OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION

of

EVELLE J. YOUNGER
Attorney General
MARC B. MIHALY
Deputy Attorney General

No. CV 78/90

AUGUST 18, 1978

THE HONORABLE RONALD B. ROBIE, DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES, has requested an opinion of this office on the following question:

Do property taxes levied by local water agencies to provide for payments due to the state under the State Water Project water supply contracts fall within section 1(b) of article XIIIA of the state Constitution?

The conclusion is: Property taxes levied by local water districts necessary to provide for payments to the state under the state water supply contracts fall within section 1(b) of article XIIIA of the California Constitution.

ANALYSIS

1. Introduction

The question concerns the impact of the recently approved Proposition 13 1/ on the local taxation and rate structure supporting the State Water Project. The State Water Project has been financed in part by state bonds issued pursuant to the Burns-Porter Act. 2/ The state pays the principal and interest on these bonds from revenues derived from

---

1. Proposition 13, now article XIIIA of the California Constitution, was approved by the voters on June 6, 1978. It will be referred to as article XIIIA herein.

2. Water Code sections 12930-12944. Statutes 1959, chapter 241, page 5809. The official title of the act is the California Water Resources Development Bond Act. (Wat. Code § 12930.) However, it is commonly called the Burns-Porter Act and will be referred to by that name herein.

contracts for the sale of water and power to 31 local water districts. (Wat. Code § 12937.) Until now these districts have met their contractual obligations to the state in significant part from property taxes. If pursuant to article XIIIA these taxes are reduced precipitously, some local districts may default, forcing the state to draw on reserves and the general fund for bond payments with possible adverse effects on the state's credit. Therefore, the Director of the Department of Water Resources has asked this office to clarify the effect of article XIIIA on the taxing power of these local contractors.

Section 1(a) of article XIIIA of the California Constitution limits ad valorem taxes to one percent of the "full cash value" of property. 3/ "Full cash value" is defined as the valuation of real property as shown on the 1975-1976 tax roll with certain adjustments to take into account new construction, change in ownership, and inflation. (Art. XIIIA, § 2(a).) 4/ An exception to the one percent tax limit is provided for in section 1(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."

The question addressed here is whether taxes levied by local water contractors to generate revenues for the payment of

---

3. Section 1(a) of article XIIIA states:

> "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."

4. Section 2(a) of article XIIIA reads:

> "The full cash value means the County Assessors 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 tax levels may be reassessed to reflect that valuation."

Burns-Porter bonds fall within the limitation of section 1(a) or the exception of section 1(b). The response turns in part on the construction of article XIIIA and in part on the Burns-Porter Act itself.

The Burns-Porter Act was enacted by the Legislature in 1959 and ratified by the voters on November 8, 1960. The object of the Act is "to provide funds to assist in the construction of the State Water Resources Development System . . . ." 5/ (Wat. Code § 12931.) To that end the

---

5. The "State Water Resources Development System" is defined in the Burns-Porter Act to include the "State Water Facilities" and "such additional facilities as may now or hereafter be authorized by the Legislature as part of (1) the Central Valley Project or (2) The California Water Plan, and including other additional facilities as the department deems necessary and desirable to meet local needs . . . ." (Wat. Code § 12931.)

It is clear from the definition of these three components--"State Water Facilities," "Central Valley Project," and "California Water Plan"--that the term "State Water Resources Development System" embraces nearly all state and federal water facilities in California. The term "State Water Facilities" is defined to include the Oroville and upstream reservoirs, an aqueduct system from the Sacramento-San Joaquin Delta to termini in the North and South San Francisco Bay area, the San Joaquin Valley, the Central Coast, and Southern California; facilities in the Sacramento-San Joaquin Delta for water conservation, Delta water supply, transfer of water across the Delta, flood and salinity control; San Joaquin Valley drainage facilities; power generation and transmission facilities; and Davis-Grunsky Act water development projects (see Wat. Code § 12880 et seq.). (Wat. Code §§ 12931, 12934(d)(1)-(7).)

The Department of Water Resources has adopted the working term "State Water Project" to describe these facilities and that term will be used herein. (California Department of Water Resources, Bulletin No. 200, "California State Water Project," Nov. 1974, Vol. I, p. 142.) The Central Valley Project is defined in the Central Valley Project Act, Water Code section 11100 et seq. It includes Shasta Dam and the other facilities built by the United States as the federal Central Valley Project as well as Oroville Dam and the aqueduct system to the Bay Area and Central and Southern California. The state component of the Central Valley Project authorizes many of the same facilities authorized as part of the State Water Project. (Wat. Code §§ 11200-11295.)

