



Opinion No. CV 75-271—February 26, 1976

SUBJECT: SPECIAL DISTRICT—MAXIMUM PROPERTY TAX RATE—PROMISSORY NOTE—A special district, having a maximum property tax rate established by the enabling statute under which it is organized as provided in Revenue and Taxation Code section 2263(1), may exceed that rate under section 2270 of said Code. Where a special district has executed a promissory note prior to the effective date of section 2270, it may exceed its property tax rate under section 2270(1) in the amount required to pay installments of interest and principal falling due under the promissory note during the next fiscal year.

Requested by: SENATOR, 2nd DISTRICT

Opinion by: EVELLE J. YOUNGER, Attorney General

Charles C. Kobayashi, Deputy

The Honorable Peter H. Behr, Senator, Second District, has requested an opinion on the following questions:

1. Assuming a special district has a maximum property tax rate established by the enabling statute under which it is organized as provided in subdivision (1) of section 2263 of the Revenue and Taxation Code, may that rate be exceeded under the provisions of section 2270 of the Revenue and Taxation Code?
2. If the answer to question No. 1 is yes, and assuming that a special district made a promissory note prior to the effective date of that section, may the district's rate be exceeded under the provisions of section 2270, subdivision (1) of the Revenue and Taxation Code in the amount required to pay installments of interest and principal falling due under the promissory note during the next fiscal year?

Our conclusions are:

1. A special district which has a maximum property tax rate established by the enabling statute under which it is organized as provided in subdivision (1) of section 2263 of the Revenue and Taxation Code may exceed that rate under the provisions of section 2270 of the Revenue and Taxation Code.
2. A special district which has made a promissory note prior to the effective date of section 2270 of the Revenue and Taxation Code may exceed its property tax rate under the provisions of section 2270, subdivision (1) of the Revenue and Taxation Code in the amount required to pay installments of interest and principal falling due under the promissory note during the next fiscal year.

ANALYSIS

Revenue and Taxation Code section 2270, found in chapter 3, part 4, division 1, provides in relevant part as follows (all references hereinafter to code sections shall be to the Revenue and Taxation Code unless otherwise specified):¹

¹ Section 2270 was enacted by Stats. 1973, ch. 358, in effect August 31, 1973, and amended by Stats. 1975, ch. 486, p. —, effective September 2, 1975, as an urgency measure.

"A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay the cost of: (1) interest and redemption charges on bonded or other indebtedness authorized prior to the effective date of this section, together with any reserve or sinking funds required in connection therewith; (2) interest and redemption charges on bonded or other indebtedness authorized after the effective date of this section by the voters of such agency, together with any reserve or sinking funds required in connection therewith; (3) interest charges on notes of a local agency issued in anticipation of bonds, if such bonds were authorized prior to the effective date of this section or were authorized by the voters of such agency after the effective date of this section, and if the principal amount of any such notes is payable only from proceeds of the sale of such bonds; . . ."

Section 2211 defines a local agency as meaning "any city, county or special district."

Section 2215² defines special district 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. 'Special district' does not include any agency which is not authorized by statute to levy a property tax rate."

The facts assume that the special district in question has a maximum property tax rate established by the enabling statute under which it is organized. Section 2263, subdivision (1), which like section 2270 is found in that chapter 3, reads 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 As amended by Stats. 1975, ch. 486, p. —, effective September 2, 1975, as an urgency measure.

By virtue of this provision the maximum rate authorized by the enabling statute satisfies the definition of "the maximum property rate established pursuant to this chapter" found in section 2270. The special district in question comes within the definition of special district as defined in section 2215, thereby placing it within the definition of a local agency under section 2211. Therefore, a special district such as this which has a maximum tax rate established by the enabling statute may levy a rate in addition to the maximum property tax rate established pursuant to this chapter to pay for the cost of the items enumerated in section 2270.

In examining section 2270, we note that subdivision (1) provides for the increase of property tax rates to pay for the cost of interest and redemption charges on bonded or other indebtedness authorized prior to the effective date of this section. At the same time, subdivision (2) of section 2270 provides for a similar increase for bonds or other indebtedness which are authorized after the effective date of this section. In addition, subdivision (2) expressly refers to bonds or other indebtedness authorized by the voters of such agency whereas subdivision (1) merely refers to bond or other indebtedness that is authorized. Subdivision (1) does not refer to an authorization by any particular person or body but simply states "authorized."

The question which then arises is whether the term "bonded or other indebtedness authorized" in section 2270, subdivision (1) refers to any bonded or other indebtedness or only those bonded or other indebtedness that must be authorized by the voters.

In further examining section 2270 in its entirety, we note that in subdivision (3) with respect to notes issued in anticipation of bonds a distinction is made between bonds authorized prior to and after the effective date of that section. Again in referring to such bonds and other indebtedness, subdivision (3) simply states "authorized" for bonds issued prior to the effective date of this section whereas it limits bonds issued after the effective date of this section to such bonds as "authorized by the voters of such agency."

The usage by the Legislature of the different words in different parts of the section would tend to indicate that the Legislature intended that different treatment be accorded to bonds which are issued prior to the effective date of this section from those issued after the effective date of this section. Under the rule of statutory construction, "When different language is used in the same connection in different parts of a statute, it is presumed the legislature intended a different meaning and effect." *McCarthy v. Board of Fire Commrs.*, 37 Cal. App. 495, 497 (1918); *In re Dees*, 50 Cal. App. 11, 19 (1920). Here the word "authorized" is used repeatedly and is followed by different modifiers in different places, indicating that the Legislature intended different types of authorizations under different circumstances.

In addition to the established rule of statutory construction, there is a further explanation for the distinction made in the use of the word "authorized." The pur-

pose of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406) and as subsequently amended was to give lasting property tax relief to homeowners and to afford the voters in each local agency an active role in the fiscal affairs of each such agency. § 2226. To accomplish this aim, the Legislature in general froze the local property tax rates and required voter approval prior to the raising of property tax rates. However, to provide for certain pre-existing obligations which would have to be fulfilled in subsequent years, the Legislature apparently permitted special allowances through the enactment of sections such as section 2270 to permit the local agency to fulfill such obligations.

Thus, a special district which executed a promissory note prior to the effective date of section 2270 may raise its rates under the provisions of section 2270, subdivision (1) in the amount required to pay installments of interest and principal falling due under the promissory note during the next fiscal year.