a closed court facility staff will seek and obtain written communication from each court re-confirming that it has no plans to reoccupy a closed court facility.

Staff will provide an information report to the Judicial Council when a lease is executed. No out-of-pocket costs will be incurred in order to enter into a lease. All of the courts ceased operations at the affected facilities months ago; therefore, there are no operational impacts.

Links

1. [Government Code section 70391:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391)
[http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391)
2. [Government Code section 70392](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70392)
[http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70392.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70392)
3. [Government Code section 14670](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14670)
[http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14670.](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14670)