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OPINION	:	No. 79-909
of	:	December 5,1979
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SUBJECT: RECREATION AND PARK DISTRICT TAX LEVY—Revenue and Taxation Code section 2237 prohibits a recreation and park district from levying the tax authorized by Public Resources Code section 5788 *et seq*.

The Honorable Lou Cusanovich, Senator, Nineteenth District, has requested an opinion on the following question:

In light of Article XIIIA of the California Constitution, may a recreation and park district levy the tax authorized by Public Resources Code section 5788 *et seq*.?

CONCLUSION

Revenue and Taxation Code section 2237, enacted pursuant to section 1 of Article XIIIA of the California Constitution, prohibits a recreation and park district from levying the tax authorized by Public Resources Code section 5788 *et seq*.

ANALYSIS

We are informed that an existing recreation and park district desires to create a zone within the district and impose a levy on the property within that zone, as authorized by the Public Resources Code. The issue presented is whether the ad valorem property tax limitations imposed by Article XIIIA of the California Constitution, as implemented by the Legislature in the Revenue and Taxation Code preclude the imposition of this levy. It is our conclusion that such a levy constitutes an ad valorem property tax, as opposed to a special assessment which would not be subject to the constitutional restrictions, and therefore, the district is not authorized to impose it.

1. Recreation and Park Districts

Public Resources Code section 5780 *et seq*.[1] provides for the creation and operation of recreation and park districts. The board of directors of such a district is given specific power to:

> ". . . .
>
> "(a) Organize, promote, conduct, and advertise programs of community recreation;
>
> "(b) Establish systems of recreation and recreation centers, including parks and parkways; and
>
> "(c) Acquire, construct, improve, maintain and operate recreation centers within or without the territorial limits of the public authority." (§ 5782.2.)

The district board is also given the power to maintain and operate a fire department for the protection of property within the district (§ 5782.22), and if no other public agency provides such services in any area within the district, such district may provide garbage collection, street lighting services, and street and highway sweeping services. (§ 5782.23.)

In addition, a recreation and park district may cause a tax to be levied upon all the property taxable by the district, not to exceed 60 cents for each $100 of assessed valuation (§ 5784.5), and if approved by two-thirds of the voters of the district, may issue bonds, the proceeds of which may be used to acquire lands and facilities. (§§ 5784.22–5784.29.) Such bonds are to be repaid by a special property tax (§ 5784.30), the amount of which is not

[1] All section references are to the Public Resources Code unless otherwise indicated.

included in the 60 cent per $100 assessed valuation ceiling. (§ 5784.5.)

Of more immediate concern in this opinion is the authority contained in section 5788 *et seq*. for a recreation and park district to create zones within the district and levy exactions in support of such zones. Section 5788 authorizes the establishment of zones. Section 5788.1 provides:

> "Zones may be established for the purpose of providing or maintaining facilities and programs such as parks and recreation facilities which are within the powers of the district to provide or maintain, but which are in addition to facilities and programs provided or maintained for the benefit of the district as a whole. The establishment of a zone as a special assessment district will permit the additional cost of such facilities and programs to the extent that they are not of districtwide benefit to be charged to the taxpayers of the zone for whose benefit the additional facilities and programs are provided or maintained."

After the formation, which may be prevented by protests by either more than 50 percent of the voters or the owners of more than 50 percent of the assessed value of land within the proposed zone (§ 5788.7), the district is empowered to levy a "tax":

> "Upon the establishment of the zone, the governing board may fix and collect special zone taxes for use solely within the zone, and do all things necessary within its power to carry out the purposes of the zone." (§ 5788.12.)

The maximum rate of this levy is 10 cents per $100 assessed valuation, but this is in addition to the exaction allowed within the entire district. (§ 5788.10.)[2] The Board of Directors may also issue bonds for the zone, and levy and collect taxes for their repayment in the same manner and under the same restrictions as for the entire district. (§ 5788.13.)

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[2] Section 5788.10 provides in part:

"(a) Except as provided in subdivision (b), the maximum tax levied by the district upon property within a zone shall not exceed a rate of ten cents ($0.10) on each one hundred dollars ($100) of assessed valuation in addition to the tax allowed pursuant to Section 5784.5 or 5784.6.

". . . ."

