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OPINION	:	No. 79–1003
of	:	December 28, 1979
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SUBJECT: CHARGES IMPOSED IN A COUNTY SERVICE AREA—This opinion deals with the charges imposed in a county service area pursuant to Government Code section 25210.77a and whether they constitute ad valorem property taxes or special taxes and when they can be levied.

The Honorable Joseph W. Kiley, District Attorney, Calaveras County, has requested an opinion on the following questions:

1. Do the charges imposed in a county service area pursuant to Government Code section 25210.77a constitute ad valorem property taxes which are subject to the one percent (1%) limitation provided by section 1(a) of Article XIIIA of the California Constitution?

2. If not ad valorem taxes, do the charges imposed in a county service area pursuant to Government Code section 25210.77a constitute special taxes within the meaning of section 4 of Article XIIIA of the California Constitution?

3. If a special tax, may the charges imposed in a county service area pursuant to Government Code section 25210.77a be authorized after approval by a two-thirds vote of those voting on the issue within the service area?

CONCLUSIONS

1. The charges imposed in a county service area pursuant to Government Code section 252l0.77a do not constitute ad valorem property taxes and are therefore not subject to the one percent (1%) limitation provided by section 1(a) of article XIIIA of the California Constitution.

2. The charges imposed in a county service area pursuant to Government Code section 25210.77a would constitute special taxes within the meaning of section 4 of Article XIIIA of the California Constitution, if levied as a revenue raising fee. If properly levied as a special assessment on the parcels benefitted in proportion to such benefit, or if levied as a compensatory fee collected only from those to whom the services are rendered, such charges would not constitute special taxes within the meaning of section 4 of Article XIIIA.

3. The charges imposed in a county service area pursuant to Government Code section 25210.77a, when they do constitute special taxes within the meaning of section 4 of Article XIIIA of the California Constitution, may be levied after approval by a two-thirds vote of those voting on the proposition within the service area charged.

ANALYSIS

The Legislature in 1953 enacted the County Service Area Law (Gov. Code, § 25210.1 *et seq*.)[1] to provide ". . . an alternative method for providing governmental services by counties within unincorporated areas. . . ." (§ 25210.3.) The Act authorizes counties to provide a variety of services to such areas, once created. The six basic services authorized[2] in brief are: extended police protection; structural fire protection; local park, recreational and parking facilities and services; miscellaneous extended services; extended library facilities; and television translator station facilities. (§ 25210.4.)[3] "Miscellaneous

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[1] All code section references are to the Government Code unless otherwise indicated.

[2] Sections 25210.4b and 25210.4d also authorize particularized services within a small number of specific counties.

[3] Section 25210.4 provides:

"A county service area may be established under this chapter to provide any one or more of the following types of extended service within such area:

"(a) Extended police protection.

"(b) Structural fire protection.

"(c) Local park, recreation or parkway facilities and services.

"(d) Any other governmental services, hereinafter referred to as miscellaneous extended services, which the county is authorized by law to perform and which the county does not also perform to the same extent on a countywide basis both within and without cities, if: "(1) The board of supervisors determines that such services should

extended services" include: water service; sewer service; pest, rodent and animal control; street and highway sweeping; street and highway lighting; refuse and garbage collection; ambulance service; area planning; and soil conservation and drainage control. (§ 25210.4a.)[4]

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be provided on an extended basis within a county service area; or

"(2) Such services are specified in a request or a petition for the initiation of proceedings for the formation of a county service area or in a request or a petition for the initiation of proceedings for the furnishing of additional types of services within a county service area.

"(e) Extended library facilities and services.

"(f) Television translator station facilities and services, if:

"(1) The number of translators to be erected by the service area will not exceed six.

"(2) The number of television channels provided by the service area will not exceed six.

"At the time of the adoption of the resolution of intention to establish a county service area the board of supervisors shall specify the type or types of services which are proposed to be provided within the area pursuant to this chapter."