(Continued)

Act authorizes the issuance of $1,750,000,000 in state general obligation bonds and appropriates their proceeds. 6/ (Wat. Code §§ 12935, 12938.) As of June 1978, $1,570,000,000 principal amount of these bonds has been issued, and $1,540,900,000 is still outstanding.

Although the Burns-Porter bonds are general obligation bonds backed by the full faith and credit of the state, revenue is anticipated from the sale of water and power, 7/ and that revenue is pledged for payment of the principal and interest of the bonds. (Wat. Code §§ 12936, 12937.) In order to generate the revenue, the Department of Water Resources is directed to enter into contracts for the sale, delivery or use of water and power. To date, the Department of Water Resources has entered into 31 such contracts with local water districts. 8/

The California Water Plan is broader in scope. It is a comprehensive master plan for present and future water control, protection, conservation, distribution and utilization in the state. It includes the entire Water Project and federal and local developments as well. (Wat. Code § 10004; California Department of Water Resources, Bulletin No. 3, "The California Water Plan," May 1957.)

6. Although the system is defined by the Burns-Porter Act to include all the elements described in footnote 5, the $1.75 billion in bonds are actually intended specifically to finance the elements of the State Water Project. (Metropolitan Water District v. Marquardt (1963) 59 Cal.2d 159, 180-181, 36 Ops.Cal.Atty.Gen. 160, 164-165 (1960).)

7. The value of the power is included in the price charged for water. Revenues from the sale of a portion of this power are pledged to payment of three series of revenue bonds issued pursuant to the Central Valley Project Act. (Wat. Code § 11,100 et seq.) The California Supreme Court has held that the specific pledge of revenues to these projects--namely Oroville, Devil's Canyon and Castaic power plants--does not violate the general pledge of project revenues to payment of the general obligation bonds in the Burns-Porter Act. (Warne v. Harkness (1963) 60 Cal.2d 579.) This opinion does not consider issues relating to these revenue bonds.

8. Three contractors are entitled to water from the upper Feather River area above Oroville, two from the North Bay Aqueduct, and three from the South Bay Aqueduct. The others take water or are entitled to take water from the California Aqueduct, including eight in the San Joaquin Valley area, two in the central coastal area and thirteen in the Southern California area. For the complete list, see California Department of Water Resources, Bulletin 200, supra, page 22.

These 31 contractors make regular payments to the state in return for participation in the system supported by the Burns-Porter Bonds. Some districts, but not all, take water from the state and sell it to local consumers. Some take water, but use it to recharge ground water rather than selling it directly to consumers. Others are participating in the project in anticipation of future growth but take no water at present. However, whether or not a district takes or sells water, it must make payments according to its maximum annual entitlement and the portions of the State Water Project required to supply that entitlement. For example, payments are under $15 per acre-foot of entitlement at the Sacramento Delta, in the $30-45 range for those districts utilizing water transported through the North and South Bay and California Aqueducts and over $100 for those whose water must be pumped over the Tehachapi Mountains.

Many of the local water districts rely in substantial part on property taxes to make their payments to the state, especially those that sell or take no water. The question addressed here is whether a part or all of these local property taxes fall within the section 1(b) exemption from the one percent limit in article XIIIA. This in turn depends upon whether the scheme described above involves an indebtedness "approved by the voters," and whether that indebtedness is sufficiently linked to the ad valorem taxes levied by local districts.

2. The Requirement of Voter Approval

The exemption created by section 1(b) of article XIIIA applies only to indebtedness "approved by the voters" prior to July 1, 1978. Even though the principal and interest on the Burns-Porter bonds is paid from revenue generated from the sale of water, the bonds are general obligation in nature. Article XVI, section 1 of the California State Constitution requires a vote of the people to authorize the sale of general obligation bonds. Therefore the Burns-Porter Act was put to a vote, and adopted by the people on November 8, 1960. Thus, there is no question that the obligation to pay principal and interest on the Burns-Porter bonds is an obligation that was approved by the voters for purposes of section 1(b) of article XIIIA of the California Constitution.

