

750.0074

750.0074 Special Assessments. Assessments of lands for improvements that benefit the lands made in conjunction with bonds issued pursuant to Water Code Sections 36250 et seq. are special assessments, and the limitations of Article XIII A of the California Constitution are not applicable. C 9/21/79.

(916) 445-5047

September 21, 1979

Dear _____

_____ referred your August 24, 1979, letter to me for reply. You asked the question:

"Do general obligation bonds approved by the Board of Directors of a Water District prior to July 1, 1978, constitute indebtedness approved by the voters within the meaning of Article XIII A, Section 1(b), of the State Constitution?"

I have examined the legal notice you attached to your letter. The notice provides the El Toro Water District may issue general obligation bonds for payment of district improvements. Your letter leads me to understand that you question the legality of the assessment for payment of these particular bonds.

The bonds were issued under the authority of Chapter 3.5 of Part 6 of Division 13 of the Water Code of the State of California (Water Code, §§ 36250 et seq.). In essence, that part of the Water Code provides the bonds may be issued by the district board after proper notice to the district land owners and after the absence of protest from a majority of the land owners. I presume the bonds mentioned in the notice were finally issued after all legal procedures were properly followed.

As I interpret the Water Code sections mentioned, it appears the assessment is made only upon land for improvements which benefit the land. That being the case, then I would characterize the assessment as a "special assessment" and not a tax at all. If the assessment is not a tax, the restrictions imposed by Proposition 13 (Cal. Const., Art. XIII A) do not apply. (See County of Fresno v. Malmstrom, 94 Cal. App. 3d 974.)

September 21, 1979

However, if the assessment is nevertheless characterized as a "special tax" it would, in this instance, be considered a debt obligation of the district incurred before the Proposition 13 amendment. As such, the tax assessment would not be prohibited under California Constitution, Article XIII A. It is only those special tax assessments created and levied after Proposition 13 passage that require a vote of 2/3 of the people to authorize the assessment.

I do not characterize the assessment to be a property tax at all, so therefore, I would say that California Constitution, Article XIII A does not control or limit the assessment to the one percent of market value, nor the other limiting features of that article upon property tax imposition.

I did not find enough information in your correspondence to characterize the assessment by MWD. But it appears it probably is a special tax, legally authorized before the passage of Proposition 13 and, therefore, is a lawful assessment upon the land to which is benefitted by the improvements for which the assessment is made. The voters within the district must have either voted approval of the assessment or voted approval of the directors who acted by their authority to initiate the assessment. In either case, I would say the assessment was one approved by a vote of the people, directly or indirectly before the Proposition 13 amendment, and therefore, is specifically exempted from the limitations imposed under the provisions of California Constitution, Article XIII A.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr

cc: Honorable Ernest J. Dronenburg, Jr.

bc: Mr. Douglas D. Bell