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OPINION	
OF	NO. CV 78/136
GEORGE DEUKMEJIAN Attorney General JAMES M. SCHIAVENZA Deputy Attorney General	JUNE 29, 1979

The Honorable George P. Kading, County Counsel for the County of Santa Barbara, has requested an opinion from this office on the following question:

Are property taxes levied pursuant to section 16090 of the Education Code to repay apportionments made under sections 16310 through 16344 of the Education Code exempt from the one percent limitation of article XIII A of the California Constitution?

The conclusion is:

Property taxes levied pursuant to section 16090 of the Education Code to repay apportionments made under sections 16310 through 16344 of the Education Code are exempt from the one percent property tax limitation contained in section 1, article XIII A, of the California Constitution.

ANALYSIS

I

INTRODUCTION

Pursuant to sections 16310 through 16344 of the Education Code,[1] school districts may apply for and receive loans from the state for the purpose of housing pupils in structurally safe facilities. (§ 16313.) The sources for these loans are the proceeds of bonds issued under the State School Building Aid Bond Law of 1966, ratified by the voters at a special election consolidated with the primary election of June 7, 1966 (stats. 1966, ch. 26, p. 214, § 1) and the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972, ratified by the voters at a special election consolidated with the primary election of June 6, 1972. (Stats. 1971, ch. 105, p. 136, § 1.) Each school district which receives an apportionment is required to repay the apportionment plus accrued interest in twenty equal annual payments. (§ 16335.) The State Controller is required on or before January 1 of each fiscal year to determine the repayment to be due from each district during the next succeeding fiscal year (§ 16075) and shall deduct the total amount of the annual repayment from the State School Fund and transfer the amount deducted to the State School Building Aid Fund. (§ 16080.) After transfer to the State School Building Aid Fund, these funds are made available for transfer to the state general fund. (§§ 16080, 16403.) The Controller is required to notify the governing board of the school district and the county auditor of the county, the county superintendent of which has jurisdiction over the district of the amount to be deducted. (§ 16089.) The boards of supervisors of the counties which have jurisdiction over the school districts having funds so withheld are required to levy a tax upon the property in the district sufficient to raise for the district the amount of money withheld by the Controller during the fiscal year in which the tax is levied. (§ 16090.)

The question presented concerns the impact of article XIII A of the California Constitution, approved by the voters on June 6, 1978 as Proposition 13,[2] on the local

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1. All statutory references are to the Education Code unless indicated otherwise.

2. On September 22, 1978 the California Supreme Court in Amador Valley Joint Union High School District v. State Board of Equalization (1978) 22 Cal.3d 208 handed down a decision upholding the constitutionality of article XIII A.

tax rate structure supporting the repayment of the apportionments under the State School Building Aid Bond Law and the State School Building Aid and Earthquake Reconstruction and Replacement Bond Law. (Hereinafter referred to as the Building Aid Bond Laws.)

Section 1, subdivision (a) of article XIII A of the California Constitution limits the ad valorem taxes imposed in each county to one percent of the full cash value of the property. Section 2 provides for certain adjustments to take into account new construction, change in ownership and inflation. An exception to the one percent tax limitation is provided in section 1, subdivision (b) of article XIII A. This exception provides as follows:

> "The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective."

The question addressed here is whether the taxes levied to generate revenues for payment of the principal and interest on the bonds by counties whose school districts receive funds under the Building Aid Bond Laws fall within the limitation of section 1, subdivision (a) or the exception of section 1, subdivision (b).

