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No. 80/83

May 16, 1980

TO COUNTY ASSESSORS:

ATTORNEY GENERAL'S OPINIONS RELATING
TO PROPERTY TAXATION

Here are summaries of several recent Attorney General opinions relating to property taxation for your information. Copies of the complete opinions may be obtained from the Attorney General's Opinion Section, 555 Capitol Mall, Suite 350, Sacramento, California 95814.

We have also included a summary of the appeal court decision in the case of County of Fresno v. Malmstrom, 1979, 94 Cal App. 3d 974, which excluded certain special assessments from the 1 percent tax limitation imposed by Article XIII A of the California Constitution. The full decision may be reviewed at your local county law library.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosures

ATTORNEY GENERAL'S OPINIONS

No. 79-809, October 31, 1979

Question: What effect does Article XIII A of the California Constitution have upon the ability of a county board of supervisors to levy a tax under the provisions of Military and Veterans Code Section 1262?

Conclusion: Article XIII A of the California Constitution, as implemented by Revenue and Taxation Code Section 2237, generally prohibits a county board of supervisors from levying a tax under the provisions of Military and Veterans Code Section 1262.

No. 79-724, November 1, 1979

Question: Is an in-lieu fee imposed by a county as a condition for issuing a building permit for the purpose of providing housing for low and moderate income persons a "special tax" within the meaning of Section 4 of Article XIII A of the California Constitution, thus requiring the approval of 2/3 of the qualified electors of the county?

Conclusion: An in-lieu fee imposed by a county as a condition for issuing a building permit for the purpose of providing housing for low and moderate income persons is a "special tax" and if imposed after July 1, 1978 requires approval of 2/3 of the qualified electors of the county.

No. 79-712, November 1, 1979

Question: Do the fees imposed by a local agency pursuant to Government Code Section 66484 of the Subdivision Map Act constitute "special taxes" within the meaning of Section 4 of Article XIII A of the California Constitution thus requiring approval of 2/3 of the qualified electors prior to imposition?

Conclusion: The fees imposed by a local agency pursuant to Government Code Section 66484 of the Subdivision Map Act do not constitute "special taxes" within the meaning of Section 4 of Article XIII A of the California Constitution since they are special assessments, and thus do not require approval of 2/3 of the qualified electors prior to imposition.

No. 79-623, October 4, 1979

Question: Does the exception to the property tax limitation provided by Section 1(b) of Article XIII A of the California Constitution apply to that portion of the territory of a

reorganized or annexing school district, the voters of which did not initially vote to authorize indebtedness incurred either by local school bonds or by state building aid apportionment loans?

Conclusion: The authorized indebtedness applies to the portion of the territory that is annexed or reorganized, the voters of which did not initially vote to authorize the indebtedness, provided such bonded indebtedness was assumed by the voters of such territory in a bonded indebtedness assumption election prior to July 1, 1978.

No. 79-508, November 9, 1979

Question: 1. (a) Can county assessors constitutionally compel the filing of detailed tax statements and welfare exemption forms from church related schools?

(b) Does the state or the institution bear the burden of demonstrating that the institution is exempt from taxation?

2. Can the State of California constitutionally require church related schools to file Form 199B (Exempt Organization Annual Information Statement)?

Conclusion: County assessors may constitutionally require church related schools to file factual statements on prescribed forms as a condition to allowing such schools a property tax exemption. An institution which claims tax exemption has the burden of demonstrating its exempt status. The state can require such institution to file Form 199B as a condition to allowing such schools an exemption from the state franchise tax.

No. 79-424, October 16, 1979

Question: May a fire protection district exceed the 1 percent limitation contained in Section 1 of Article XIII A of the California Constitution for the purpose of obtaining revenue to pay an indebtedness incurred pursuant to Section 13917.5 of the Health and Safety Code prior to July 1, 1978, if such action is necessary to avoid default of the obligation of the district's contract?

Conclusion: A fire protection district may not exceed the 1 percent limitation contained in Section 1 of Article XIII A of the California Constitution for the purpose of obtaining revenue to pay an indebtedness incurred pursuant to Section 13917.5 of the Health and Safety Code prior to July 1, 1978, whether or not such action is necessary to avoid default of the obligation of the district's contract.

APPEAL COURT DECISION

County of Fresno v. Malmstrom (Civ. No. 4719, Fifth Dist., July 12, 1979)

Summary: A county initiated assessment proceedings under Streets and Highway Code, Section 10000 et seq., to construct certain improvements, with the intention of issuing assessment bonds pursuant to Streets and Highway Code, Section 5000 et seq., to represent the assessments levied. The tax collector refused to serve a notice of assessment on the property owners involved or to collect the assessment, contending that the assessment would result in a levy of over 1 percent on the property in the district in contravention of California Constitution, Article XIII A, Section 1, Subdivision (a), and that it constituted a "special tax" not approved by a 2/3 vote of qualified electors of the district, as required by California Constitution, Article XIII A, Section 4.

The Court of Appeal issued a writ of mandate directing the tax collector to give notice of recording of assessments and to collect the assessments pursuant to Streets and Highway Code, Sections 10404 and 10603, for those improvements duly authorized by the county in the special assessment district. The court held the 1 percent maximum tax limitation imposed by California Constitution, Article XIII A on ad valorem taxes does not apply to special assessments levied pursuant to Streets and Highway Code, Sections 500 et seq. and 10000 et seq., the Improvement Act of 1911 and the Municipal Improvement Act of 1913. The court further held that, because special assessments pursuant to such acts are not within the definition of "special taxes" in California Constitution, Article XIII A, Section 4, the Constitution does not require the issuance of bonds to be approved by an election of 2/3 of the qualified electors of the district.