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OPINION	:	No. 80-1003
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The Honorable Priscilla Grew, Director, Department of Conservation, has requested an opinion on the question which has been revised and restated as follows:

Is a resource conservation district regular or special assessment under division 9 of the Public Resources Code an "ad valorem tax on real property" within the purview of sections 1 and 4 of article XIIIA of the California Constitution?

CONCLUSION

Both a resource conservation district regular and special assessment under division 9 of the Public Resources Code constitute an "ad valorem tax on real property" within the purview of sections 1 and 4 of article XIIIA of the California Constitution.

ANALYSIS

The basic policy of this state pertaining to resource conservation (div. 9, Pub. Res. Code) is set forth in section 9001:[1]

> "The Legislature hereby declares that resource conservation is of fundamental importance to the prosperity and welfare of the people of this state. The Legislature believes that the state must assume leadership in formulating and putting into effect a statewide program of soil and water conservation and related natural resource conservation and hereby declares that the provisions of this division are enacted to accomplish the following purposes:
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> "(a) To provide the means by which the state may cooperate with the United States and with resource conservation districts organized pursuant to this division in securing the adoption in this state of conservation practices, including but not limited to, farm, range, open space, urban development, wildlife, recreation, watershed, water quality, and woodland, best adapted to save the basic resources, soil, water, and air of the state from unreasonable and economically preventable waste and destruction.
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> "(b) To provide for the organization and operation of resource conservation districts for the purposes of soil and water conservation, the control of runoff, the prevention and control of soil erosion, and erosion stabilization, including, but not limited to, these purposes in open areas, agricultural areas, urban development, wildlife areas, recreational developments, watershed management, the protection of water quality and water reclamation, the development of storage and distribution of water, and the treatment of each acre of land according to its needs.

A resource conservation district may be formed for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, and the improvement of land capabilities. (§ 9151.) District directors are elected at a "general district election." (§ 9351.) Each candidate for the office of director must be an owner of land within the district. (§§ 9352, 9027.) The board of directors is authorized and empowered to manage and conduct the business and affairs of the district (§ 9401), conduct and publish the results of surveys, investigations, and research relating to the conservation of resources and prevention and control measures and needed works of improvement

[1] Hereinafter, all Section references are to the Public Resources Code.

(§ 9402), make improvements or conduct operations on public lands, and on private lands with the consent of the owners, in furtherance of the prevention or control of sod erosion, water conservation and distribution agricultural enhancement, wildlife enhancement, and erosion stabilization, including terraces, ditches, levees, and dams or other structures, and the planting of trees, shrubs, grasses, or other vegetation (§ 9409), disseminate information and conduct demonstrational projects relating to soil and water conservation and erosion stabilization (§ 9411), give assistance to private landowners or occupants within the district in seeds, plants, materials and labor under designated conditions (§ 9412), develop districtwide comprehensive plans, in conformance with applicable general plans, including soil and water conservation, improvement of farm irrigation and land drainage, erosion control and flood prevention, and community watersheds (§ 9413), act as agent of the United States or of this state in connection with the management, acquisition, construction, operation, or administration of any soil conservation, water conservation, water distribution, flood control, or erosion control, prevention or stabilization project (§ 9415), establish, as a condition to the expenditure of district funds or the performance by the district of work on private lands, standards of cropping and tillage operations and range practices on such lands (§ 9416), and develop educational programs and engage in other activities designated to promote a knowledge of principles of resource conservation (§ 9419).

The following provisions pertain to the levy of regular assessments for and on behalf of a district.

> 9501. "The directors shall, on or before January 1 of the calendar year during which an assessment is to be levied for the first time, notify the State Board of Equalization as provided in Revenue and Taxation Code Sections 756 and 759 and, annually on or before August 1st, furnish the county auditor and the board of supervisors an estimate in writing of the amount of money necessary to be raised by assessment for the purposes of the district for the next ensuing fiscal year."
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> 9503. "The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district, the costs of the work which the directors may deem advisable to be done during the ensuing year, the estimated costs of repairs to and maintenance of the property and works of the district, and the estimated expenses of any action or proceeding to which the district is or may be a party, including the cost of employing engineers and attorneys.
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> 9504. "Assessments levied pursuant to this article shall be known as regular assessments.