2. Article XIIIA, California Constitution

In June, 1978, the voters of this state adopted an initiative measure (Proposition 13) which added Article XIIIA to the California Constitution. Section 1(a) of that article provides:

> "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."[3]

Pursuant to the authority granted in section 1(a) of Article XIIIA, the Legislature has determined how to levy and apportion the maximum one percent:

> "(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. . .
>
> "(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($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.' (Rev. & Tax. Code, § 2237; emphasis added.)

A recreation and park district is clearly a "local agency" within the meaning of section 2237. (Rev. & Tax. Code, §§ 2217, 2215.) Thus the question presented is whether the 10

[3] Section 1(b) of Article XIIIA provides an exception to the 1 percent limitation contained in section 1 (a) to pay the interest and redemption charges on any indebtedness approved by the voters prior to the effective date of Article XIIIA. The request for this opinion is in the context of a desire by a recreation and park district to impose a levy of up to 10 cents per $100 assessed valuation pursuant to sections 5788.12 and 5788.10, and not to repay outstanding bonds pursuant to section 5788.13. We therefore do not discuss section 1(b) of Article XIIIA. (See however, 62 Ops. Cal. Atty. Gen. 533 (No. 79–623); 62 Ops. Cal. Atty. Gen. 339 (1979); 61 Ops. Cal. Atty. Gen. 373 (1978).)

cents per $100 assessed valuation levy sought to be imposed by a recreation and park district against the territory in a district zone is an ad valorem property tax within the meaning of section 1(a) of Article XIIIA and Revenue and Taxation Code section 2237(a). If so, the district may not impose it. (See 62 Ops. Cal. Atty. Gen. 655 (No. 79–809).)

3. Special Assessments

In 62 Ops. Cal. Atty. Gen. 663 (No. 79–712), we discussed at length what constitutes a tax as distinguished from a special assessment, particularly for purposes of Article XIIIA of the California Constitution. We noted that Article XIIIA was designed to accomplish property tax relief (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 218, 230–232; *County of Fresno v. Malmstrom* (1979) 94 Cal. App. 3d 974, 980), and concluded that special assessments levied for the benefit of the assessee's property, and not for the benefit of the general public are not property taxes within the meaning of Article XIIIA, nor can they be used as a mechanism for circumventing the property tax relief provided by Article XIIIA. The *County of Fresno v. Malmstrom case, supra*, held that assessments made under the Improvement Act of 1911 (Sts. & Hy. Code, § 5000 *et seq*.) and the Municipal Improvement Act of 1913 (Sts. & Hy. Code, § 10000 *et seq*.) were not taxes within the meaning of section 1 of Article XIIIA, and therefore the 1 percent rate limitation did not apply. Our Opinion in 62 Ops. Cal. Atty. Gen. 663 (No. 79-712) concluded that the fees imposed by Government Code section 66484 of the Subdivision Map Act constituted a special assessment and are therefore not subject to the strictures of Article XIIIA.

Determining the difference between a property tax and a special assessment is not always an easy task. In 62 Ops. Cal. Atty. Gen. 663 (No. 79-712), *supra*, we set forth the authorities analyzing this task as follows:

> "Perhaps the best exposition of the difference between a property tax and an assessment and the requirements of an assessment are contained in *Northwestern Etc. Co. v. Sr. Bd. of Equal., supra*:
>
> "'A tax is an assessment levied on the person or the property involved and hence the terms have often been confused, but there is a difference that may be determined from the language and legal effect of the particular statute involved
>
> """There is a broad and well-recognized distinction between a tax levied for general governmental or public purposes and a special assessment levied for improvements made under special laws of a local character. (*Inglewood v. County of Los Angeles*, 207 Cal. 697, 702 (280 P. 360); . . . .'

(*Id*. at 551.)

". . . A special assessment is taxation in the sense that it is a distribution of that which is originally a public burden. Clearly, however, a special or local assessment is not a tax in the sense of a tax to raise revenue for general governmental purposes. Taxes for revenue, or 'general taxes' as they are sometimes called by distinction, are the exactions placed upon the citizen for the support of the government paid to the state as a state, the consideration of which is protection or public service by the state, whereas special or local assessments, sometimes called 'special taxes,' are imposed upon property within a limited area for the payment for a local improvement supposed to enhance the value of all property within that area. To enumerate significant differences between a special assessment and a tax, it may be observed: (1) A special assessment can be levied only on land; (2) a special assessment cannot (at least in many states) be made a personal liability of the person assessed; (3) a special assessment is ordinarily based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not an assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment, rather than a tax, notwithstanding the statute calls it a tax. It has been ruled that a special assessment is not, in the constitutional sense, a tax at all." (48 Am. Jut., pp. 565–567, § 3; . . . .)' (*Id*. at 552.)

