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GEORGE DEUKMEJIAN
Attorney General

OPINION	
of	No. 79-424
GEORGE DEUKMEJIAN Attorney General	OCTOBER 16, 1979
ANTHONY S. DaVIGO Deputy Attorney General	

THE HONORABLE WILLIAM CAMPBELL, STATE SENATOR, THIRTY-THIRD DISTRICT, has requested an opinion on the following question:

May a fire protection district exceed the one 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 one 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.

ANALYSIS

We are advised that prior to the adoption of article XIII A of the California Constitution (hereinafter, "article XIII A") by the voters on June 6, 1978 (Proposition 13, effective July 1, 1978), several special fire districts had incurred an indebtedness to purchase new equipment or to construct a new fire station. Upon the adoption of

article XIII A the reduced level of funds available to these special fire districts has placed them in a critical bind in meeting their financial obligations.

Article XIII A provides as follows:

"SECTION 1. (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.

"SEC. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term 'newly constructed' shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.

"(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

"SEC. 3. From and after the effective date of this article, any changes in State

taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

"SEC. 4. 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.

"SEC. 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

"SEC. 6. If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect."

The question presented is whether a fire protection district may exceed the one percent limitation contained in section 1 of article XIII A 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. Health and Safety Code section 13917.5 provides as follows:

"The district may acquire all necessary and proper lands and facilities, or any portion thereof, or equipment, by means of a plan to borrow money or by purchase on contract. The amount of indebtedness to be incurred shall not exceed an amount equal to three times the actual tax income

for the fiscal year preceding the year in which the indebtedness is incurred, and all such indebtedness which is incurred on or after the effective date of this act shall be repaid in approximately equal annual installments during a period not to exceed 10 years from the date on which it is incurred and shall bear interest at a rate not exceeding 8 percent per annum payable annually or semiannually or in part annually and in part semiannually. Each such indebtedness shall be authorized by a resolution adopted by the affirmative votes of at least four-fifths of the members of the district board if the board has five members or more, and by the affirmative votes of at least two-thirds of the members if the board has less than five members, and shall be evidenced by a promissory note or contract signed by at least four-fifths of the members of the district board, if the board has five members or more, or signed by at least two-thirds of the members if the board has less than five members. At the time of making the general tax levy after incurring each such indebtedness and annually thereafter until such indebtedness is paid or until there is a sum in the treasury set apart for that purpose sufficient to meet all payments of principal and interest on such indebtedness as they become due, a tax shall be levied and collected sufficient to pay the interest on such indebtedness and such part of the principal as will become due before the proceeds of a tax levied at the next general tax levy will be available. The indebtedness authorized to be incurred by this section shall be in addition to, and the provisions of this section shall not apply to, any bonded indebtedness authorized by vote of the electors."

While an obligation incurred in accordance with section 13917.5 of the Health and Safety Code and related provisions is valid and binding, it is clear that such indebtedness was not approved by the voters within the meaning of section 1, subdivision (b) of article XIII A.

Article 1, section 10, clause 1 of the Constitution of the United States provides inter alia that no state shall pass any law impairing the obligation of

contracts. 1/ The federal contract clause applies only to a substantial impairment of a contractual relationship. (Allied Structural Steel Co. v. Spannaus (1978) 438 U.S. 234, 244; Amador Valley Joint Union High School District v. State Bd. of Equalization (1978) 22 Cal.3d 208, 241.) For the reasons hereinbelow set forth, we conclude that article XIII A does not constitute such a substantial impairment of the contracts in question.

The constitutional prohibition against the impairment of contracts must be harmonized with the authority of a state to safeguard the vital interests of its people. (Home Building & Loan Assn. v. Blaisdell (1934) 290 U.S. 398, 434-435; United States Trust Co. v. New Jersey (1977) 431 U.S. 1, 15.) A state retains the sovereign right to protect the general welfare of the people, and the wide discretion on the part of the Legislature in determining what is and what is not necessary must be respected. (El Paso v. Simmons (1965) 379 U.S. 497, 508-509; United States Trust Co. v. New Jersey, supra, at p. 16.) Thus, it is not every modification of a contractual promise that impairs the obligation of contract. (El Paso v. Simmons, supra, at pp. 506-507.) As stated in United States Trust Co. v. New Jersey, supra, at p. 21:

> "Although the Contract Clause appears literally to proscribe 'any' impairment, this Court observed in Blaisdell that 'the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.' 290 U.S., at 428. Thus, a finding that there has been a technical impairment is merely a preliminary step in resolving the more difficult question whether that impairment is permitted under the Constitution. In the instant case, as in Blaisdell, we must attempt to reconcile the strictures of the Contract Clause with the 'essential attributes of sovereign power,' id., at 435, necessarily reserved by the States to safeguard the welfare of their citizens. Id., at 434-440."

Although the contract clause limits the power of the states to modify their own contracts as well as to

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1. The concomitant provision of the California Constitution is found in article 1, section 9.

regulate those between private parties, it does not prohibit the states from repealing or amending statutes generally, or from enacting legislation with retroactive effects. (Id., at p. 17.)