3. The Connection Between the Water District Taxpayer and the Burns-Porter Indebtedness

The section 1(b) exemption applies only to taxes levied "to pay" the voter approved indebtedness. Thus, in addition to establishing that the indebtedness was voter

approved, a nexus must be found between that indebtedness and the local taxes in question. This is relatively easy where the same entity levies the taxes and pays the obligation. Here, however, the local water district levies the taxes and the state pays the obligation. This two-tiered aspect of the Burns-Porter Act does not mean that no local taxes fall within the section 1(b) exception; the purpose of section 1(b) is to avoid retroactive cancellation of voter approved obligations irrespective of whether the same entity taxes and pays. However, section 1(b) must not be interpreted to exempt taxes that do not actually flow to the voter approved obligation. Since the danger of such over-inclusivity is great in the two-tiered situation, tax dollars paid to the water district must be traceable to the voter approved obligation. Only those taxes which the water districts actually use to make payments to the state and the state actually spends to meet the voter approved obligation are exempt under section 1(b). In order to determine if such a nexus exists we examine the end of the chain first: Do contract payments made to the state flow directly and uniquely to payment of the Burns-Porter indebtedness? Then we analyze the flow from the taxpayer to the contract payment: What part of the property taxes can be traced to contract payment?

It is clear from the structure of the Burns-Porter Act that funds the state receives from the water districts are all used "to pay" the voter approved indebtedness. The Act appropriates from the general fund the sum annually as will be necessary to pay the principal and interest on the Burns-Porter bonds. (Wat. Code § 12937(a).) However, the Act also requires that such monies expended from the general fund be replaced dollar for dollar by revenues derived from the water system. Water Code section 12937(b) provides that all revenues received from the sale of water and power constitute a trust fund. The proceeds of that fund are pledged first to:

> "1. The payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof.
>
> "2. The annual payment of the principal of and interest on the bonds issued pursuant to this chapter."

All revenues generated thus far have gone to these two purposes.9/

---

9. California Department of Water Resources, Bulletin No. 132-76, June 1976, pages 74-75.

The use of funds for these ends is payment of "an indebtedness approved by the voters" for purposes of section 1(b). The Burns-Porter bonds certainly constitute an "indebtedness" and, as discussed above, they were approved by the voters in 1960. The first priority--operation of the system itself--is part of that obligation. Operation of the system is essential to the generation of the revenue, and operational expenses are paid literally in order "to pay" the bond indebtedness. Operation of the system with the concomitant revenues is declared to be part of the bondholders' security. (Wat. Code § 12937(b).) Revenue supported bonds often commit a portion of revenues to operation of the revenue-generating activity, and commitment of funds for that purpose constitutes part of the obligation.

Any doubt as to the intent that all revenues received from water contracts be utilized to discharge the obligation to Burns-Porter bondholders is dispelled by the language of section 12937(b) which states in relevant part:

> "All such revenues shall constitute a trust fund and are hereby pledged for the uses and purposes above set forth and such pledge shall inure to the direct benefit of the owners and holders of all general obligation bonds issued under this chapter. The department, subject to such terms and conditions as may be prescribed by the Legislature, shall enter into contracts for the sale, delivery or use of water or power, or for other services and facilities, made available by the State Water Resources Development System with public or private corporations, entities, or individuals . . . . [E]ach such contract shall recite (i) that it is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under this chapter, and (ii) that the income and revenues derived from such contracts are pledged to the purposes and in the priority herein set forth. Such pledge of revenues as herein set forth is hereby declared to be and shall constitute an essential term of this chapter and upon its ratification by the people of the State of California shall be binding upon the State so long as any general obligation bonds authorized hereunder are outstanding and unpaid. Such income and revenues, subject to the priorities herein set forth, shall constitute additional security for all of the bonds authorized and issued hereunder irrespective of the

> date of their issuance and sale and so long as any of the bonds authorized and issued hereunder, or the interest thereon, are unpaid, such income and revenues shall not be used for any other purpose. The bonds authorized hereunder shall be equally secured by a lien upon all income and revenues derived from the State Water Resources Development System without priority for number, amount, date of bonds, of sale, of execution, or of delivery pursuant to this chapter."

Thus, payments received by the state from water contractors are irrevocably pledged to the purpose of running the system and paying the bonds. 10/

This is to be distinguished from voter approval of a simple general obligation bond issue for some water project where the issuer is free to dispose of the bond proceeds as it wishes, sell water or not sell it, and use any revenues at its total discretion. The Department of Water Resources is not merely selling water at its discretion; it is selling entitlements to the total output of the system pursuant to the detailed mandate of the Burns-Porter Act. The department is directed to enter into contracts and those contracts are designed to make local districts participants in the system. Whether or not it takes any water in a given year, each contractor pays a capital charge and a Delta water charge which reflects its share of the Oroville and upstream reservoirs from which all system users benefit. These payments are an essential, nonseverable part of the Burns-Porter Act as presented to the voters.