II

THE STATE SCHOOL BUILDING AID BOND LAW OF 1966 AND THE STATE SCHOOL BUILDING AID AND EARTHQUAKE RECONSTRUCTION AND REPLACEMENT BOND LAW OF 1972 ARE DEBTS APPROVED BY THE VOTERS PRIOR TO THE EFFECTIVE DATE OF ARTICLE XIII A

We are of the opinion that the taxes levied pursuant to the Building Aid Bond Laws which were ratified by statewide voter approval fall within the literal wording of the constitutional exception provided by subdivision (b) of section 1 of article XIII A of the California Constitution. In a recent opinion of this office (61 Ops.Cal.Atty.Gen. 373 (1978)) we discussed a closely analagous situation. The question presented in that opinion was whether property taxes levied by local water agencies to provide for payments due to the state under the State Water Project water supply contracts (Burns-Porter Act) fall within the exemption provided by section 1, subdivision (b) of article XIII A of the State Constitution. In that opinion we reviewed the Burns-Porter Act, the purpose of

which is "to provide funds to assist in the construction of the State Water Resources Development System." The Burns-Porter Act authorized the issuance of state general obligation bonds backed by the full faith and credit of the state with revenues to be derived from the sale of water and power to the local water agencies pledged for payment of the principal and interest on the bonds. The local agencies make regular payments to the state in return for participation in the state system which is supported by the Burns-Porter bonds and obtain the funds to make the payments at least in part from property taxes. The Burns-Porter Act was adopted by the people of the State of California on November 8, 1960. (61 Ops.Cal.Atty.Gen., supra, pp. 373-376.)

In that opinion we concluded that the property taxes levied by the local water districts to provide payments under the Burns-Porter Act fall within the exemption provided in section 1, subdivision (b) of article XIII A of the California Constitution. This conclusion was based on the reasoning that the Burns-Porter Act authorizing the bonds was voter approved prior to July 1, 1978 (the effective date of article XIII A) and that there was a sufficient nexus between the payment of the voter approved obligation and the local taxes to be levied on property of the local water agencies. This nexus exists because the contract payments being made by the county flow directly to payment of the statewide bond obligation; the portion of the local property taxes attributable to the contractual payment for the state program is traceable; and all the funds collected by the county and paid to the state are used by the state to pay for the obligation. (61 Ops.Cal.Atty.Gen., supra, pp. 376-379.)

In our earlier opinion at page 379 we stated that "[w]hen the people of the state approved the Burns-Porter Act, they enacted into law a unified system of financing the water system, including authorization for both initial financing (the bonds) and payment of long-term debt and operational costs (the water contracts). The bonds, the mandate to enter into contracts, and the pledge of proceeds are part of the single and indivisible scheme the voters accepted . . . . In sum, the voters did not simply approve the . . . bond indebtedness; they also approved a contractual scheme to support the system and pay the indebtedness. Therefore, dollars paid into that system are, for the purposes of section 1(b), destined 'to pay' an 'indebtedness approved by the voters.'"[3]

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3. The question presented in 61 Ops.Cal.Atty.Gen. 373, supra, is presently in issue in Kern County Water Agency v. The Board of Supervisors of the County of Kern, Kern County Superior Court No. 155001, now pending in the Court of Appeal, Second Appellate District. (2 Civil No. 55587.)

The question presently before us regarding the repayment of the Building Aid Bond Laws closely parallels the system of repayment under the Burns-Porter Act. In neither the Building Aid Bond Laws nor the Burns-Porter Act did all local districts approve the bonded indebtedness in local elections.[4] However, both the Burns-Porter Act and the Building Aid Bond Laws were approved at statewide elections and this approval encompassed a system of indebtedness which included the levy of local property taxes to accomplish the purpose of repaying the principal and interest on the bonds. It is also of significance that section 1, subdivision (b) of article XIII A does not state that in order to be exempt from the one percent limitation of section 1, subdivision (a) the indebtedness must be approved by the voters of the particular district subject to the levy; the exception merely provides that the indebtedness must be approved by the voters. In approving the systems established under the Burns-Porter Act and the Building Aid Bond Laws the voters approved the entire system which includes the local indebtedness as an integral part of the total scheme.

