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OPINION	:	No. 80-309
	:	
of	:	<u>May 9, 1980</u>
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SUBJECT: STATE REIMBURSEMENTS TO COUNTIES—State reimbursements to counties, pursuant to Government Code section 15202, for that part of the cost of homicide trials which exceeds the amount of money derived by the county from a tax of 5 cents per \$100 of assessed value are to be determined by the total amount of money a 5 cent tax would raise in the county.

The Honorable Charles R. Mack, County Counsel, County of Yolo, has requested an opinion on the following question:

Are state reimbursements to counties, pursuant to Government Code section 15202, for that part of the cost of homicide trials which exceeds the amount of money derived by the county from a tax of 5 cents per \$100 of assessed value to be determined by the total amount of money a 5 cent tax would raise in the county or only that portion of that sum which is apportioned to the county as provided by Revenue and Taxation Code section 2237(b)?

CONCLUSION

State reimbursements to counties, pursuant to Government Code section 15202, for that part of the cost of homicide trials which exceeds the amount of money derived by the county from a tax of 5 cents per \$100 of assessed value are to be determined by the total amount of money a 5 cent tax would raise in the county.

ANALYSIS

In 1961, the Legislature (Stats. 1961, ch. 2115) instituted, through the addition of a chapter in the Government Code (§ 15200 *et seq.*),¹ a system whereby the state would share with counties the cost of certain homicide trials. The legislative intention was expressed in section 15200:

“The Legislature hereby declares that: (1) The uniform administration of justice throughout the State is a matter of statewide interest; (2) The prosecution and conduct of trials of persons accused of homicide should not be hampered or delayed by any lack of funds available to the counties for such purposes; (3) A county should not be required to bear the entire costs of a trial involving a homicide if such costs will seriously impair the finances of the county; and (4) It is the intention of the Legislature in enacting this chapter to provide for state assistance to counties in such emergency situations.”

The chapter then provides that the costs, as defined,² over a threshold amount (§ 15202) are to be paid by the Director of Finance out of any funds appropriated by the Legislature for that purpose. (§ 15203.) We are informed that these provisions have been used by counties with a low tax base. (See, e.g., Stats. 1979, ch. 1103 appropriating \$1,200,000 in augmentation of the Budget Act item for § 15203 reimbursement purposes. The Budget Act appropriation was \$100,000. The urgency clause in chapter 1103 recited expected trial costs in Siskiyou, Sutter and Yolo Counties.)

The key to this procedure is the threshold determination set by section 15202:

“A county which is responsible for the cost of a trial or trials or any bearing of a person for the offense of homicide may apply to the Director of

¹ All unidentified code section references hereinafter are to the Government Code.

² Section 15201 defines the costs incurred by the county. In 58 Ops. Cal. Atty. Gen. 911 (1975) this office concluded that such costs included the costs of determination of the sanity of the defendant.

Finance for reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of five cents (\$0.05) on each one hundred dollars (\$100) on the property assessed for purposes of taxation within the county.”³

With the adoption of California Constitution, Article XIII A by the voters in June 1978, there is now imposed by section 1(a) of Article XIII A a maximum property tax on real property of one percent of the full cash value of such property. The Legislature has directed that, with exceptions authorized by section 1(b) of Article XIII A relating to preexisting voter approved indebtedness, there is to be only one property tax levied, and that by the county as follows:

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“(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.)

As a result of this tax rate limitation and the subsequent reduction of property tax revenues allocated to the county, as well as other taxing agencies, the question is presented as to whether the threshold amount of money required by section 15202 should be proportionally reduced.⁴

³ As initially enacted in 1961, section 15202 set a threshold figure of 10 cents per \$100 assessed valuation. The section also then added this paragraph:

“No reimbursement shall be made pursuant to this section if the county, in the opinion of the Director or Finance, has sufficient funds in its treasury, not allocated or committed for other purposes, which could be used to pay such costs.”

The 1971 amendment to section 15202 (Stats. 1971, ch. 1476 and ch. 1689) deleted this paragraph and reduced the ten cents per \$1 assessed valuation to five cents.

⁴ “For purposes of illustration, Yolo County has presented the following example. During the 1979–1980 fiscal year, a tax of five cents per \$100 assessed valuation of all property in Yolo County would produce \$334,285. Under section 5203, the state would be obligated to pay homicide trial costs in excess of that figure. Due to the tax rate limitation, the county this fiscal year, under the allocation system directed by Revenue and Taxation Code section 2237 will only receive approximately 29.5 percent of the revenue received from a \$4 per \$100 assessed valuation

We do not believe that the statute authorizes such a reduction. First, section 15202 is not a tax levy statute. It does not purport to authorize any county to levy any tax. It is, therefore, unaffected by the tax rate limitation imposed by Article XIII A or the property tax revenue allocation system instituted by the Legislature. Instead, it is merely an objective mechanism established by the Legislature for determining at what point the state will pick up the excess costs of homicide trials in any particular county. The Legislature could have used any of a number of devices for ascertaining the dividing point, such as population, percentage of county budgets or the like. It chose the mechanism of determining the amount of money that would be produced on a tax of live cents per \$ 100 assessed valuation, undoubtedly recognizing the pre-Article XIII A fact that most county costs for the administration of justice were paid for from property tax revenues. Again, however, it did not purport to authorize a particular property tax to be levied by this statute.

Secondly, the theory of a proportionally reduced threshold determination requires an assumption that the prosecution of homicide trials by a county can only be funded from property tax revenues. That never was true, the counties being free to use other sources of revenue for that purpose, if available. It is, of course, even less true today with the Article XIII A restrictions and with state bail-out funds and subventions.

We are not unmindful of the Legislature's purpose in enacting section 11200 *et seq.* to have the state share costs of homicide trials which costs could be debilitating to smaller counties if borne by the county alone. We suggest, however, that if the advent of Article XIII A results in a threshold determination under section 15202 being so high as to frustrate that purpose, the Legislature has the power to change it.⁵ We conclude, however, that under the statute as it now reads, the state's obligation to reimburse counties for costs of homicide trials does not commence until those costs are in excess of the amount that would be provided by a tax of five cents per \$100 assessed valuation in the particular county.

tax. It is suggested that the \$334,285 should be proportionally reduced to reflect this by making the threshold figure for Yolo County 29.5 percent of the five cents per \$100 assessed valuation, that is, \$98,745.

⁵ We also note, and the Legislature might wish to consider, the effect, if any, that Statutes 1978, chapter 1206 will have on the threshold determination of section 15202. Under chapter 1206, commencing with fiscal year 1981-1982, "assessed value" shall mean 100 percent of full value. (Rev. & Tax. Code, § 135(a).) Unless section 15202 is changed, this could be interpreted to have the effect of quadrupling the threshold amount as determined by that section.