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OPINION	:	No. 03-401
	:	
of	:	February 5, 2004
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THE HONORABLE SILVANO B. MARCHESI, COUNTY COUNSEL,  
COUNTY OF CONTRA COSTA, has requested an opinion on the following question:

May a county transportation authority reimpose a retail transactions and use tax for an additional period of time without first adopting a new county transportation expenditure plan?

CONCLUSION

A county transportation authority may not reimpose a retail transactions and use tax for an additional period of time without first adopting a new county transportation expenditure plan.

## ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Local Transportation Authority and Improvement Act (Pub. Util. Code, §§ 180000-180264; “Act”),<sup>1</sup> to “raise additional local revenues to provide highway capital improvements and maintenance and to meet local transportation needs in a timely manner.” (§ 180001, subd. (d).) Under this legislation, the board of supervisors of a county may create a local transportation authority (§§ 180050-180051; “Authority”), empowered to impose a retail transactions and use tax of up to one percent to fund transportation improvements and services in the county (§ 180202). A county transportation expenditure plan must be approved “for the period during which the tax is to be imposed” (§ 180206, subd. (a)), and the tax, which must receive voter approval, may “remain in effect for the period of time specified in the tax ordinance” (§ 180201).

We are informed that an Authority’s retail transactions and use tax will soon expire at the end of a 20-year period. May the Authority reimpose the tax for an additional period without adopting a new county transportation expenditure plan? We conclude that a new plan must first be adopted.

The legal issues presented require an examination of the relationship between three different statutes. First, section 180201 authorizes an Authority to impose and reimpose a retail transactions and use tax:

“A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of a county may be imposed by the authority in accordance with this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if the tax ordinance is adopted by a two-thirds vote of the authority and imposition of the tax is subsequently approved by a majority of the electors voting on the measure, or by any otherwise applicable voter approval requirement, at a special election called for that purpose by the board of supervisors, at the request of the authority, and a county transportation expenditure plan is adopted pursuant to Section 180206.

“A retail transactions and use tax approved by the electors shall remain in effect for the period of time specified in the tax ordinance. *The tax may be continued in effect, or reimposed, by a tax ordinance adopted by a two-thirds*

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<sup>1</sup> Unless otherwise indicated, all statutory section references are to the Public Utilities Code.

*vote of the authority and the reimposition of the tax is approved by any applicable majority of the electors.” (Italics added.)*

Second, section 180206 requires the preparation of a county transportation expenditure plan for the period during which the tax is to be imposed:

“(a) *A county transportation expenditure plan shall be prepared for the expenditure of the revenues expected to be derived from the tax imposed pursuant to this chapter, together with other federal, state, and local funds expected to be available for transportation improvements, for the period during which the tax is to be imposed.*

“(b) A county transportation expenditure plan shall not be adopted until it has received the approval of the board of supervisors and of the city councils representing both a majority of the cities in the county and a majority of the population residing in the incorporated areas of the county.

“(c) The plan shall be adopted prior to the call of the election provided for in Section 180201.” (Italics added.)

Finally, section 180207 allows an Authority to amend a county transportation expenditure plan under certain conditions:

“(a) The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances.

“(b) The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments.

“(c) The proposed amendments shall become effective 45 days after notice is given.”

Looking first at the language of the third statute, section 180207, we reject the suggestion that its terms have any application in the present circumstances. Section 180207 is limited to extraordinary events resulting in “unexpected revenues.” When, as here, a tax is set to expire at the end of a 20-year period, that expiration cannot be characterized as an “unforeseen circumstance.” Nor could any reimposition of the tax for a new period be said

to produce “additional . . . local funds” for the current period of the tax already covered by a county transportation expenditure plan.

In contrast, the terms of section 180201 are directly applicable. When the tax is set to expire, it “may be continued in effect, or reimposed, by a tax ordinance adopted by two-thirds vote of the authority and the reimposition of the tax is approved by any applicable majority of the electors.” (§ 180201.) Two conditions are thus specified in section 180201 for reimposing the tax: (1) a two-thirds vote of the Authority’s members and (2) approval by the electorate. No mention is made in the statute concerning the need to adopt a new county transportation expenditure plan.

If section 180201 stood alone, our analysis would be at an end. However, it does not stand alone; furthermore, it does not expressly waive or prohibit the adoption of a county transportation expenditure plan covering the proposed new period of the tax. To determine whether a new plan is necessary, we must turn to the language of the third statute, section 180206.

The preparation of a county transportation expenditure plan is required covering “the period during which the tax is to be imposed.” (§ 180206.) It is readily apparent that a plan that was adopted for a previous 20-year period will not meet this statutory requirement with respect to a subsequent period of time. Section 180206 makes clear that a plan must be in existence for all expenditures “of the revenues expected to be derived from the tax” during the time the tax is imposed.

We do not view the terms of section 180201 as controlling over the terms of section 180206. The rule that a specific statute controls a more general statute, even assuming that section 180201 is the more specific, “applies only when the specific and the general provision cannot be reconciled.” (*Fremont Comp. Ins. Co. v. Superior Court* (1996) 44 Cal.App.4th 867, 873; accord, *People v. Wheeler* (1992) 4 Cal.4th 284, 293; *In re Ricardo A.* (1995) 32 Cal.App.4th 1190, 1194-1195.) It is elemental that “ ‘every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.’ ” (*Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645; accord, *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) “ ‘Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.’ ” (*Woods v. Young* (1991) 53 Cal.3d 315, 323.)

Hence, section 180206 answers the question whether a county transportation expenditure plan must be prepared for an additional period of the tax. We apply its terms

“giving the language its usual, ordinary meaning.” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000; see *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) In so doing, we harmonize and give effect to each of the provisions of sections 180201 and 180206. Nothing in the former directly waives or prohibits application of the latter.

We conclude that an Authority may not reimpose a retail transactions and use tax for an additional period of time without first adopting a new county transportation expenditure plan.

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