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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 79-907
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of	:	November 27, 1979
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Attorney General	:	
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Clayton P. Roche	:	
Deputy Attorney General	:	
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SUBJECT: REDUCTION OF STATE FUND THROUGH APPROPRIATION—The two-thirds vote requirement for appropriation bills in the California Constitution is applicable only to appropriations from the state general fund, and even as to that fund it is not applicable to appropriations for the public schools.

The Honorable John V. Briggs, Senator, Thirty-Fifth District, has requested an opinion on the following question:

Does every bill which would reduce any state fund through an appropriation, whether it be the general fund or a special fund, require a two-thirds vote of each house of the Legislature?

CONCLUSION

The two-thirds vote requirement for appropriation bills in the California Constitution is applicable only to appropriations from the state general fund, and even as to that fund it is not applicable to appropriations for the public schools.

## ANALYSIS

The question presented is whether every bill which would reduce any state fund through an appropriation, whether it be the general fund or a special fund, requires a two-thirds vote of each house of the Legislature.

Article IV, section 12(d) of the California Constitution, which is the only provision therein specifically relating to a vote requirement for appropriations, provides:

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring.”

The clear wording of this constitutional provision makes the two-thirds vote requirement applicable only to bills which appropriate money from the general fund. It additionally excepts therefrom appropriations from the general fund “for the public schools.” There is no two-thirds vote requirement as to bills which appropriate money only from a special fund.

The history of Article IV, section 12(d) and an opinion of this office with respect to a predecessor provision confirm this conclusion. Section 12(d) resulted from the revision of Article IV of the California Constitution in 1966. The second sentence thereof, the one providing for the two-thirds vote, had been previously contained in section 34a in substantially the same form. It read, as amended November 6, 1962:

“Appropriations from the General Fund of the State for any fiscal year, exclusive of appropriations for the support of the public school system, shall be void unless two-thirds of all the members elected to each house of the Legislature vote in favor thereof.

“Not more than 25 per centum of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.”

However, prior to its amendment in 1962, Article IV, section 34a read substantially differently. It stated, as amended November 5, 1946:

“Appropriations from the General Fund of the State for any fiscal year, exclusive of appropriations for the support of the Public School System,

shall not exceed by more than 5 per centum the appropriations from such fund, exclusive of such public school appropriations, for the preceding fiscal year unless two-thirds of all the members elected to each house of the Legislature vote in favor thereof; provided, that no amount appropriated in excess of such 5 per centum shall become a part of the base for determining the maximum appropriation for a succeeding fiscal year and provided that the base for the Ninety-ninth Fiscal Year shall be one-half of the base in effect for the Ninety-seventh and Ninety-eighth Fiscal Years plus 5 per centum. Should the appropriations in the Budget Act for any fiscal year exceed the limitations herein prescribed and such Budget Act be not passed by such two-thirds vote, the several items of appropriation therein shall be deemed reduced by that percentage which the excess amount of appropriation bears to the total appropriation. Should the prescribed limit for any fiscal year be exceeded by reason of any other appropriation or appropriations from the General Fund, then the appropriation first passed by the Legislature without such two-thirds vote, which exceeds such prescribed limitation, shall be deemed reduced by the amount of such excess, and all other subsequent appropriations from the General Fund not passed by such two-thirds vote shall be void. Nothing herein contained shall prevent the Governor from vetoing any bills or reducing any appropriation therein or any appropriation reduced as herein provided.

“Not more than 25 per centum of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.”

Despite the radical change in language in Article IV, section 34a in 1962, an examination of the Arguments to the Voters for Proposition 16 at the November 6, 1962 General Election discloses that the change in language had no practical effect. The Arguments to the Voters, at page 23 thereof, stated:

“The measure would also change the provision which requires a two-thirds vote by the Legislature for the passage of bills appropriating money from the General Fund, other than public school appropriations, if the appropriation exceeds an amount determined from a formula specified in the Constitution (Art. IV, Sec. 34a). The measure would remove this formula from the provision so that all such appropriations would require a two-thirds vote of the Legislature. However, because of the existence of ‘continuous’ statutory appropriations this formula now requires a two-thirds vote for all new General Fund appropriations, so that the removal of the formula will not change the practical effect of this constitutional provision.”

Accordingly, Article IV, section 12(d) as it presently reads is the functional equivalent of Article IV, section 34a as it read *prior to its amendment* in 1962.

This history is significant because in 1955 this office had the occasion to render an opinion on the scope of the two-thirds vote requirement of the Article IV, section 34a. We analyzed what we called “feeder funds,” that is funds which though continually appropriated for certain purposes still “fed” the general fund “reserve funds” which were in reality reserve accounts in the general fund, and then true “special funds.” (26 Ops. Cal. Atty. Gen. 168 (1955).) We ultimately concluded:

“Thus, *in our opinion the two-thirds voting requirement of section 34a applies* to the General Fund, all or certain ascertainable portions of the feeder funds listed at the outset of this opinion, all of the reserve funds set forth in the list at the commencement of the opinion, but *to none of the special funds so listed*. All of the funds to which the voting requirement of section 34a applies must be considered together in ascertaining whether the appropriations made for the current fiscal year exceed by five per cent the appropriations made for the preceding fiscal year under section 34a.” (*Id* at p. 176, emphasis added.)

In short, we concluded that appropriations to be funded from special funds did not fall within the two-thirds vote requirement.

Since section 12(d) is merely the successor provision of section 34a of Article IV in all material respects herein, our 1955 opinion is precedent for construing section 12(d) similarly, and according to its plain import. Accordingly we conclude that section 12(d) of Article IV imposes a two-thirds vote requirement only upon bills which appropriate money from the general fund, exclusive of appropriations for public schools. As to appropriation bills involving special funds, the simple majority vote required for most bills would be applicable. (See Cal. Const., Art. IV, § 8(b).)<sup>1</sup>

In so concluding we note that a *possible* explanation for the distinction made in Article IV, section 12(d) between the general fund and special funds may be found in the initial purpose for which its predecessor, Article IV, section 34a was added to the

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<sup>1</sup> In this opinion we neither attempt to nor intend to determine what funds are properly included in the state general fund for purposes of Article IV, section 12(d) and what funds are truly special funds exempt from the two-thirds vote requirement. Such an undertaking is beyond the scope of this request. Accordingly, 28 Ops. Cal. Atty. Gen. 168 (1955) *supra*, is cited herein solely for the conclusion that “special funds” do not fall within the two-thirds vote requirement without any attempt on our part to reanalyze it beyond that point.

California Constitution as part of Proposition 1 at a special election held on June 27, 1933. An examination of the Arguments to the Voters for that proposition (Arguments, at p. 3) discloses that Article IV, section 34a was added as part of a property *tax reform* measure which provided for a limitation upon governmental expenditures both at the state and local government level to five percent over the prior budget. As a tax reform measure, it is logical to have excluded special fund monies from the two-thirds vote requirement of Article 34a, since special funds are normally fed from sources other than general tax revenues such as from regulatory fees, trust funds, income from state property, or special taxes. (See 28 Ops. Cal. Atty. Gen. at p. 175.)

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