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OPINION	:	No. 80-228
	:	
of	:	<u>May 13, 1980</u>
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SUBJECT: TRANSFERABLE COUNTY FUNDS—The amount of county funds which may be temporarily transferred to a school district is restricted by section 6 of article XVI of the California Constitution to 85 percent of the school district taxes levied by the county under section 21 of article XIII of the California Constitution.

The Honorable Wilson C. Riles, Superintendent of Public Instruction, has requested an opinion on the following question:

What restriction is imposed by section 6 of article XVI of the California Constitution upon the amount of county funds which may be temporarily transferred to a school district?

CONCLUSION

The amount of county funds which may be temporarily transferred to a school district is restricted by section 6 of article XVI of the California Constitution to 85 percent of the school district taxes levied by the county under section 21 of article XIII of the California Constitution and of all amounts apportioned to the county or to such school district under section 6 of article IX of the California Constitution solely with respect to any retirement system provided for in the charter of such county pursuant to the provisions

of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by such county, which will accrue to such school district during the fiscal year in which such transfer is made.

ANALYSIS

Section 6 of article XVI of the California Constitution provides:

“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; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; . .

“

“And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer’s office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of *the taxes accruing to such political subdivision*, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes.” (Emphasis added.)

Section 42620 of the Education Code provides:

“Whenever prior to the receipt by any school district or county school service fund of its state, county, city and county, or district funds, any school district or county school service fund of a county or city and county does not have sufficient money to its credit to meet current expenses of maintenance, the board of supervisors of the county or city and county shall order, and the auditor and treasurer of the county or city and county shall make a temporary transfer from any funds of the county or city and county not immediately needed to pay claims against them to the school fund of the district or county school service fund of the amount needed, not exceeding 85 percent *of the amount of money which will accrue to the school district* or county school service fund during the fiscal year. Upon the making of the transfer the auditor shall immediately notify the superintendent of schools of the county or city and county of the amount transferred. Each transfer of funds requested under this section shall be granted in order of receipt by the board of supervisors, regardless of whether sufficient county funds are available for transfer to meet pending or anticipated requests of school districts.

“The funds transferred under this section to the credit of a school district or county school service fund shall be retransferred by the auditor and treasurer to the fund from which they were taken from the first moneys accruing to the school district or county school service fund and before any other obligation of the school district or county school service fund is paid from the money accruing.”

The issue arises whether the word “taxes” within the context of the constitutional provision (underscored, *supra*) is limited to local school taxes¹ as distinguished from funds apportioned to the school districts from state or federal tax revenue. It has been suggested that the statutory term “money” (underscored, *supra*) constitutes a legislative interpretation of the constitutional language consistent with an expanded definition of “taxes.” For the reasons hereinafter set forth, we are, again, compelled to disagree. We have previously determined that the statutory reference is to local school taxes and not to funds received through taxes levied by the state. (Ops. Cal.

¹ Section 21 of article XIII of the Constitution provides:

“Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district’s board determines are required for its schools and district functions.”

Atty. Gen. No. 10846 (1936).)

There is, of course, 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.) Thus, when 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; and see *Lundberg v. County of Alameda* (1956) 46 Cal. 2d 644, 652; *Flood v. Riggs* (1978) 80 Cal. App. 3d 138, 152.) The courts, therefore, will not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said it is positively and certainly in conflict therewith. (*Kaiser v. Hopkins* (1936) 6 Cal. 2d 537, 540; *San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273; *Methodist Hosp. of Sacramento v. Saylor*, *supra*.)

On the other hand, the terms used in a constitutional amendment must be construed in the light of their meaning at the time of the adoption of the amendment, and cannot be extended by legislative definition, for such extension would, in effect, be an amendment of the Constitution, if accepted as authoritative. (*Lucas v. County of Monterey* (1977) 65 Cal. App. 3d 947, 954; *Forster Shipbuilding Co. v. County of Los Angeles* (1960) 54 Cal. 2d 450, 456; *Pacific G. & E. Co. v. Industrial Acc. Com.* (1919) 180 Cal. 497, 500.) Moreover, a constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 245; *In re Quinn* (1973) 35 Cal. App. 3d 473, 482.)

The last paragraph of section 6 of article XVI, hereinabove first set forth, was added by constitutional amendment of 1926,² substantially in its present form. The word "taxes" appears within the phrase "taxes accruing to such political subdivision." This phrase, construed in accordance with its natural and ordinary meaning at the time of its adoption, is, in our view, neither doubtful nor obscure, nor capable of various interpretations. With respect to a particular political subdivision, the reference is to those direct taxes levied by or on behalf of, and specifically for the support and maintenance of that subdivision. Neither the terms of the amendment nor the ballot summary and arguments presented to the electorate in connection therewith indicate an intention to permit a temporary transfer of funds in excess of 85 percent of the taxes *accruing to such political subdivision*.

² Proposition 24, General Election, November 2, 1926; then section 31 of article IV.