[4] Section 25210.4a provides:

"The term 'miscellaneous extended services' as used in this chapter shall include, but shall not be limited to, the following:

"(1) Water service including the acquisition, construction, operation, replacement, maintenance and repair of water supply and distribution systems, including land, easements and rights-of-way and water rights.

"(2) Sewer service, including the acquisition, construction, operation, replacement, maintenance and repair of sewage collection, transportation and disposal systems, including land, easements and rights-of-way.

"(3) Pest or rodent control.

"(4) Street and highway sweeping.

"(5) Street and highway lighting including the acquisition, construction, replacement, maintenance and repair of a street or highway lighting system, including land, easements and rights-of-way.

"(6) Refuse collection.

"(7) Garbage collection.

"(8) Ambulance service.

"(9) Area planning by an area planning commission established pursuant to Article 11 (commencing with Section 65600) of Chapter 3 of Title 7.

"(10) Soil conservation and drainage control.

"(11) Animal control.

"(12) Services provided by a municipal advisory council established pursuant to Section 31010."

Except for the television translator station facilities and service, a separate article in the Act deals with each of the basic services authorized. For example, Article 4 (§ 25210.40 *et seq*.) deals with extended police protection, authorizes the supervisors of any county to provide such service within any county service area established for that protection (§ 25210.40), and, among other items, provides: for the levy and collection of a property tax within the service area to cover the cost of the extended service provided. (§§ 25210.41a-25210.45.) The format and tax authorization is the same for the other basic services. Article 7 (§ 25210.70 *et seq*.) dealing with miscellaneous extended services, however, has an additional funding provision added in 1963 (Stats. 1963, ch. 1657) contained in section 25210.77a:

> "For any county service area or zone thereof located therein, a county may fix and collect charges for a particular extended service authorized pursuant to this article to pay, in whole or in part, for the cost thereof. The revenue obtained thereby may be in lieu of, or supplemental to, revenue obtained by the levy of taxes. The charges may vary by reason of the nature of the use or the month in which the service is rendered to correspond to the cost and the value of the service. The charges may be determined by apportioning the total cost, not otherwise offset by other available revenue, of the extended service area to each parcel therein in proportion to the estimated benefits from such service to be received by each parcel.
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> ". . . ."[5]

[5] The remainder of section 25210.77a as last amended by Statutes 1979, chapter 261 (AB. 549) provides:

> ". . . .
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> "Any county which has fixed charges pursuant to this section may, by ordinance, provide a procedure for, and collect such charges, on the tax roll in the same manner and at the same time as its general ad valorem property taxes are collected as provided herein, except that the board of supervisors shall not impose a charge upon a federal or state governmental agency or another local agency. Any such ordinance shall provide that:
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> "(a) Once a year the board of supervisors shall cause to be prepared a written report which shall contain a description of each parcel of real property receiving the particular extended service and the amount of the charge for each parcel for such year computed in conformity with the procedure set forth in the ordinance authorizing collection of such charges on the tax roll. Such report shall be filed with the clerk of the board of supervisors.
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> "(b) Upon the filing of such report, the clerk shall fix a time, date, and place for heating thereon and for filing objections or protests thereto. The clerk shall publish notice of such heating as provided in Section 6066, prior to the date set for hearing, in a newspaper of general circulation printed and published in the county.

Article XIIIA of the California Constitution, as adopted by the voters in June 1978, contains two sections pertinent to this discussion:

> "SEC. 1. (a) 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.
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> ". . . .
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> "SEC. 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales

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"(c) At the time, date and place stated in the notice, the board of supervisors shall heat and consider all objections or protests, if any, to the report and may continue the hearing from time to time. Upon conclusion of the hearing, the board of supervisors may adopt, revise, change, reduce, or modify any charge and shall make its determination upon each charge as described in the report and thereafter, by resolution, shall confirm the report.

"(d) The charges set forth in the report, as confirmed, shall appear as a separate item on the tax bill. The charge shall be collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem property taxes shall be applicable to such charge; except that, if for the first year such charge is levied the real property to which such charge relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancher for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, the charge confirmed pursuant to this section shall not result in a lien against such real property but instead shall be transferred to the unsecured roll for collection.

