TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-1211
of	:	JUNE 18, 1981
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The Honorable Frank J. DeMarco, County Counsel, County of Siskiyou, has requested an opinion on a question we have phrased as follows:

Does section 6 of article XVI of the California Constitution prohibit a general law county from distributing county funds to a community services district under Revenue and Taxation Code section 98.8?

CONCLUSION

Section 6 of article XVI of the California Constitution does not prohibit a general law county from distributing county funds to a community services district under Revenue and Taxation Code section 98.8 if the funds are expended for purposes for which the county is authorized to expend such funds.

ANALYSIS

We are asked whether a general law county may lawfully distribute some of its funds to a "community services district" (the "district") under section 98.8.[1] The district in question seeks such funds in order to supplement its general operating revenues. Concern has been voiced as to whether such a distribution violates the provisions of section 6 of article XVI of the California Constitution. We begin our discussion with the statute, section 98.8, under which the district seeks to receive the funds:

> "*In addition to* the amounts provided for in Section 98.6, pursuant to a resolution adopted by its governing board, a county or city may *distribute funds* to any *special district* from any available county or city sources." (Emphases added.)[2]

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[1] All unidentified statutory references are to the Revenue and Taxation Code.

[2] Section 98.6, to which section 98.8 makes reference, provides:

"(a) Notwithstanding any other provision of this chapter, the amount allocated pursuant to Sections 96 or 97 and 98 to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, excluding multicounty districts, shall be reduced by an amount computed as follows:

"(1) A ratio shall he computed for each such special district equal to the amount of state assistance payment for such special district for the 1978–79 fiscal year divided by the sum of such state assistance payment for the special district plus the amount of property tax revenue allocated to the special district for the 1978–79 fiscal year pursuant to Section 26912 of the Government Code.

"(2) The amount by which the allocation pursuant to Sections 96 or 97, 98, shall be reduced shall be equal to such allocation multiplied by the factor computed for the district pursuant to paragraph (1).

"(3) The total of all amounts computed for special districts within each county shall be deposited in the Special District Augmentation Fund which shall specify amounts for each governing body as defined in Section 16271 of the Government Code and which shall be allocated pursuant to subdivision (b).

"(b) There is hereby created a Special District Augmentation Fund in each county *to augment the revenues of special districts*. The auditor shall, on or before September 30 of each year, notify each governing body, as defined in Section 16271 of the Government Code, of the amount allocated to it pursuant to this section.

"Within 15 days of such notice, the governing body shall hold a public hearing for the purpose of determining the *distribution of such funds*, the governing body shall send written notice to the legislative body of each special district which is not governed by the board of supervisors or the city council and shall publish such notice in a newspaper of general circulation in the county not less than three days prior to the hearing. The notice shall include the following: (1) the amount of funds available to

This section provides the authority for the county to "distribute" funds to the district. We must first determine the meaning of the word "distribute" as used in the context of section 98.8. In determining the intent of the Legislature in employing this word, we should first apply rules of statutory construction which have been summarized by the *California Supreme Court in Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 as follows:

> "We begin with the fundamental rule that a court should ascertain the intent of the Legislature *so as to effectuate the purpose of the law*. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose and a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping-in mind the nature and obvious purpose of the statute where they appear. Moreover, *the various parts of a statutory enactment must he harmonized by considering the particular clause or section in the context of the statutory framework as a whole."* (Citations and quotations omitted; emphasis added.)

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special districts, and (2) the time and place of the hearing.

"Within 30 days of the notice of allocation, the governing body shall determine the amount of funds to be disbursed to each special district. The funds provided for by this shall be used exclusively for special districts and shall not be used for any general county or municipal expenses.

"The county auditor shall disburse funds to the special district in the same manner as disbursements which are made from the county treasurers property tax trust fund." (Emphases added.)

The district is a "special district," which is defined in section 2215:

"'Special district' means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. 'Special district' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area, 'Special district' does not include a city, a county, a school district or a community college district, 'Special district' does not include any agency which is not authorized by statute to levy a property tax rate."

For a general discussion of "special districts" see 57 Ops, Cal. Atty. Gen, 1 (1974). (See also, Gov. Code, § 61000 *et seq.* regarding "community services districts.")

It is clear from the statutory scheme as a whole that the Legislature intended to augment the revenues of such districts by way of permanent grants of funds. Section 98.8, for example, specifically states that the funds distributed are "in addition to the amounts provided for in section 98.6." Additionally, section 98.6, in part, provides for the disbursement of funds to special districts to augment their revenues. We conclude that the authority to "distribute funds" granted by section 98.8 refers to a grant of such funds without any reimbursement obligation.

We now move to the issue of whether a distribution of county funds under section 98.8 to the district violates section 6 of article XVI of the California Constitution, which section limits the county's power to grant funds by prohibiting gifts of public funds. Section 6 states:

> "The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever . . .
>
> " . . . . . "[3]

It has been consistently held that expenditures of public funds which may benefit private persons are not gifts within the meaning of section 6 of article XVI if those funds are expended for a "public purpose." (*Schettler v. County of Santa Clara* (1977) 74 Cal. App. 3d 990, 1003; *County of Alameda v. Carleson* (1971) 5 Cal. 3d 730, 745–746; *California Emp. etc. Com. v. Payne* (1947) 31 Cal. 2d 210, 216; *County of San Bernardino v. Way* (1941) 18 Cal. 2d 647, 653; *County of Alameda v. Janssen* (1940) 16 Cal. 2d 276, 281; *County of Riverside v. Whitlock* (1972) 22 Cal. App. 3d 863, 877; *Winkelman v. City of Tiburon* (1973) 32 Cal. App. 3d 834, 844–846.) As set forth by the *California Supreme Court in City of Oakland v. Garrison* (1924) 194 Cal. 298, 302:

> "[W]here the question arises as to whether or not a proposed application of public funds is to be deemed a gift within the meaning of that

[3] Formerly article XIII, section 25, adopted in 1966, restating the provisions of former article IV, section 31, without substantial change.