No attempt has been made by the Legislature since our opinion of 1936 to amend or clarify the statutory reference to “money” accruing to a school district.³ In our view, the use of that term was simply not perceived as an expansion upon the constitutional standard. Indeed, at the time of the 1926 amendment, section 1858 of the Political Code provided in part (Stats. 1921, p. 709):

“Whenever in any school year, prior to the receipt by the school districts of any county, or city and county of this state, of their state, county, or city and county, or special or high school fund, the school districts of that county, or city and county shall not have sufficient money to their credit to pay the lawful demands against them, the county or city and county superintendent shall give the treasurer of said county or city and county, an estimate of the amount of school money that will next be paid into the county or city and county treasury, stating the amount to be appropriated to each district. Upon the receipt of such estimate it shall be the duty of the treasurer of said county, or city and county, to transfer from any fund not immediately needed to pay the claims against it, to the proper school fund an amount not to exceed ninety per cent of the amount estimated by the superintendent, and he shall immediately notify the superintendent of the amount so transferred. The funds so transferred to the school fund shall be retransferred by the treasurer to the fund from which they were taken, from the first money paid into the school fund after the transfer.” (Emphasis added.)

(*Cf. Fawcett v. Ball* (1926) 80 Cal.App. 131, 134.)

Section 1858 of the Political Code was repealed by the School Code of 1929. (See Gen. Laws, Act 7519, § 10.3.) Section 4.290 of the School Code was enacted as follows:

“Whenever between the first day of July and the last Monday in April of the succeeding year and prior to the receipt by the school districts of their state, county or city and county or special or high school fund, the school districts of a county, or city and county, shall not have sufficient money to their credit to meet current expenses of maintenance, it shall be the duty of the board of supervisors of said county or of said city and county to make a temporary transfer from any fund of said county or said city and county, not immediately needed to pay claims against it, to a proper school fund not to exceed eighty-five per cent of the *amount of tax moneys which will accrue to such school district* during such fiscal year, and upon the making of such

³ See also Education Code section 85220; and *cf.* Government Code section 23010 (“anticipated revenue”).

transfer the treasurer shall immediately notify the superintendent of the amount so transferred.

“The funds so transferred under the provisions of this section, to the credit of a school district, shall be retransferred by the treasurer to the fund from which they were taken from the first moneys accruing to such school district and before any other obligation of such school district is paid from such moneys so accruing.” (Emphasis added.)

It is apparent that this section was enacted to conform the statutory law pertaining to school districts specifically with the 1926 constitutional amendment. The 90 percent limitation in the former Political Code provision was reduced to 85 percent. Concomitantly, the former reference to “school money” became “tax moneys.” Section 4.290 of the School Code was amended in various respects by the Statutes of 1931, chapter 1186. The amended section referred to “moneys which will accrue to such school district,” as does the present Education Code section 42620. It would appear, therefore, that insofar as statutory language reflects the Legislature’s interpretation of the constitutional amendment, the most appropriate statutory expression would be the enactment immediately following the amendment which brought the statute into conformance therewith. We perceive no intended distinction between the 1929 statutory reference to “tax moneys,” from which the present reference to “moneys” derived, and the constitutional reference to “taxes.” Consequently, we discount as a significant interpretive factor in the determination of the meaning of the constitutional term “taxes” the present statutory reference to “moneys.”

The term “taxes” clearly refers to any funds collected under the provisions of section 21 of article XIII (see fn. 1, *supra*). This reference to local school taxes is exclusive, except as otherwise provided in the Constitution. At the general election of November 8, 1932, section 6 of article IX was amended to establish the state income and sales taxes and to transfer the burden of county taxes for schools to the state. At the special election of June 27, 1933, section 15 of article XIII was amended to provide in part:

“Out of the revenue from State taxes for which provision is made in this article, together with all other State revenues, there shall first be set apart the moneys to be applied by the State to the support of the public school system and the State university. The Legislature shall provide for the raising of revenue by any form of taxation not prohibited by this Constitution in amounts sufficient to meet the expenditures of this State not otherwise provided for and in amounts sufficient to apportion and shall apportion, to each county or city and county of this State, an amount equal to the entire amount required to be raised by each such county or city and county respectively under the provision of section 6 of Article IX of this

Constitution; provided, however, that all sums so apportioned shall be considered as though derived from county and city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of said section, nor shall any revenues so apportioned be regarded as appropriations from the funds of the State within the meaning of section 34a of Article IV of this Constitution.”
(Emphasis added.)

Accordingly, we have previously concluded that the term “taxes” in section 6 of Article XVI (then § 31 of art. IV) included funds apportioned by the state under section 6 of article IX for the support of schools. (Ops. Cal. Atty. Gen. No. 9945 (1935).)

At the general election of November 5, 1946, the underscored words in section 15 of article XIII were deleted, and the following paragraph, as it presently appears, was added to section 6 of article IX:

“Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.”

It is concluded, therefore, that the amount of county funds which may be temporarily transferred to a school district is restricted by section 6 of article XVI of the California Constitution to 85 percent of the school district taxes levied by the county under section 21 of article XIII of the California Constitution and of all amounts apportioned to the county or to such school district under section 6 of article IX of the California Constitution solely with respect to any retirement system provided for in the charter of such county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by such county, which will accrue to such school district during the fiscal year in which such transfer is made.