"(e) Whenever a railroad, gas, water, or electric utility right-of-way or electric line right-of-ways is included within such service area, or zone thereof, the railroad, gas, water, or electric utility right-of-way or electric line right-of-way shall be subject to the charges authorized only if, and to the extent that, it is found that it will benefit from the particular extended service, and she railroad, gas, water, or electric utility right-of-way or electric line right-of-way shall be subject to the same penalties, and the same procedure and sale, in case of delinquency as other properties in such service area or zone. In determining whether or not the railroad, gas, water, or electric utility right-of-way or electric line right-of-way benefits from the extended service, its use as a right-of-way for a railroad, gas, water, or electric utility shall be presumed to be permanent."

Sections 25210.77b and section 25210.77e also provide for water or sewer standby or availability charges and fees for waste disposal sites and services.

tax on the sale of real property within such City, County or special district."

The legislature, as authorized by section 1(a), has enacted Revenue and Taxation Code section 2237,[6] which, as pertinent here, prohibits any county from levying a real property tax except for an annual tax of four percent of assessed value, the proceeds of which are to be distributed among counties, cities, and local agencies pursuant to a statutory formula. Thus, the five property tax levy authorizations set forth in the County Service Area Law have been superseded by Revenue and Taxation Code section 2237. Moreover, section 4 of Article XIIIA prohibits the enactment of any new ad valorem tax on real property by a county, even with approval of two-thirds of the qualified electors. (See 62 Ops. Cal. Atty. Gen. 655); 62 Ops. Cal. Atty. Gen. 747.) Our first task, then, is to determine whether the charges authorized by section 25210.77a constitute ad valorem property taxes within the meaning of Article XIIIA.

In two recent opinions, we examined at length several governmental exactions in relation to Article XIIIA. In 62 Ops. Cal. Atty. Gen. 663, we examined those exactions known as special assessments" as distinguished from property taxes. We concluded, as did the court in *County of Fresno v. Malmstrom* (1979) 94 Cal. App. 3d 974, 983, that special assessments for improvements of benefit to real property are not ad valorem taxes or special taxes within the meaning of Article XIIIA. We reviewed the authorities establishing the criteria for special assessments (see particularly *Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212, 216; *Northwestern Etc. Co. v. St. Bd. of Equal*. (1946) 73 Cal. App. 2d 548, 552–553), and from them noted the prime prerequisite: The improvement

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[6] Revenue and Taxation Code section 2237 as amended by Statutes 1979, chapter 29 (SB. 55) provides:

"(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (b) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.

"(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code."

must be for the benefit of the real property assessed, as opposed to benefit to the taxpayers within the area or district or the general public. (62 Ops. Cal. Atty. Gen. 254 at 256 (No. 79–712; slip opn. at pp. 7–9).) Although the cases talk most frequently in terms of improvements (such as sewer or water lines or street lighting) of identifiable benefit to the parcels assessed (see, e.g., *Anaheim Sugar Co. v. County of Orange, supra*), we know of no authority that would prohibit special assessments for the operation of such improvements once installed (see, e.g., Sts. & Hy. Code, § 10100.6, Municipal Improvement Act of 1913) or for services provided by a governmental agency (see § 25210.65),[7] provided that it is determined that the service is of peculiar benefit to the parcel assessed.

In 62 Ops. Cal. Atty. Gen. 673, we discussed whether fees (other than special assessments) exacted by governmental agencies constitute taxes, and what are "special taxes" within the meaning of section 4 of Article XIIIA. We noted that there are generally three types of fees: (1) revenue raising fees; (2) regulatory fees; and, (3) compensatory fees. Our review of the purposes and intent of Article XIIIA led us to the conclusion that the term "special taxes" means any new or additional local tax levied for revenue purposes.[8] This would generally include what we categorized as revenue raising fees. (62 Ops. Cal. Atty. Gen. 673 at (No. 79–724; slip opn. at pp. 7–9).)