The United States Trust Co. decision involved a legislative repeal of an express covenant which had assured bondholders that monies pledged as security for repayment would not be used to subsidize rail passenger transportation. The court stated in part (id., at pp. 23-26):

> "When a State impairs the obligation of its own contract, the reserved-powers doctrine has a different basis. The initial inquiry concerns the ability of the State to enter into an agreement that limits its power to act in the future. As early as Fletcher v. Peck, the Court considered the argument that 'one legislature cannot abridge the powers of a succeeding legislature.' 6 Cranch, at 135. It is often stated that 'the legislature cannot bargain away the police power of a State.' Stone v. Mississippi, 101 U.S. 814, 817 (1880). This doctrine requires a determination of the State's power to create irrevocable contract rights in the first place, rather than an inquiry into the purpose or reasonableness of the subsequent impairment. In short, the Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty.
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> "In deciding whether a State's contract is invalid ab initio under the reserved-powers doctrine, earlier decisions relied on distinctions among the various powers of the State. Thus, the police power and the power of eminent domain were among those that could not be 'contracted away,' but the State could bind itself in the future exercise of the taxing and spending powers. Such formalistic distinctions perhaps cannot be dispositive, but they contain an important element of truth. Whatever the propriety of a State's binding itself to a future course of conduct in other contexts, the power to enter into effective financial contracts cannot be questioned. Any financial obligation could be regarded in

theory as a relinquishment of the State's spending power, since money spent to repay debts is not available for other purposes. Similarly, the taxing power may have to be exercised if debts are to be repaid. Notwithstanding these effects, the Court has regularly held that the States are bound by their debt contracts.

"The instant case involves a financial obligation and thus as a threshold matter may not be said automatically to fall within the reserved powers that cannot be contracted away. Not every security provision, however, is necessarily financial. For example, a revenue bond might be secured by the State's promise to continue operating the facility in question; yet such a promise surely could not validly be construed to bind the State never to close the facility for health or safety reasons. The security provision at issue here, however, is different: The States promised that revenues and reserves securing the bonds would not be depleted by the Port Authority's operation of deficit-producing passenger railroads beyond the level of 'permitted deficits.' Such a promise is purely financial and thus not necessarily a compromise of the State's reserved powers.

"Of course, to say that the financial restrictions of the 1962 covenant were valid when adopted does not finally resolve this case. The Contract Clause is not an absolute bar to subsequent modification of a State's own financial obligations. As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, expecially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important

public purpose, the Contract Clause would provide no protection at all." (Fns. omitted.) (Emphasis added.)

The repeal of the 1962 statutory covenant was held an unconstitutional impairment of contract because it eliminated an important security provision for the protection of the bondholders and was neither reasonable nor necessary to serve an important state interest. The court held that a less drastic modification of the bondholders' security rights would have sufficed, that alternative means of achieving the state's goals could have been adopted, and that changed circumstances did not justify the impairment because the need for mass transit in the New York metropolitan area had been known by the state as early as 1922.

Following the decision in United States Trust Co., the California Supreme Court held that an attempt by the Legislature to eliminate cost of living wage or salary increases of local agency employees in excess of the increase for state employees was an invalid impairment of the obligation of the contracts, agreements, or memoranda of understanding that were previously in effect between the local public agencies and the employees. (Sonoma County Org. of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296.)

Unlike the cases above cited, article XIII A neither repealed nor modified the terms of the contracts in question. Nor has it resulted in a substantial depreciation of the security for the payment of such contractual obligations. First, as noted in Amador Valley Joint Union High School District v. State Bd. of Equalization, supra, 22 Cal.3d at p. 226, article XIII A neither destroys nor annuls the taxing power of local agencies. Although revenues derived from real property taxes may well be substantially reduced by reason of the new tax rate and assessment restrictions, local agencies retain full authority to impose "special taxes" (other than certain real property taxes) if approved by a two-thirds vote of the qualified electors. (Cf. Stats. 1979, ch. 397.) Nor does article XIII A purport to direct or control local budgetary decisions or program or service priorities. (Id.) Thus, article XIII A is a qualified limitation upon one particular source of revenue.

More importantly, the contracts in question contain no express covenant securing the payment of obligations from

any given source or warranting that no substantial changes would occur in the then existing system of taxation. Nor may any such promise be implied from the statutory scheme of taxation in effect at the time of the contracts. While the parties to a municipal contract may rely on the continued existence of adequate statutory remedies for enforcing their agreement (cf. United States Trust Co. v. New Jersey, supra, 431 U.S. at pp. 19-20, n. 17, pp. 26-27, n. 26), it cannot be said that a system of taxation for the general obligations of a contracting local agency constitutes a contract remedy in which a property interest or legitimate expectation may be claimed. Even with regard to statutes governing contract remedies, the parties are unlikely to expect that state law will remain entirely static. (Id., at n. 17; Amador Valley Joint Union High School District v. State Bd. of Equalization, supra, 22 Cal.3d at p. 241.) In any event, it may be noted that even prior to the adoption of article XIII A, the Legislature was expressly authorized to "provide maximum property tax rates and bonding limits for local government." (Cal. Const., art. XIII, § 20.) It cannot be reasonably asserted therefore that the tax rates prevailing at the time of the subject contracts were impliedly guaranteed or that they provided any measure of security for the payment of contractual obligations.

In the absence of any express or implied covenant it cannot be said with respect to the contracts in question that the state has a purely financial obligation within the purview of United States Trust Co. v. New Jersey, supra, 431 U.S. 1. Moreover, although any such financial obligation "may not be said automatically to fall within the reserved powers that cannot be contracted away" (id., at pp. 24-25), we think that the adoption of article XIII A falls well within the necessary residuum of the state's power to enact broad and comprehensive tax reform legislation for the protection of basic societal interests. The power to amend the general tax laws according to prevailing economic conditions and for the general welfare is an essential attribute of sovereignty.

Finally, it cannot be assumed that no new revenue sources will be found or legislatively enacted in connection with the lawful obligations of special districts. (See Gov. Code, §§ 16270-16279.) It cannot be determined, therefore, that article XIII A has precluded the payment of any debt.

It is concluded that a fire protection district may not exceed the one percent limitation contained in

section 1 of article XIII A 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.

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