9505. "The regular assessment in any one year shall not exceed two cents ($0.02) on each one hundred dollars ($100) of assessed valuation of the land, exclusive of improvements, trees, and mineral rights, within the district. The valuation shall be determined according to the last assessment roll, reduced proportionately when mineral rights, standing trees, or timber are involved.

"The cost to the assessor, if any, of recomputing assessed valuations in accordance with this section shall be paid by the district requesting an assessment levy pursuant to this article."

9506. "The board of supervisors of each county in which there lies any portion of the district shall, annually, at the time of levying county taxes, levy an assessment on the land exclusive of improvements, trees, and mineral rights, within the county and within the district to be known as the '............(name of district) Resource Conservation District assessment,' sufficient to raise the amount reported to them in the estimate of the directors."

9507. "The rate, as determined by the board, shall be such as will produce, after due allowance for delinquency, the amount determined as necessary to be raised by taxation on the secured roll. On or before September 1st of each year the board shall fix the rate, composed of the number of cents or fraction thereof for each one hundred dollars ($100) of assessed valuation of land exclusive of improvements and mineral rights, such as will produce, after due allowance for delinquency, the amount determined as necessary to be raised by taxation on the secured roll."

9508. "If the board fails to levy the assessment the auditor of the county shall do so, providing the directors have requested the assessment.

9509. "The assessment shall be computed and entered on the assessment roll by the auditor. "[2]

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[2] Section 9512 provides:

"If during the current fiscal year the directors are not, by reason of the fact that no assessment has been levied, collecting a regular assessment levied during the year immediately preceding, then notwithstanding other provisions of this code, the board of supervisors in each county in which a soil conservation district, or a pardon thereof is located may, upon a showing by the directors that funds are needed for the purposes of the district for the current year, appropriate money from the general fund of the

Section 9545, pertaining to the levy of the special assessment referred to in the inquiry, provides as follows:

> "Except as provided in Section 9546, the county shall pay any and all costs attributable to the conduct of district elections and shall be reimbursed for such expenditure the following year by a special assessment levied and collected in the same manner as regular assessments pursuant to the provisions of Article 1 (commencing with Section 9501), except that the limitations set forth in section 9505 shall not apply to such assessment."[3]

The inquiry presented is whether the regular or special assessment is an "an valorem tax on real property" within the purview of sections 1 and 4 of article XIIIA of the California Constitution, which provide as follows:

> "SECTION 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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> "(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.
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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 tax on the sale of real property within such City, County or special district."

> county for the use of said district in an amount equal, during any one year, to the amount which said district could have raised by assessment, as limited by this code, in said current year, or so much thereof as may be required. This provision shall not be deemed to prohibit the board of supervisors from appropriating to such districts sums in excess of these amounts.

This section does not provide the district with an optional alternative means of support, but may be invoked only under limited circumstances where the county board of supervisors has failed to act. (7 Ops. Cal. Atty. Gen. 395 (1946).)

[3] Section 9546 provides:

> "The county shall bill any candidate for district office for the actual prorated costs of printing, handling, and translating his statement of qualifications contained in the voter's pamphlet accompanying the sample ballot."

Both the regular and the special assessments are clearly based on the valuation of real property. (*Cf.* § 9505.) The principal remaining issue is whether the ad valorem exaction is a "tax" for purposes of article XIIIA. For the reasons hereinafter set forth, such assessments in our view constitute a "tax" within the purview of article XIIIA.

In 62 Ops. Cal. Atty. Gen. 663 (1979) we examined the nature of the distinction between a tax and an assessment:

> "The recent case of *County of Fresno v. Malmstrom*, [(1979) 94 Cal.App.3d 974], 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 sections 1 and 4 of article XIIIA, and therefore neither the one percent tax rate limitation of section 1 nor the voter approval requirement of section 4 was applicable. The essence of the court's reasoning was that since special assessment improvements are for the benefit of the property against which the cost is assessed, the assessments are not, and traditionally have not been, considered taxes. The court even analogized assessments as being more in the nature of loans to property owners for improvements benefiting their property, with bonds representing that loan and secured by the property itself.' (*Id*. at 980, fn. 2.)
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> "Many California court decisions have held that property assessments for improvements which are of benefit solely to the property assessed, in contrast to general ad valorem property taxes, are not taxes at all. (See, e.g., *Cedars of Lebanon Hosp. v. County of L.A*., *supra*, 35 Cal. 2d at 747; *Los Angeles Co. F.C. District v. Hamilton* (1917) 177 Cal. 119, 129; *County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal. App. 3d 364, 379-380; *County of San Bernardino v. Flournoy* (1975) 45 Cal. App. 3d 48, 51-52. And see 6 Ops. Cal. Atty. Gen. 147, 148 (1945).) This is so despite the fact that the source of governmental power to levy special assessments is ' . . . the same power as that exerted in the levy of an ordinary tax for governmental purposes. . . .' (*Inglewood v. County of Los Angeles* (1929) 207 Cal. 697, 703.)
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> "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.* [(1946) 73 Cal. App. 2d 548]:

"'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 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 government 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. Jur., 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).)