In 62 Ops. Cal. Atty. Gen. 673, we did discuss compensatory fees, but did not decide whether such are special taxes within the meaning of Article XIIIA. We stated there:

> "There are, of course, government exactions which appear to be for neither revenue not regulatory purposes, but which are designed to compensate the governmental agency for services rendered.
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> "The features which distinguish the charges here from normal taxes, imposts, or assessments are that the charges here are for the specific purpose amount of the charges are by law limited to the public entity's expenses, and that they are not levied on a regular or routine basis. . . ." (*Crawford v. Herringer, supra*, 85 Cal. App. 3d at 550; costs of printing an election pamphlet on candidate qualifications.)

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[7] The last sentence of section 25210.65, relating to taxes for local parks, recreation or parking facilities and services for county service areas provides (as amended in 1969):

> ". . . . With respect to any county service area formed between January 1 and June 1, 1966, the board may levy an annual special assessment upon the property within the county service area for recreational services and facilities benefiting such property."

[8] We expressed no opinion in 79–724 on whether regulatory fees confined in amount to the cost of regulation involved constitute special taxes within the meaning of section 4 of Article XIIIA. We do not perceive the charges authorized by section 25210.77a as being of a regulatory nature, so we again do not decide whether regulatory fees are such special taxes.

"The court has held that a charge for fire hydrant services of so much per month is not a tax:

"'Defendants' characterization of plaintiffs' charges as a 'tax' is unfounded. A charge for services rendered is in no sense a tax. (*Arcade County Water Dist. v. Arcade Fire Dist.* (1970) 6 Cal. App. 3d 232, 240; see also *Linnell v. State Dept. of Finance, supra*, 203 Cal. App. 2d at 469; parking fees.)

"If, however, the charges exceed the cost, the exaction may be declared a tax (*cf. City of Madera v. Black, supra*), and some exactions which appear to be compensatory service fees have been declared to be excise taxes. (See *Associated Homebuilders v. City of Livermore, supra*, 56 Cal. 2d at 852; *Dare v. Lakeport City Council, supra*, 12 Cal. App. 3d at 868.)" (62 Ops. Cal. Atty. Gen. 673 at (slip opn. at pp. 8–9).)

In addition, our analysis of the intent and meaning of Article XIIIA leads us now to conclude that compensatory fees, that is exactions from the recipient to pay the cost of services actually provided by a public agency, are not "special taxes" within the meaning of section 4 of Article XIIIA:

"In Opinion 79–712 (62 Ops. Cal. Atty. Gen. 663 (1979)), *supra*, we examined the purposes of article XIIIA, particularly noting the analysis of the article made by the Supreme Court in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208. We stated there (62 Ops. Cal. Atty. Gen. at 663):

"'In light of these authorities, we reach one paramount conclusion as to the scope of section 4 of article XIIIA. Section 4 is intended to act as a device to stop any circumventing of the property tax relief provided by sections 1 and 2. Thus, any exaction imposed by a local government agency must be measured by this purpose of section 4. If this exaction is designed to raise revenue for the benefit of the taxing agency, it must be carefully scrutinized to see if it either (1) is a prohibited ad valorem tax on real property or a transaction or sales tax on the sale of real property, or (2) a special tax requiring a two-thirds vote of the qualified electors. Conversely, if the purpose and effect of the exaction is not to raise revenue for the benefit of the governmental agency as distinguished from the persons or property from whom or which it is exacted, it may well be beyond the proscription of section 4.'

"The Supreme Court in *Amador Valley* had noted that sections 3 (a limitation on state taxes) and 4 limitation on local taxes) were designed to preserve the property tax relief obtained by sections 1 and 2:

". . . Moreover, since any tax savings resulting from the operation of sections 1 and 2 could be withdrawn or depleted by additional or increased state or local levies other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes. . . . .' (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal. 3d at 230–231.)

"The Ballot arguments in support of the initiative measure clearly disclose the purpose and meaning of section 4. Ballot arguments amount to the equivalent of legislative history. (*People v. Knowles* (1950) 35 Cal. 2d 175, 182; also see *Schmitz v. Younger* (1978) 21 Cal. 3d 90, 97.)

