

2. Streets and Highways Code section 5830 does not set a maximum property tax rate as that phrase is used in Revenue and Taxation Code section 2263, subdivision (1).

3. Since Streets and Highways Code section 5820 et seq. provides no statutory maximum for property tax rates, if a city on behalf of a maintenance district proposes to use the alternate procedure under Revenue and Taxation Code section 2266 to determine maximum property tax rate for 1973-74 for the maintenance district, it must use the rate selected pursuant to Revenue and Taxation Code section 2263, subdivision (2), as the starting point in making the computations provided for by Revenue and Taxation Code section 2266.

ANALYSIS

I

Revenue and Taxation Code section 2215^{1/} states as follows:

"'Special district' means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. 'Special district' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. 'Special district' does not include a city, a county, a school district or a community college district."

1. This section and the other sections in the Revenue and Taxation Code referred to herein were enacted by Stats. 1973, ch. 358, effective August 31, 1973, as an urgency statute, along with other sections in the Government Code and the Streets and Highways Code amending and revising the Property Tax Relief Act of 1972, Stats. 1972, ch. 1406. All section citations refer to the Revenue and Taxation Code unless otherwise indicated.

This provision defines a special district as an agency of the state for the local performance of governmental or proprietary functions within limited boundaries. It expressly includes within the definition of a special district a county service area, a maintenance district or area, an improvement district or zone, or any other zone or area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area.

Maintenance districts formed pursuant to Streets and Highways Code section 5820 et seq. are defined in section 5820 as follows:

"As used in this chapter, 'maintenance district' means an assessment district which a county board of supervisors or the legislative body of a city has created pursuant to the provisions of this chapter.

"The provisions of this chapter except Sections 5850 to 5853, inclusive, shall be applicable to the creation of maintenance districts by, and maintenance districts created by, the legislative body of a city. For such purpose, the references in the provisions of this chapter to a county or a county officer shall be deemed to refer, respectively, to a city or a city officer performing the same duties."

The governing body of maintenance districts are empowered to order work done or improvements made, including repairs, replacements, and all other things necessary to maintain and operate such improvements in the district, with provision for assessment of real property or land only lying within the district to be benefited by and to be assessed to pay the cost of construction of the public improvement, said amounts to be assessed and levied in the same manner and by the same officers as taxes for city purposes are levied and collected. Streets and Highways Code § 5821.

The question here presented raises the issue of whether such district, when formed by a city such as the City of San Buenaventura, which is a chartered city, is to be regarded as a "city" subject to the tax rate limitations upon cities found in sections 2262, 2262.1 or whether maintenance districts are special districts falling within the provisions of section 2263, Revenue and Taxation Code. We have concluded that maintenance districts formed pursuant to Streets and Highways Code sections 5820 et seq.

are "special districts" subject to the tax rate limitation of Revenue and Taxation Code section 2263.

Section 2215 expressly includes a county service area and a maintenance district within the term "special district." Both a county service area and a maintenance district have similar characteristics. A county service area is merely an administrative unit of the county itself, having no separate governing body or officers of its own. Its functions are performed by the county. It does not have the capacity to sue or be sued. In other words, a county service area is not an autonomous body. See 43 Ops. Cal. Atty. Gen. 267 (1964); 31 Ops. Cal. Atty. Gen. 73 (1958). In these respects a maintenance district is similar to a county service area in that it is not a legal entity separate from the city, it has no independent officers and powers, its functions are performed by the city or county, and it has no capacity to sue or be sued. 38 Ops. Cal. Atty. Gen. 156, 157 (1961).

Thus, since county service areas and maintenance districts are defined as special districts in section 2215, then maintenance districts created pursuant to the provisions of the Streets and Highways Code section 5820 et seq. should also be regarded as being included within that definition. In addition to the specific reference to maintenance districts in section 2215, indication of intent to include maintenance districts formed under Streets and Highways Code section 5820 in section 2215 is revealed by the inclusion of not only ad valorem property taxes but also special assessments within the definition of the term "property tax rate." § 2213, Rev. & Tax. Code.