"The California Supreme Court has noted that:

"'. . . Special assessments can be levied only on the specific property benefited and not on all the property in the district. . . ." The basis of the imposition of a special assessment is the benefit inuring to the property assessed. . . .' (*Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212, 216.)

"If the exaction is for the '. . . benefit [of] the members of the taxing district in common with the public and not merely as individual property owners . . .' (*Id*. at 217), or if the assessment exceeds the actual cost of the improvement, the exaction is a tax and not an assessment. (*City of Los Angeles v. Offner, supra*, 55 Cal. 2d at 108.)

"'. . . The compensating benefit to the property is the warrant, and the sole warrant, for the legislature to impose the burden of a special assessment.

[Citation.) The improvement must confer a special benefit upon the property assessed. [Citation.]" . . . .' (*Id*. at 112; see also *Roberts v. City of Los Angeles* (1936) 7 Cal. 2d 477, 490.)

"It should be noted, however, that the basis of determining the benefits to a particular parcel of property may be done by a variety of methods, so long as it is reasonable *Jeffrey v. City of Salinas* (1965) 232 Cal. App. 2d 29, 44), and may be determined on an ad valorem basis under some circumstances. (*County of Santa Barbara v. City of Santa Barbara, supra*, 59 Cal. App. 3d at 380.) (See also 58 Ops. Cal. Atty. Gen. 200, 202 (1975).)" (62 Ops. Cal. Atty. Gen. at 663 (No. 79–712, Slip opn. pp. 8–9).)

With that background, we now turn to an analysis of the recreation and park district zone levies.

4. The Levies Authorized Public Resources Code Section 5788.12 are Ad Valorem Property Taxes

The sections in question (§ 5788 *et seq*.) use the phrases "special assessments" (§ 5788.1) and "taxes" (§§ 5788.10–5788.12). The label used, of course, is not determinative of its nature, rather it is its incidences that prevail. (*Ainsworth v. Bryant* (1949) 34 Cal. 2d 465, 473; *Ingels v. Riley* (1936) 5 Cal. 2d 154, 159; 62 Ops. Cal. Atty. Gen. 254, 256 (1979).)

The Act authorizing the creation and funding of recreation and park district zones starts out as though it were creating a special assessment district as outlined in the authorities above. Section 5788.1 set forth in full, *supra*, establishes the purpose of such zones to create a mechanism whereby the facilities and programs can be charged to the taxpayers of the zone for whose benefit the additional facilities and programs are provided or maintained."[4] Note, however, that the section refers to the benefit of "taxpayers," not the property within the district.

[4] Some of the services authorized to be provided by such a district, such as fire protection, garbage disposal. Street lighting, and street sweeping, are of the type which one would expect would be found of benefit to a particular property, a prerequisite for a special assessment. The basic, specific duties of a recreation and park district, to provide park and recreation services and programs (§ 5782.2, *supra*), are of the type one would expect to benefit taxpayers rather than specific real property. We express no opinion on whether these latter purposes or services could be the subject of a special assessment.

Further, after that introductory section, the Act makes no provision for determining or assessing the benefits that would accrue to each parcel within the zone. Although benefits can, under some circumstances, be assessed on an ad valorem basis (*County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal. App. 3d 364), there must be a determination of the benefit to each parcel. (*Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212; *Harrison v. Board of Supervisors* (1975) 44 Cal. App. 3d 852, 857.) Here, of course, the levy is on a zone wide ad valorem basis, without a benefit determination.

Finally, the levy is against all the property in the zone, not just the real property. (§§ 5788.10, 5784.5.) As the quotation from *Northwestern Etc. Co. v. Sr. Bd. of Equal*. (1946) 73 Cal. App. 2d 548, notes, a special assessment can only be levied on land, not personal property.

We conclude, therefore, that the levy exacted pursuant to section 5788 et seq. on property in a recreation and park district zone is an ad valorem property tax within the meaning of section 1(a) of Article XIIIA of the California Constitution, and pursuant to Revenue and Taxation Code section 2237, the board of directors of such a district is no longer authorized to impose such a tax.

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