"As noted above, the court in *County of Fresno v. Malmstrom*, *supra*, has concluded that section 4 of article XIIIA does not apply to 1911 and 1913 Improvement Act assessments since they are special assessments and not taxes. (94 Cal. App. 3d at 984-985.) We reach the same conclusion, with slightly different reasoning. Since special assessments as defined and discussed by the courts must be for the benefit of the assessee s property, and not for the benefit of the general public other than incidentally, we conclude that assessments are not the type of action that can be used as a mechanism for circumventing the property tax relief provided by sections 1 and 2 of article XIIIA. As the *Offner* and *Roberts* cases, *supra*, note, if the assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment, but is a tax. (See *Harrison v. Board of Supervisors* (1975) 44 Cal. App. 3d 852, 857.) This being so, it is our opinion that an exaction which meets the requirements of a special assessment is not a tax within the meaning of the provisions of section 4 of article XIIIA."

Clearly, resource conservation district "assessments" contain certain attributes of an assessment, as distinguished from a tax. In this regard, section 9505 provides that the regular assessment shall be based on the valuation of" the land, exclusive of improvements, trees, and mineral rights, *within the district*." (Emphasis added.) Section 9152 provides:

"The lands included in a district shall be those generally of value for agricultural purposes, including farm and range land useful for the production of agricultural crops or for the pasturing of livestock, but other lands may be included in a district if necessary for the control of runoff, the prevention or control of soil erosion, the development and distribution of water, or land improvement, and for fully accomplishing the purposes for which the district is formed."

Section 9153 provides:

"The lands included in any one district need not be contiguous but they shall be susceptible of the same general plan or system for the control of runoff, the prevention or control of soil erosion, and the development and distribution of water, or land improvement. No lands may be included in more than one district."

In fixing the boundaries of a district the county board of supervisors must exclude therefrom or from within the district such lands as the owner has requested to be excluded. (§ 9219; *cf.* 6 Ops. Cal. Atty. Gen. 2, 4 (1945); 12 Ops. Cal. Atty. Gen. 167, 169 (1948).) In its final determination of the boundaries the board "shall not include within the district any land which, in the opinion of the board, will not be benefited by such inclusion." (§ 9220; *cf.* 6 Ops. Cal. Atty. Gen. 2, 4, *supra*; 27 Ops. Cal. Atty. Gen. 396, 398 (1956).) Thus, resource conservation district assessments are levied only on land rather that on all taxable property in the district (§ 9505), only on certain lands within the boundaries of the district (§§ 9152, 9153, 9220), and only upon such lands as have not been excluded upon the request of the owner (§ 9219). On the basis of such considerations we concluded in 27 Ops. Cal. Atty. Gen. 396, *supra*, with respect to the municipal corporation exemption provisions of California Constitution article XIII, section 3, subdivision (b), that resource conservation district assessments are assessments rather than taxes.

Nevertheless while the matter is not free from doubt,[4] we are persuaded that

[4] As stated by the court in *Solvang Municipal Improvement District v. Board of Supervisors* (1980) 112 Cal. App. 3d 541, 553-554:

"In practical application, the two types of taxation, general ad valorem taxes and special assessments, to some extent overlap, and we cannot always differentiate between them with precision. A tax to pay the cost of a particular improvement may be crafted as a special assessment levied a gains particular real property within a local district on the theory that this property is the primary beneficiary of the improvement, or it may be structured as a general ad valorem tax levied on property in a larger area on the theory that all property within the larger area benefits to some extent from the improvement. Such variegated treatment may be seen in the projects of water districts, a resource conservation district "assessment" is a "tax" subject to the provisions and limitations of article XIIIA of the California Constitution. First, a perusal of the statutory design and objectives reveals an intended benefit to the public generally, which is not merely incidental to the benefit to the members of the district severally. In 9 Ops. Cal. Atty. Gen. 225 (1947) it was concluded, based upon then existing express statutory provision, that the expenses of a general district election were to be borne by the county. It was noted in part that the programs carried out by soil conservation districts[5] were for the general public benefit. (*Id*., at p. 257; and see 38 Ops. Cal. Atty. Gen. 72, 75 (1961); *cf*. §§ 9001, 9002.) Second, the exaction is bound not to any special compensating benefits inuring to the land, which is the sole warrant upon which an assessment may he based (*cf*. *Solvang Municipal Improvement District v. Board of Supervisors*, *supra*, 112 Cal. App. 3d 545), but upon the revenue required to meet the district's expenses. (§ 9503.) Thus, it cannot be ascertained that the exaction does not exceed the actual cost of the benefit or improvement. (*Cf*. *County of Fresno v. Malmstrom* (1979) 94 Cal. App. 3d 974, 984; 62 Ops. Cal. Atty. Gen. 663, 669 (1979).) Further, while 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; and *cf*. *County of Fresno v. Malmstrom*, *supra*, at p. 980; 62 Ops. Cal. Atty. Gen. 747, 752–753 (1979)), there must be a determination of the amount that the particular service rendered is of benefit to each parcel of land. In the absence of such a determination, the exaction cannot constitute an assessment. (*Anaheim Sugar Co. v. County of Orange* (1919) 181 Cal. 212; *Harrison v. Board of Supervisors* (1975) 44 Cal. App. 3d 852, 857; 62 Ops. Cal. Atty. Gen. 747, *supra*, at p. 753; 62 Ops. Cal. Atty. Gen. 831, 839, (1979).)

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flood control districts, sewer districts, irrigation districts, and similar public entitles, where the benefit of the improvement to particular property is sometimes thought to outweigh its benefit to property in the larger area, and sometimes not. (*Los Angeles County Flood Control Dist. v. Hamilton* (1917) 177 Cal. 119, 124-126; *Roberts v. City of Los Angeles* (1936) 7 Cal. 2d 477, 491; *Harrison v. Board of Supervisors* (1975) 44 Cal. App. 3d 852, 856-859.) Yet in spite of ambiguities encountered in practice, the basic distinction between general ad valorem taxation and special assessment to meet the cost of a local improvement remains reasonably clear. (*Cedars of Lebanon Hospital v. County of Los Angeles* (1950) 35 Cal. 2d 729, 747, hospital exempt from taxation not exempt from special assessment; *City Street Imp Co v. Regents* (1908) 153 Cal. 776, 778-779, university property, the same; *San Diego v. Linda Vista I. Dist.* (1895) 108 Cal. 189, 192-195, municipal land, the same.) In sum, a special assessment is a charge levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement. (*Burnett v. Mayor etc. of Sacramento* (1859) 12 Cal. 76, 83–84; *Clute v. Turner* (1909) 157 Cal. 73, 80; *City of Whittier v. Dixon* (1944) 24 Cal. 2d 664, 667-668, public parking.)'

[5] Resource conservation districts were previously known as soil conservation districts. (Stats. 1971, ch. 430; 57 Ops. Cal. Atty. Gen. 406 (1974).)

Without regard to the complexity inherent in any attempt to correlate the amount of benefit to assessed valuation according to assessment roll (§ 9505) under article XIIIA (compare 52 Ops. Cal. Atty. Gen. 72, 75(1969)), it does not appear that any such determination has been made or is required under the statute. (*Cf. Kern County Water Agency v. Board of Supervisors* (1979.) 96 Cal. App. 3d 874, 880.)

Finally, since resource conservation district "assessments" are ad valorem taxes on real property, they do not fall within the provisions of section 4 of article XIIIA permitting an imposition of special taxes[6] by a two-thirds vote. It is concluded that both a resource conservation district regular and special assessment constitute an "ad valorem tax on real property" within the purview of sections 1 and 4 of article XIIIA.

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[6] We have previously defined the term "special taxes" in pertinent context to mean any new or additional local tax levied for revenue purposes. (62 Ops. Cal. Atty. Gen. 673, 685-687 (1979); and see 62 Ops. Cal. Atty. Gen. 254, 257-258 (1979); *Mills v. County of Trinity* (1980) 108 Cal. App. 3d 656; Gov. Code, § 50076.)