



OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 82-803
	:	
of	:	
	:	<u>DECEMBER 2, 1982</u>
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
RODNEY O. LILYQUIST	:	
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THE HONORABLE JESSE M. UNRUH, TREASURER, STATE OF CALIFORNIA, has requested an opinion on the following question:

Does article XIII A of the California Constitution or Revenue and Taxation Code section 93 affect the authority of a California water district to levy assessments to pay the principal and interest on bonds issued to finance the construction of water and sewer system projects, where the bonds were approved by two-thirds of the voters at an election held after July 1, 1978?

CONCLUSION

Neither article XIII A of the California Constitution nor Revenue and Taxation Code section 93 affects the authority of a California water district to levy assessments to pay the principal and interest on bonds issued to finance the construction of water and sewer system projects, where the bonds were approved by two-thirds of the voters at an election held after July 1, 1978.

ANALYSIS

The California Water District Law (Wat. Code, §§ 34000-38501) 1/ authorizes the formation of public

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

Districts empowered to construct and operate water supply and distribution systems. (§ 35401.)

Water district bonds may be issued under the statutory scheme “for the purposes of acquiring or constructing works for irrigation, domestic, municipal, and industrial water supplies . . .” (§ 35951.) Assessments for the payment of the principal and interest on district bonds are made part of the general assessment for all district obligations (§ 37206) and are levied and collected along with general county taxes (§ 37208).

The question presented for analysis is whether assessments made under the California Water District Law to pay the principal and interest on bonds issued to finance the construction of water system projects, where the bonds were approved by two-thirds of the voters at an election held after July 1, 1978, would be affected by article XIII A of the California Constitution or Revenue and Taxation code section 93. We conclude that neither the constitutional nor statutory provision would be applicable to such assessments.

Section 1 of article XIII A of the Constitution states:

“(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one-percent (1-%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

“(b) 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.” (Italics added.)²

Section 4 of article XIII A 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.” (Italics added.)

Turning to the critical language of article XIII A, section 1, we note that special assessments are specifically not affected by the one percent limitation of the section where they are “to pay the interest and redemption charges on any indebtedness approved by the voters prior to” July 1, 1978. The obvious implication of such wording is that indebtedness approved by the voters after July 1, 1978 (as in the question presented) would be subject to the one- percent limitation insofar as special assessments were used for funding.

The “special assessments” wording of article XIII A, section 1, subdivision (b), however, has been “eliminated” by judicial interpretation. (Solvang Mun. Improvement Dist. V. Board of Supervisors (1980) 112 Cal.App.3d 545, 555-557; County of Fresno v. Malmstrom (1979) 94 Cal.App.3d 974, 979-982.) In the Solvang case, the Court of Appeal distinguished between “special assessments” and “taxes” and concluded,

“We view the phrase special assessments as an aberration which inadvertently crept into section 1. We . . . identify the reference to special

² “[T]he time this section becomes effective” was July 1, 1978 (see Cal. Const., art. XIII A, § 5), and hence the use of said date in the question presented.

assessments in subdivision (b) as surplusage, i.e., as an exception to a nonexistent limitation, and to infer its insertion by the drafter of the amendment out of an abundance of caution.” (112 Cal. App.3d at 556.)

Solvang presents the same factual situation as that underlying the question herein. Special assessments were to be levied within a parking district to retire bonds issued to finance the acquisition of parking lots. (112 Cal. App.3d at 549.) Here, we have assessments to be levied within a water district to retire bonds issued to finance the construction of water and sewer system projects.

In 64 Ops. Cal. Atty. Gen. 790, 791-795 (1981), we examined in detail the assessments levied by water districts under the California Water District Law and determined that they were special assessments rather than taxes covered by article XIII A or Revenue and Taxation Code section 93. A special assessment is not an “ad valorem tax on real property” (Cal. Const., art. XIII A, § 1, subd. (a)), does not come within the phrase “special taxes” (Cal. const., art. XIII A, § 4), and is not an “ad valorem property tax” (Rev. & Tax. Code. § 93). (See Solvang Mun. Improvement Dist. V. Board of Supervisors, supra, 112 Cal. App.3d 545, 556-557; County of Fresno v. Malmstrom, supra, 94 Cal. App.3d 974, 982-986; 64 Ops. Cal. Atty. Gen. 790, 795 (1981).)

It makes no difference for purposes of these constitutional and statutory provisions whether voters approve the underlying indebtedness, as long as the indebtedness is financed by special assessments. Indeed, the above-cited authorities make clear that voter approval is not required under these specific constitutional and statutory provisions in such cases.³

In answer to the question presented, therefore, we conclude that neither article XIII A of the California Constitution nor Revenue and Taxation Code section 93 affects the authority of a California Water District to levy assessments to pay the principal and interest on bonds issued to finance the construction of water and sewer system projects, where the bonds were approved by two-thirds of the voters at an election held after July 1, 1978.

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³ The Water Code requires a two-thirds vote for issuance of the bonds in question. (§ 35155, subd. (a).)