Additionally, the maintenance district in question fits the general description set out in section 2215 to cover local agencies that are not specifically enumerated, i.e., "any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area."

Because the maximum property tax rate limitations for special districts are separately considered apart from tax rate limitations upon cities and counties (§§ 2261, 2262, 2263), these districts are to be treated for such purposes separately from the city or county whose legislative bodies have created them.

II

Revenue and Taxation Code section 2263, which sets the maximum tax rate limit, reads in part as follows:

"The maximum property tax rate which may be levied by, or on behalf of, a special district shall be:

"(1) The maximum property tax rate authorized by the enabling statute under which the district is organized; provided that any rate in excess of such maximum rate which is authorized by Section 35 of Chapter 1 of the Statutes of 1968 (First Extraordinary Session) and which was levied during either the 1971-1972 or the 1972-1973 fiscal year may continue to be levied.

"(2) If no such maximum property tax rate is provided by statute, or if a maximum property tax rate is provided but such rate is applicable only to a portion of the purposes for which such district is levying an ad valorem tax, the maximum rate shall be the rate levied by, or on behalf of, the district for either the 1971-1972 or the 1972-1973 fiscal year, at the option of the governing body of the district. . . ."

Under this statute, if a maximum property tax rate is set by the enabling statute under which the maintenance district in question was formed, then that rate would be the maximum rate allowable. Examining the enabling statute by which the subject maintenance district was created, we find that Streets and Highways Code section 5830 provides as follows:

"The board of supervisors shall thereafter, in each year, prior to the time of fixing the county tax rate estimate the cost of maintaining and operating the said improvements to be maintained and operated within said maintenance district during the ensuing year. Said board shall decide whether or not the cost of the same shall be borne wholly or partially by the said maintenance district and shall, in addition to all other taxes, fix a special tax rate for the real property within said maintenance district sufficient to raise an amount of

money to cover the expense of maintaining said improvements during the ensuing year, or such portion of said amount as the board of supervisors shall determine shall be borne by said district, and the board of supervisors shall levy a special assessment tax each year upon the real property in such district sufficient to pay such expense or the portion thereof which must be paid by the district."

This section requires the city council to fix a special tax rate which will raise sufficient revenue to cover the expenses of maintaining the improvements in the current fiscal year. The question, therefore, is whether section 5830 of the Streets and Highways Code sets a maximum property tax rate as that phrase is used in section 2263, subdivision (1); that is, can the maximum property tax rate be an unspecified, fluctuating rate depending on the expenses of the district?

We have examined some of the other statutory provisions which authorize the creation of special districts, and we have discovered that they, similar to section 5830 of the Streets and Highways Code, generally enable the districts to raise as much tax revenue as is necessary to pay for their estimated expenses. However, other statutes impose a limit as to the maximum tax rate in terms of so much per one hundred dollars of assessed value. On the other hand, some of the provisions are silent as to the monetary rate limit.

Some examples are as follows:

1. Port districts - Harbors and Navigation Code section 6361 provides that the board of supervisors shall levy as much tax as will be needed to pay for the estimated total expenses for the year. Section 6362 then limits the maximum rate to ten cents on each one hundred dollars of assessed value.

2. Reclamation districts - Water Code section 51361 authorizes the board of supervisors to levy a tax sufficient so as to raise the estimated sum needed for expenses. Section 51362 then sets a maximum tax rate of \$1.50 per \$100.00 of assessed value for certain lands and \$5.00 per \$100.00 of assessed value for others.

3. Pest abatement districts -- Health and Safety Code section 2871 requires that the board of supervisors levy a tax sufficient to raise the needed amount. The section then provides that a district shall not levy more than that amount specified in its organizational petition if such a limit was originally imposed.

4. County service areas -- Government Code sections 25210.44, 25210.54, 25210.65, 25210.75, and 25210.78e provide that the board of supervisors shall fix a rate "such as will produce, after due allowance for delinquency as fixed by the board, the amount found by deducting from the estimate finally approved by the board, the amount of estimated revenue from other sources of the county service area to be received during the fiscal year and of any available surplus."