As was discussed in our analysis of the Burns-Porter Act, there is a two-tiered structure for the repayment of the Burns-Porter bonds - the local water district levies the tax and the state pays the obligation. (61 Ops.Cal.Atty.Gen., supra, p. 377.) This two-tiered structure is also present in the Building Aid Bond Laws. The boards of supervisors levy the tax and the state pays the obligation. Despite this two-tiered aspect of the repayment system, there is a sufficient nexus between the local tax levy and the payment of the obligation pursuant to the Building Aid Bond Laws. Under the Building Aid Bond Laws the district is required to repay monies loaned by the state for the purpose of reconstructing or replacing substandard buildings in 20 equal annual payments. (§ 16335.) The State Controller is required on or before January 1 of each fiscal year to determine the annual repayment to be due from each district during the next fiscal year (§ 16075) and is to deduct that amount from the installments of the apportionments made to such district

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4. See section 39228 and 61 Ops.Cal.Atty.Gen., supra, at 379, footnote 11. Generally, payment may not be made by the local districts under the Building Aid Bond Laws unless the local district holds an election at which the school district electorate approves the acceptance, expenditure and repayment of the amount apportioned. (§ 16327.) However, in certain circumstances where the local districts provide certain matching funds, the necessity for such voter approval is eliminated. (§ 39228.) It is our understanding that in the question presented the Building Aid Bonds Laws had statewide but not local voter approval.

From the State School Fund[5] and transfer that sum to the State School Building Aid Fund. (§ 16080.) From there the monies are available for transfer to the general fund. (§§ 16683 16403.) The Controller is required to notify the school district of the amount to be deducted (§ 16089) and the boards of supervisors are required to levy a tax upon the property in the district sufficient to raise the amount of money withhold by the Controller. (§ 16090.) Such tax, when collected, shall be paid into the county treasury, the county superintendent of schools of which has jurisdiction over the district for which the tax was levied, to the credit of the general fund of the district. (§ 16090.)

Thus, as in the Burns-Porter Act a nexus is established between the local taxes levied and the payment of the bonded indebtedness. The nexus is that the local property taxes levied pursuant tot he Building Aid Bond Laws directly replace the monies deducted by the Controller from the apportionment's to the school district from the State School Fund. The monies deducted by the Controller from the State School Fund flow directly through to the State School Building Aid Fund and from there to the state's general fund for payment of the bond obligation. The funds deducted and the local property taxes collected attributable to the bond program are traceable to the county treasury and all the funds collected through the levy of this tax are used to replace the funds deducted by the controller for payment of the bond indebtedness. (See 671 Ops. Cal. Atty. Gen., supra pp. 376-379.)

The Building Aid Bond Laws are therefore an indebtedness approved by the voters prior to the effective date of article XIII A, and the local taxes levied pursuant to section 16090 are used to pay the interest and redemption charges on t he indebtedness. Thus, these local taxes have met the requirements of section 1, subdivision (b) of article XIII A of the California constitution and fall within the exemption provided therein.[6]

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[5] Monies received by the county treasurers from apportionment's of the State School fund are credited to the county school service fund, the county school tuition fund and the general funds of the several school districts of the county as apportioned by the superintendent of public instruction or the chancellor or the California Community Colleges. (§ 14043.)

[6] This conclusion is consistent with the understanding of the State Legislature in connection with this subject inasmuch as Revenue and Taxation Code section 2237 subdivision (a) set forth in section 27 of chapter 332 of the 1978 statutes (amending and renumbering Rev. & Tax code § 2235 added by ch. 292 of the 1978 Stats.) authorizes the levying of ad valorem property taxes . . . equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 9commencing with Section 15000) of Division 1 . . . of the Education code." This legislative interpretation is not controlling but would be entitled great deference in construing the meaning of subdivision (b) of section 1 of article XIII A. (People v. Southern Pac. Co. (1930) 209 Cal. 578, 595; Amador Valley Joint Union High School Dist. V. St. 5d. of Equalization, supra, 22 Cal.3d 208, 246-247.)