"'Limits property tax to 1 % of market value, requires two-thirds vote of both houses of the legislature to raise any other taxes, limits yearly market value tax raises to 2 % per year, and *requires all tax raises to be approved by the people. . . .*" (Ballot Pamp., argument in favor of Initiative Prop. No. 13 as presented to the voters, Primary Election (June 6, 1978).) (Emphasis added.)

"It is our conclusion, from that Ballot argument statement and from the purposes and objectives of article XIIIA, that the term 'special taxes' as used in section 4 refers to any new or increased exactions imposed by a city, county, or special district for revenue purposes. [Footnote omitted.] Any narrower construction would, as noted by the court in Amador Valley, allow the basic tax relief obtained to be subverted and lost contrary to the intent of the people in enacting article XIIIA." (62 Ops. Cal. Atty. Gen. 673 at — (slip. opn. pp. 17–18).)

Thus, fees or charges which compensate a public agency for its cost of rendering a particular service to citizens and exacted from recipients of that service are not taxes and would not run counter to the objectives of Article XIIIA. We caution, however, that charges for services that are exacted from all or a portion of taxpayers irrespective of whether the services are used by or rendered to the taxpayers would, in our judgment, constitute a tax and would not be a compensatory fee. (See *City of Glendale v. Trondsen* (1957) 48 Cal. 2d 93, 103; garbage fee charged to all residents, irrespective of use is an excise tax; see also Stats. 1979, ch. 903 (SB. 785) adding § 50076.) Such a tax would, under our analysis, constitute a special tax within the meaning of section 4 of Article XIIIA.

We turn now to an analysis of whether the charges authorized by section 25210.77a constitute an ad valorem property tax, a special assessment, a compensatory fee, or a revenue fee, and the consequences thereof. We conclude that such charges are not ad valorem property taxes, but may be special assessments, compensatory fees or revenue fees, depending on how they are exacted by the county.

The key provision of section 25210.77a is the first paragraph set out above.[9] That paragraph authorizes the imposition of charges to pay, in whole or in part, for the cost of the particular miscellaneous extended services provided in the county service area. This mechanism is intended to be in lieu of, or supplemental to a tax levy authorized by sections 25210.72a-25210.76 (now superseded by Rev. & Tax. Code, § 2237). There is thus no need to impose these charges on property on an ad valorem basis.[10] Nor is the authorizing language conducive to levying the charges on an ad valorem basis, since it allows the varying of the charges to correspond to the cost and the value of the service. The second paragraph and subdivisions (a) through (d) of the section provide a collection procedure which a county may, but is not obligated to use, that of collecting the charges in conjunction with and through the property tax mechanism. This does not make the charges property taxes, but rather just provides a collection and security method. In response to the first question, we conclude that the charges authorized by section 25210.77a could but ordinarily would not constitute ad valorem taxes subject to the limitations of section 1 of Article XIIIA.

Turning now to the effect of section 4 of Article XIIIA on the section 25210.77a charges, we conclude that these charges can constitute special assessments, as that term has been defined in the authorities cited above, if properly levied by the board of supervisors. The last sentence of the first paragraph of section 25210.77a, which was added by Statutes 1979, chapter 261, section 1, provides: "The charges may be determined by apportioning the total cost, not otherwise offset by other available revenue, of the extended service area to each parcel therein in proportion to the estimated benefits from such services to be received by each parcel." Such a determination would constitute a special assessment. We again note, that to be a special assessment the board of supervisors would be required to ascertain the amount that the particular service rendered is of benefit to each parcel of land, as distinguished from the taxpayers, and assess the cost of the service accordingly. Without such a determination, the exaction cannot constitute a special assessment. (*Anaheim Sugar Co. v. County of Orange, supra*; 62 Ops. Cal. Atty. Gen. 747.) If validly assessed as a special assessment however, the exaction would not constitute special taxes

[9] Subdivision (e) added by Statutes 1979, chapter 261 (A.B. 549), places a restriction on the charges as relates to utility property. This amendment does not affect our discussion herein.

