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OPINION	No. CV 78/123
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THE HONORABLE WILLIAM A. CRAVEN, SENATOR FOR THE 38TH DISTRICT, has requested an opinion on the following question:

Do the fees imposed under Government Code section 65974 constitute "special taxes" within the meaning of article XIIIA of the California Constitution?

The conclusion is:

The fees imposed under Government Code section 65974 constitute "special taxes" within the meaning of article XIIIA of the California Constitution.

ANALYSIS

In 1977 the Legislature enacted a statutory scheme designed to help alleviate the overcrowding of local school facilities caused by new residential developments. The Legislature found that under the traditional method of

financing such facilities, 1/ the necessary amount of funds was often unavailable within a reasonable period of time to prevent overcrowding. (Gov. Code, § 65970.) 2/ It thus authorized local governments to impose a new method of financing interim school facilities necessitated by new residential developments. (§ 65070, subd. (e).)

The key financing provision is section 65974, which states:

> "For the purpose of establishing an interim method of providing classroom facilities where overcrowding conditions exist as determined necessary pursuant to Section 65871 and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in-lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, provided that all of the following occur:
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> "(a) The general plan provides for the location of public schools.
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> "(b) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.
>
> "(c) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities.
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> "(d) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary or high school facilities and shall be

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1. Traditionally, the levy of an ad valorem property tax has funded new school construction in California. (See Ed. Code, §§ 15250, 15252, 15527, 15576, 15742, 16090, 16204, 16214, 39308, 39311.)

2. All unidentified statutory section references hereinafter refer to the Government Code.

reasonably related and limited to the need for schools caused by the development.

"(e) A finding is made by the city council or board of supervisors that the facilities to be constructed from such fees or the land to be dedicated, or both, is consistent with the general plan.

"The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by subdivision (b) of Section 65971.

"If the payment of fees is required, such payment shall be made at the time the building permit is issued.

"Only the payment of fees may be required in subdivisions containing fifty (50) parcels or less."

Consequently, to substitute for revenue traditionally obtained by the levy of property taxes, the Legislature has authorized under certain conditions "the dedication of land, the payment of fees in-lieu thereof, or a combination of both . . . as a condition to the approval of a residential development."

The question presented for analysis is whether the "fees" imposed by a city or county under section 65974 constitute "special taxes" as that term is used in section 4 of article XIIIA of the California Constitution. If so, a two-thirds approval vote by the electorate would be required for such imposition. Based upon an examination of the relevant principles of constitutional construction, we conclude that an approval vote would be required for imposing fees under the provisions of section 65974.

Article XIIIA was added by the initiative process to the Constitution on June 6, 1978, and deals with the general subject of property tax relief. Besides limiting real property taxation in sections 1 and 2, the amendment places a restriction on other state and local taxes in sections 3 and 4. As stated by the Supreme Court in Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 231:

". . . each of [the sections] is reasonably

interrelated and interdependent, forming an interlocking "package" deemed necessary by the initiative's framers to assure effective real property tax relief. . . . Moreover, since any tax savings resulting from the operation of sections 1 and 2 could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes."

Specifically, section 4 provides:

"Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

As noted by the Supreme Court, section 4 restricts the imposition of "special taxes" by mandating a two-thirds voter approval requirement. (Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d 208, 227-228, 242.) The amendment, however, fails to define the term "special taxes," and we must therefore construe the provision with regard to the section 65974 fees at issue herein.

The generally accepted rules for construing constitutional provisions may be summarized as follows: (1) a liberal, practical and common-sense approach should be taken, (2) the natural and ordinary meaning of the words used should be followed, (3) the apparent intent of the framers should be fulfilled and absurd results avoided, and (4) interpretations by the Legislature and administrative agencies and the ballot summary, arguments and analysis should be considered in determining the probable meaning of uncertain language. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d 208, 245-246.)

Applying the above rules, we preliminarily note that the character of a fee or charge is ascertained from its incidents, not its label. (See Ainsworth v. Bryant (1949) 34 Cal.2d 465, 473; Ingels v. Riley (1936) 5 Cal.2d 154, 159.)

As commonly defined, a "tax" is a compulsory exaction imposed by legislative power upon persons or property for the purpose of raising revenue to fund a governmental endeavor. (See Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes (1977) 73 Cal.App.3d 486, 495-496; Associated Home Builders, etc., Inc. v. City of Newark (1971) 18 Cal.App.3d 107, 109-111; Dare v. Lakeport City Council (1970) 12 Cal.App.3d 864, 868.) It may be levied to raise revenue for a general or specific purpose and can cover a wide or narrow range of persons, property, or activities.