---

10. After operating costs and bond service, section 12937(b) pledges revenue to repayment of the California Water Fund and further construction of the State Water Resources Development System. No funds have been expended for those purposes, and we need not reach the question of whether commitment of revenue for those purposes would be payment of "an indebtedness approved by the voters." However, we note that the Burns-Porter Act as approved by the voters, clearly commits the system to repayment of funds advanced from the California Water Fund. Fine questions of whether the state may be indebted to itself aside, section 1(b) would probably embrace such payments. The commitment of excess funds to further construction is more problematic but such an occurence is not projected to occur until the end of the century. (California Department of Water Resources, Bulletin 132-76, supra, pp. 74-75.)

When 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. The largest contract, the Metropolitan Water District contract, was signed four days prior to the voter approval of the Burns-Porter Act, and the California Supreme Court has held that the voters were aware of the contract when they approved the Burns-Porter Act. (Metropolitan Water District v. Marquardt, supra, 59 Cal.3d 159, 202.) In sum, the voters did not simply approve the $1.75 billion bond indebtedness; they also approved a contractual scheme to support the system and pay the indebtedness. Therefore dollars paid into that system are, for purposes of section 1(b), destined "to pay" an "indebtedness approved by the voters." 11/

Now that we have established that contract payments made to the state flow undiverted to the voter-approved indebtedness, more difficult problems arise: What portion of the property taxes levied by a local water district may be allocated to those payments to the state? 12/ Assume, for

---

11. For purposes of this opinion we assume that the local contract itself was not approved by the local voters and thus that it is necessary to trace the state's use of local contract payments. In some cases the local district contract was approved by the district's voters. (See, e.g., Kern County Water Agency Act, Stats. 1961, ch. 1003, p. 2652, § 6.3 and the ensuing election on Nov. 12, 1963.) In those cases it may not be necessary to trace the state's use of the funds and the analysis may be easier; however, we do not express any opinion as to the impact of such voter approval.

12. At the outset we note that our analysis is concerned only with the portion of a local district's budget which goes to make payments to the state under water supply contracts. Taxes used to support other district expenditures are not discussed. Assume, for example, a water district that derives effectively all its revenue from property taxes, and spends 80 percent of that revenue in state water contract payments, 10 percent for administrative and operational costs and 10 percent to pay principal and interest on a local bond issue of its own to finance water distribution facilities. This opinion deals only with the 80 percent that flows to the state. The local bond payments may be an "indebtedness approved by the voters" and the administrative costs are probably not; but that, in any case, is beyond the scope of this opinion.

example, that a district spends 50 percent of its funds on water contract payments to the state and 50 percent for other expenses which are not voter-approved. It derives 30 percent of its income from taxes and 70 percent from water charges. Assume further that for the sake of simplicity the total district budget is $100. How is one to assign funds from the revenue side to the expenditure side? It may be argued that the district should be permitted to assign arbitrarily the full $30 of tax revenue to the $50 state contract payment in order to shelter the maximum amount of taxes from the one percent limitation. Another approach would be to allocate the funds from the sale of water to the state payment in which case none of the property tax revenue would be sheltered. Or, some method of simple apportionment may be appropriate.

This example illustrates further complexities: May this $100 district increase its reliance on taxes from $30 up to the full $50 amount of the payment to the state in order to take full "advantage" of the section 1(b) exception, and can it utilize this shelter to decrease its charge for water? Finally, should past practice be a guide especially in those districts which have segregated their funds so it is possible to trace the state contract payment to a given source of revenue, 13/ or in light of the overall intent of article XIIIA should districts be required to decrease reliance on property taxes and increase water charges where possible?

Ultimately, the formulation of a water and tax policy from amongst these options is a matter for the Legislature. However, in the interim existing legislation provides general guidance as to the extent to which water districts may rely on property taxes to pay the state. Certain general directions emerge from the Burns-Porter Act interpreted in light of article XIIIA itself and its early legislative implementation by the Legislature. These directions may serve as guidance for districts and county auditors. The Burns-Porter Act expresses a preference for water charges over taxation in that it provides that the state system would be supported primarily by the sale of water and power. It directs the Department of Water Resources to enter into contracts to sell the water and power and it pledges the revenues from those contracts to the operation of the system

---

13. The law would seem to require such segregation. The Burns-Porter Act provides that State Water System and the water contracts are to be administered according to the terms of the Central Valley Project Act. (Wat. Code § 12931.) That Act in turn requires segregation of funds. (Wat. Code § 11654.)

and the service of the bonded debt. (Wat. Code § 12937.) The Legislature and the voters clearly contemplated an essentially closed, self-supporting system. The Act even provides that revenues from water and power sales would be sufficient to reimburse the California Water Fund for amounts that had been expended for the construction of the State Water Resources Development System. 14/ (Wat. Code § 12937(b)(3).) The ballot argument 15/ in favor of the Burns-Porter Act echoed this preference:

> "The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself." (Voters Pamphlet, Nov. 8, 1960, p. 3; emphasis in original.)