[10] Although not prohibited by section 25210.77a, we assume the county would not attempt to levy these charges on an ad valorem basis on all assessable property throughout the county service area. To do so would make them ad valorem property taxes and subject to the restrictions or prohibitions of sections 1 and 4 of Article XIIIA and Revenue and Taxation Code, section 2237.

within the meaning of section 4 of Article XIIIA. (*County of Fresno v. Malmstrom, supra*; 62 Ops. Cal. Atty. Gen. 663, *supra*.)[11]

If not levied as a special assessment, the charges authorized by section 25210.77a, may well be special taxes within the meaning of section 4 of Article XIIIA. If they are exacted from every person or parcel within the county service area regardless of the use of the service and irrespective of the benefit to the land, they would, in our judgment, constitute revenue raising fees designed to produce revenue for the governmental agency (the county) providing the service. Under our analysis in 62 Ops. Cal. Atty. Gen. 673 outlined above, such would constitute the imposition of a special tax as that term is used in section 4, and thus require the requisite voter approval. If, however, the charges were levied against only those who made use of the services and were no more than the cost of that use or service, the charges could be considered compensatory fees and would not constitute a special tax. For example, if the county were providing garbage collection or ambulance services in a county service area and charged the costs only to those whose garbage was collected, or to those who made use of the ambulance service, the fees would appear to be compensatory. If, however, the garbage service or ambulance service charges were levied against all residences or parcels in the community service area, they would constitute revenue raising fees which are special taxes.

The answer to the second question, then, is that the charges levied pursuant to section 26210.77a will constitute "special taxes" within the meaning of section 4 of Article XIIIA if exacted as a revenue raising fee by the board of supervisors, but will not constitute special taxes if properly levied as a special assessment or as a compensatory fee only from those receiving the services.

The final question relates to the requisite majority for approval under section 4 of Article XIIIA, if the charges exacted pursuant to section 25210.77a do constitute special taxes as outlined above. This involves two issues: (1) Who, in such an election, constitute the "qualified electors," and (2) is a county service area the "district" that votes, or must it be the entire county? Again, the prerequisite contained in section 4 for the imposition of a special tax by a city, county or special district is "a two-thirds vote of the qualified electors of such district."

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[11] We note that section 25210.9 allows the county to convert any delinquent bills for water, sewer or garbage service fees provided for a county service area into a "special assessment" against the parcel of land involved, provided the owner is the person billed. Irrespective of whether this procedure validly creates a special assessment, the critical time for purposes of section 4 of Article XIIIA is the time of exaction, for that is when the determination must be made as to whether a vote is required. If an exaction is a "special tax" within the meaning of that provision at that time, converting it to a special assessment after the taxpayer's obligation is incurred does not, in our judgment, avoid the voter approval requirement of section 4.

As to the first issue, what body of persons, two-thirds of whom must approve. is meant by the phrase "qualified electors"? Article XIIIA does not define the term, so we are not told whether it means all persons residing in the voting area who are qualified to vote irrespective of whether they register,[12] or all registered voters irrespective of whether they vote in the election in question, or all who vote at that election, or all those who vote on the proposition.

The California Supreme Court, in upholding the overall constitutionality of Article XIIIA in *Amador Valley Joint Union High Sch. Dist. v. State Bd. o] Equalization* (1978) 22 Cal. 3d 208, made several observations that are pertinent here. The court noted that Article XIIIA contains many ambiguous and uncertain terms, but that as a constitutional enactment should receive a liberal, practical, common sense construction. (22 Cal. 3d at 245.) Further, the court noted:

> "Most importantly, apparent ambiguities frequently may be resolved by the contemporaneous construction of the Legislature or the administrative agencies charged with implementing the new enactment. . . . In addition, when, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. . . ." (22 Cal. 3d at 245–46.)