The basic rules of statutory construction require that the scope and purpose of a code section be determined not only from the ordinary meaning of the language employed in the particular section (City of El Monte v. City of Industry, 188 Cal.App.2d 774, 780 (1961)), but also from the entire substance of the act of which section 2263 is a part (Wallace v. Payne, 197 Cal. 539, 544 (1925)).

We conclude that section 2263, subdivision (1) applies to a situation where the statute expressly sets out a monetary tax rate limit and section 2263, subdivision (2) applies to those districts which have no monetary rate limit applied to them by statute. A contrary conclusion would lead to the absurd result that a county service area, for example, would be permitted to impose as large a tax rate as will be necessary to meet its expenses. Such a result would be contrary to the stated intent of the act, namely, to establish property tax limits that will be firm enough to insure that the property tax relief provided by the Legislature will be long lasting. §2226, Rev. & Tax. Code. Undoubtedly, it is to cover a situation where a monetary tax rate limit was not set by statute that section 2263, subdivision (2) was meant to apply.

Section 5830 of the Streets and Highways Code does not establish a maximum tax rate of a specified amount for a maintenance district. This section permits the board of supervisors to establish such a tax rate as it deems sufficient to pay the expenses of the maintenance district for the ensuing year. The provisions of this section are similar to those pertaining to some of the districts described in

the aforementioned sections where a monetary tax rate limit is not set by statute and where we concluded that section 2263, subdivision (2) applied to such districts. Therefore, section 5830 of the Streets and Highways Code does not set a maximum property tax rate as that term is used in section 2263, subdivision (1).

III

Revenue and Taxation Code section 2266 provides as follows:

"This section shall provide an alternate procedure to the other provisions of this article for establishing maximum property tax rates.

"The maximum property tax rate which may be levied by, or on behalf of, a local agency shall be a rate equivalent to the following:

"(1) The maximum property tax rate which could have been levied for such agency pursuant to any provision of this article for the prior fiscal year, plus

"(2) A property tax rate on the secured roll which would produce an amount of property tax revenue equal to the following:

"(a) The amount of property tax revenue which would be received by such agency in the current fiscal year by levying the rate identified in subparagraph (1) of this paragraph against the agency's total assessed value for the current fiscal year, subtracted from

"(b) The amount of property tax revenue which would be received by such agency in the current fiscal year if its property tax revenue from the prior year were to change by a percentage equal to the following: the percentage change in the population of the agency (as determined pursuant to Sections 2227 or 2228) plus the percentage change in the cost of living (as determined pursuant to Section 2212) which is applicable to the agency.

"As used in this section 'property tax revenue from the prior year' means the revenue which would have been received by a local agency in the prior

fiscal year by levying the maximum property tax rate authorized by this article against the total assessed value for such year.

"As used in this section 'total assessed value' means all assessed value subject to ad valorem property taxation by a local agency plus assessed value attributable to the homeowners' property tax exemption and to the business inventory property tax exemption."

This section was enacted to supersede Revenue and Taxation Code sections 2165, subdivision (c), 2167, subdivision (c), and 2169, subdivision (c), all of which were enacted by the Property Tax Relief Act of 1972, Statutes 1972, chapter 1406, to permit local agencies to raise their tax rates above the prescribed maximum when there were certain changes in the cost-of-living index and population.

The repeal of the above provisions became necessary because the provisions enacted by the Property Tax Relief Act of 1972, Statutes 1972, chapter 1406 (popularly known as SB 90), permitting changes in tax rates due to cost-of-living and population changes were found to be defective and unworkable.

Under the procedure established in section 2266, subdivision (1) provides that a maintenance district, in establishing its maximum tax rate, may first make a determination of the "maximum property tax rate which could have been levied for such agency pursuant to any provision of this article for the prior fiscal year." "This article" includes section 2263, subdivision (2), which provides for the selection of the rate levied by or on behalf of the district for either the 1971-72 or the 1972-73 fiscal year. Accordingly, if the alternate procedure provided under section 2266 is used in 1973-74 and there is no statutory maximum property tax rate, the tax rate selected pursuant to section 2263, subdivision (2) would become the starting point in making the computations set out in section 2266.