The Burns-Porter Act and water contracts under that act do contemplate that local taxes may be required to pay the obligation to the state, and authorize such taxation. However, that authority is expressly limited to situations where it is necessary. The Burns-Porter Act incorporates by reference the Central Valley Project Act 16/ and provides that facilities supported by Burns-Porter bonds are to be "acquired, constructed, operated, and maintained pursuant to the provisions of the Code governing the Central Valley Project . . . ." (Wat. Code § 12931; Warne v. Harkness (1963) 60 Cal.2d 579, 583-585.) The Central Valley Project Act authorizes local taxation, but only where necessary:

---

14. The California Water Fund was created in 1959 and revenues received from the state from Long Beach tideland revenues are designated for deposit in the fund, and appropriated for project construction. (Wat. Code § 12900 et seq.) Though larger amounts were appropriated in the early years of the construction of the State Water Project, the appropriation is currently limited to $25 million annually. (Pub. Resources Code § 6217.)

15. "California decisions have long recognized the propriety of resorting to . . . election brochure arguments as an aid in construing . . . constitutional amendments adopted pursuant to a vote of the people." (White v. Davis (1975) 13 Cal.3d 757, 775, n. 11.)

16. The Central Valley Project Act was approved by the Legislature in 1933 and subsequently approved by the voters in special election pursuant to the referendum provisions of the California Constitution. (Wat. Code § 11100 et seq.)

"The governing body [of any public agency that has contracted with the State] shall, whenever necessary, levy upon all property in the State agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under the contract then due or to become due within the current fiscal year or within the following fiscal year before the time when money will be available from the next general tax levy." (Wat. Code § 11652; emphasis added.)

Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient:

"If in any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year." (Metropolitan Water District of Southern California contract, article 34(a); emphasis added.)

This preference for water charges rather than taxation must now be construed more strictly in light of article XIIIA and its early legislative implementation. The obvious intent of article XIIIA is to reduce dependence on property taxes. (See, e.g., Argument in Favor of Proposition 13, California Voters Pamphlet, June 6, 1978, pp. 58-59.) Such a reduction will be accomplished by decreasing the cost of government services and shifting the remaining costs away from property taxpayers in general onto the specific user. Urgency legislation allocating $125 million to special districts reflects that philosophy:

"The Legislature finds and declares that many special districts have the ability to raise revenue through user charges and fees and that their ability to raise revenue directly from the property tax for district operations has been eliminated by Article XIIIA of the California Constitution. It is the intent of the Legislature that such districts rely on user fees and charges for raising revenue due to the lack of the availability of property tax revenues after the 1978-79 fiscal year. Such districts are encouraged to begin the transition to user fees and charges during the 1978-79 fiscal year." (Stats. 1978, ch. 292, p. 765 [Gov. Code § 16270].)

The Legislature provided further that counties were to carry out that preference in distributing funds to the special districts:

> "Districts which have relied most heavily upon revenues derived from property taxation to finance the provision of a service shall be given priority over those districts which are less dependent upon revenues derived from property taxation." (Stats. 1978, ch. 292, p. 797 [Gov. Code § 16275(b)(2)].)

Thus, the Burns-Porter Act, interpreted in light of article XIIIA, requires local districts to make state water contract payments from charges rather than taxes wherever possible. It would be an anomalous result if pursuant to article XIIIA local districts increased their relative reliance on property taxes to make Burns-Porter water contract payments to the state.

Thus, though the ultimate choice lies with the Legislature, the Burns-Porter Act itself interpreted in light of article XIIIA imposes certain general limitations: (1) It is clear that the portion of local water district taxes necessary to make the state contract payment is exempt from the one percent limit under section 1(b). In determining that portion, the local district should rely first on water charges wherever feasible. The question of feasibility is not susceptible to resolution by a general mechanical formula, but rests within the sound discretion of each local district; (2) Districts may not increase their tax rates over an average of the rates levied in the last several years 17/ in order to make payments to the state; (3) Districts may not decrease their reliance on water charges over the same period. To the extent that taxes collected for local water districts fall within these limits, county auditors would be acting within the legal requirements of the Burns-Porter Act and section 1(b) of article XIIIA of the California Constitution.

* * * * *

---

17. The period should be chosen so that the average is not inordinately weighted by unrepresentative periods marked by extreme drought or extreme precipitation.