

*Recent Cases from the Court of Appeal Construing Section 1759*

(In Reverse Chronological Order)

**13. *City of Los Angeles v. Tesoro Refining***

188 Cal. App. 4th 840; 2010 Cal App. LEXIS 1650 (September 22, 2010)

The Court of Appeal (Second District, Division 2) reversed the trial court's grant of summary judgment in favor of the City. The trial court held that, as a charter city, Los Angeles, had the exclusive power to provide electric service within its boundaries and that no other utility could provide electric service for consumption within those boundaries. (The Tesoro refinery straddled the service border between Southern California Edison ("SCE") and LADWP.) Most of the opinion reversing the trial court is devoted to an analysis of Article XI, Section 9 and Article XII, Section 8 of the State Constitution. The court concluded that the power vested in the Commission by the Constitution and the Legislature prevailed over any contrary provisions of the City Charter. While the decision does not cite Section 1759 until the end of the opinion, it forms the statutory basis for requiring the trial court to rule in favor of Tesoro. The appellate court's conclusion that the trial court's ruling was contrary to the Commission's grant of authority to SCE to provide electric service to the refinery, a matter of statewide concern, set the stage for it to hold that Section 1759 required the trial court to defer to the Commission. The Commission filed an *amicus* brief on behalf of Tesoro.