> term as used in the constitution, the primary and fundamental subject of inquiry is as to whether the money is to be used for a public or a private purpose. If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift." (See also *Doctors General Hospital v. County of Santa Clara* (1961) 188 Cal. App. 2d 280, 286.)

It has been said repeatedly that if a public purpose is served by the expenditure of public funds, the constitutional prohibition is not violated even though there may be incidental benefits to private persons or entitles. (*Board of Supervisors v. Dolan* (1975) 45 Cal. App. 3d 237, 243; see also *People v. City of Long Beach* (1959) 51 Cal. 2d 875; *County of San Diego v. Hammond* (1936) 6 Cal. 2d 709; *City of Oakland v. Williams* (1929) 206 Cal. 315.)

The determination of what constitutes a public purpose is primarily a marter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis. (*Schettler v. County of Santa Clara*, *supra*, 74 Cal. App. 3d at p. 1004; *County of Alameda v. Carleson*, *supra*, 5 Cal. 3d at p. 746; *County of Alameda v. Janssen*, *supra*, 16 Cal. 2d at p. 281; *The Housing Authority v. Dockweiler* (1939) 14 Cal. 2d 437, 449–450; *Veterans' Welfare Board v. Jordan* (1922) 189 Cal. 124, 145; *Community Television of So. Cal. v. County of Los Angeles* (1975) 44 Cal. App. 3d 990, 997; *Board of Supervisors v. Dolan*, *supra*, 45 Cal. App. 3d at p. 243.)

Where, as here, public funds are distributed from one public agency to another, article XVI, section 6, requires that the funds must not only be used by the recipient entity for a public purpose but must also be used to further the particular public purpose of the transferring entity. In this regard the California Supreme Court has stated:

> "[A] contribution from one public agency to another for a purely local purpose of the donee agency is in violation of the constitutional prohibition, but . . . such a contribution is legal if it serves the public purpose of the donor agency even though it is beneficial to local purposes of the donee agency." (*Santa Barbara etc. Agency v. All Persons* (1957) 47 Cal. 2d 699, 707, revd. on other grounds, 357 U.S. 275, mod. 53 Cal. 2d 743; see also *Golden Gate Bridge etc. Dist. v. Luebring*, *supra*, 4 Cal. App. 3d at p. 207; *Mallon v. City of Long Beach* (1955) 44 Cal. 2d 199, 210–212.)

In *City of Oakland v. Garrison* (1924) 194 Cal. 298, 304, the court noted that gifts to a municipal corporation were prohibited by the Constitution and concluded:

> "It is not sufficient, therefore, that the appropriation here in question

be for a public purpose. It must also be for a purpose which is of interest and benefit generally to the people of the [transferor entity]." (See also 46 Ops. Cal. Atty. Gen. 138, 140 (1965).)

As aptly synthesized in *Golden Gate Bridge etc. Dist. v. Luebring*, *supra*, 4 Cal. App. 3d at page 209:

> "Thus, the decisions speak both of furthering the purpose of the donor entity, and of the general interest of the people within that entity. But the two formulations may be reconciled by observing that the cases talking in terms of the general interests of the people of the donor entity have involved gifts by the state or a county (*Mallon v. City of Long Beach, supra*, 44 Cal. 2d 199; *City of Oakland v. Garrison*, *supra*, 194 Cal. 298; 51 Ops. Cal. Atty. Gen. 71). Such entitles have extremely broad 'purposes,' affecting in many ways the welfare of their citizens; they are therefore empowered to undertake many kinds of activity in furtherance of the general welfare of their citizens. The authorities that have said the expenditures must further the purpose of the donor have involved proposed transfers by limited purpose agencies (a water agency in *Santa Barbara etc. Agency v. All Persons*, *supra*, 47 Cal. 2d 699, reversed on other grounds 357 U.S. 275, mod. 53 Cal. 2d 743, and a sanitary district in 46 Ops. Cal. Atty. Gen. 138). Such agencies do not have the broad responsibilities of the state and counties. Therefore, it appears that an agency's public 'purpose' and its 'interests' are but different expressions of the same concept. Indeed, an entity with a narrow and particular purpose, such as a water or sanitary or highway district, could hardly have an 'interest' apart from furtherance of the purpose for which it was established. . . ."

Thus, the county funds distributed to the district must further the purposes of the county as well as the district. We are not advised how the district will utilize the county funds. For that reason our response must be conditioned on the use of the funds as in our conclusion in 51 Ops. Cal. Atty. Gen. 71 (1968). The district may use the county hinds only for those expenditures which the county itself is authorized to expend on behalf of all county taxpayers. We suggest, as we did in 51 Ops. Cal. Atty. Gen. 71, 75 (1968), that the district keep the county funds in a separate account and be prepared to demonstrate that expenditures made therefrom were used only for county purposes.

Accordingly, it is our conclusion that section 6 of article XVI of the California Constitution does not prohibit a general law county from distributing county funds to a community services district under Revenue and Taxation Code section 98.8 if the hinds are expended for purposes for which the county is authorized to expend such funds.

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