We believe that the section 65974 fees are similar in nature to those found to be validly assessed under the taxation power of the City of Rancho Palos Verdes in Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes, supra, 73 Cal.App.3d 486. The city's ordinance imposed a "special" fee upon the construction of new dwelling units for the purpose of providing revenue to alleviate the additional burden upon the city's "public services, police and fire protection, public utilities, water, and treatment and disposal of sanitary sewage" caused by the occupancy of the new units. (Id., at p. 491, fn. 2.) The Court of Appeal ruled that the fee, despite certain regulatory characteristics, was an excise tax similar to a business license tax on developers. (Id., at pp. 492, 496-497.)

Due to the unequivocable revenue raising design of the statutory scheme in question, we conclude that the section 65974 fees may be characterized as excise taxes (charges or burdens exacted for the privilege of doing a particular activity) placed upon all persons who wish to have building permits approved for residential developments under the specified conditions. (See Associated Homebuilders v. City of Livermore (1961) 56 Cal.2d 847, 852; City of Glendale v. Trondsen (1957) 48 Cal.2d 93, 103-104; English Manor Corp. v. Vallejo Sanitation & Flood District (1974) 42 Cal.App.3d 996, 1002-1003; Dare v. Lakeport City Council, supra, 12 Cal.App.3d 864, 868; see also Weekes v. City of Oakland (1978) 21 Cal.3d 381, 395-396; Gillum v. Johnson (1936) 7 Cal.2d 744, 763.)

Having determined that the section 65974 fees are a form of "taxes," we must next consider whether they are "special" taxes within the purview of section 4 of article XIIIA of the Constitution. The fees constitute local levies for a local purpose and are not property taxes imposed upon an ad valorem basis. The ballot arguments of

the amendment's framers would support a broad concept of "special" taxes covering all local taxes levied, other than property taxes, to support local programs. (Cal. Voters Pamphlet (June 6, 1978), p. 58; see also Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d 208, 226.) Presumably, the fees will be passed on to the purchasers of the residential units who would normally help fund new school construction by paying an increased property tax rate.

Reading the various provisions of article XIIIA together to effectuate its purpose of property tax relief (Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d 208, 231), we believe, without setting the parameters of a "special" tax, that the section 65974 fees come within the constitutional restriction. 3/

Next, we must consider whether section 4 of the new constitutional article applies only to newly imposed "special taxes" or applies as well to increases in the rate or method of computation of previously established "special taxes." The language of section 4 differs from that of section 3 in this respect, since the latter specifically provides: "any changes in State taxes enacted for the purpose of increasing rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members. . . ." Normally, a change of express language between two related provisions indicates differing consequences were intended. (See In re Dees (1920) 50 Cal.App. 11, 19; McCarthy v. Board of Fire Comms. (1918) 37 Cal.App. 495, 498; 59 Ops.Cal.Atty.Gen. 109, 111 (1976).) We believe, however, that the overall intent of article XIIIA--to establish a comprehensive and controlled property tax relief program--can best be effectuated by requiring voter approval for increases in the rate or method of computation of previously established "special taxes" under section 4 and that the provisions may be liberally construed to carry out this apparent intent. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra, 22 Cal.3d 208, 231, 245.) The

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3. This opinion should not be construed as expressing any view on what other fees, assessments or taxes, if any, are "special taxes" within the meaning of article XIIIA.

absurd result of requiring voter approval for a newly imposed $1 fee but not so requiring for a $1000 increase to an existing $1 fee is thus avoided.

Finally, we observe that the section 65974 fees are imposed by a "city, county, or city and county"; it is not the prerogative of a school district to levy the fees, although the latter would be the ultimate beneficiary of the city's or county's decision. (See Timberidge Enterprises, Inc. v. City of Santa Rosa (1978) 86 Cal.App.3d 873, 877, 881, 886-887.) Since the fees are imposed by "[c]ities, counties and special districts" within the plain language of section 4 of the amendment, we need not decide whether a school district constitutes a "special district" for purposes of the constitutional provision. 4/

The conclusion to the question presented, therefore, is that the fees imposed pursuant to section 65974 constitute "special taxes" within the meaning of article XIIIA, section 4, of the Constitution. Accordingly, any fees newly imposed or changes in the rate or method of computation designed to increase revenue must be approved by a two-thirds vote of the electorate as specified in the amendment.

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4. "Special districts" are defined in Revenue and Taxation Code section 2215 as excluding "a school district or a community college district." Terms used in a constitutional amendment are normally construed in light of existing statutory definitions. (County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 850; Forster Shipbldg. Co. v. County of L.A. (1960) 54 Cal.2d 450, 455-456.)