Here we have some help from both sources. The Analysis of the Legislative Analyst for the proposition which enacted Article XIIIA, and which states that it is based, in case of uncertainty of the exact meaning of language, on an opinion of the Legislative Counsel, states:

> "This measure would authorize cities, counties, special districts and school districts to impose unspecified 'special' taxes only if they receive *approval by two-thirds of the voters. . . ."* (Ballot Prop., Analysis by Legislative Analyst, Initiative Prop. No. 13 as presented to the voters, Primary Election June 6, (1978).) (Empasis added.)
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> ". . . If the initiative is approved, new taxes would also have to be approved by two-thirds of the local voters." (*Id*.)

[12] We reject this possibility on practical grounds, even though if read literally it would apply. "Qualified electors" means persons qualified to vote, but not necessarily registered. (See Elec. Code, § 17; but see 44 Ops. Cal. Atty. Gen. 159, 160; Elec. Code, § 100.) The number contained in this group, however, would never be known in any voting area barring an instant census for each election. (See *In re East Bay Etc. Water Bonds of 1925* (1925) 196 Cal. 725, 745–746.)

The Legislature has also now spoken on this issue. Statutes 1979, chapter 903 (S.B. 785) authorizes a city or county to levy a special tax". . . upon the approval of two-thirds of the voters voting upon such proposition. . . ." The intent of the Legislature in enacting this statute is declared to be to provide all cities and counties with the authority to impose special taxes, subject to the provisions of Article XIIIA. Also, Statutes 1979, chapter 397 (A.B. 618) authorizes cities, counties and special districts to impose a "special tax" for fire protection or police protection provided the tax is approved by ". . . two-thirds of the voters voting upon such proposition. . . ." (New § 53978a as added by Stats. 1979, ch. 397.)

There is a strong presumption in favor of the Legislature's interpretation of a provision of the Constitution. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal. 3d 685, 692.)

> ". . . ""'[W]hen the Constitution has a doubtful or obscure meaning or is capable of various interpretations, the construction placed thereon by the Legislature is of very persuasive significance.'""" (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal. 3d 171, 175; see also *Lundberg v. County of Alameda* (1956) 46 Cal. 2d 644, 652; *Flood v. Riggs* (1978) 80 Cal. App. 3d 138, 152.)

From this material, although it is not entirely free from doubt (see, e.g., *City of Fairfield v. Hutcheon* (1949) 33 Cal. 2d 475, 477; *People ex rel. Smith v. City of Woodlake* (1940) 41 Cal. App. 2d 119, 122–123), we conclude that the phrase ". . . by a two-thirds vote of the qualified electors" means two-thirds of those voters who vote on the proposition.

The final issue involves what is the "such district," two-thirds of the voters of which must approve. Is it the entire county, since it is the county board of supervisors who would impose the section 25210.77a charges, or is it the voters of the territory of the county service area against whom the particular charges will be levied? Here again, we have some help from the Legislature. As the cases above note, the Legislature's interpretation of the constitutional provision is presumptively correct. (*Methodist Hosp. of Sacramento v. Saylor, supra* and cases cited therein.) Statutes 1979, chapter 397, *supra*, authorizes the levy of a special tax for fire or police protection by a local agency and provides: "Such propositions shall be submitted to the voters of the affected area, zone, or district . . . ."

"Such" normally refers to its immediate antecedent, which in section 4 of Article XIIIA would be the phrase "special districts." The section makes little sense, however, if the two-thirds vote requirement is only required for special districts and not for cities and counties, since this could easily be used to circumvent the property tax relief benefits obtained from sections 1 and 2 of Article XIIIA, by having cities and counties enact special taxes without a vote. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of*

Equalization, supra, 22 Cal. 3d at 230–232; 62 Ops. Cal. Atty. Gen. 673 at — (slip. opn. at p. 18).) At the same time, we believe the overall intent of section 4 was to authorize the new "special taxes" if two-thirds of those who would bear the burden approve it. (62 Ops. Cal. Atty. Gen. 533.) In the context of this opinion, this would be the voters of the county service area against whom the charges are to be levied. To conclude to the contrary would give non-affected voters a veto over the result or the ability to impose the tax over the disapproval of the affected area, an intent we do not find in Article XIIIA.

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