

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

---

OPINION	:	No. 81-110
	:	
of	:	<u>APRIL 29, 1981</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Victor D. Sonenberg	:	
Deputy Attorney General	:	
	:	

---

The Honorable Kenneth Gory, State Controller, has requested an opinion on the following question:

May a county charge the State Controller the \$1.00 filing fee permitted by Government Code section 27361.4 in addition to the \$6.00 fee specified by section 27361.3 for the recordation of a release of lien for property tax postponement?

CONCLUSION

A county may not charge the State Controller the \$1.00 filing fee permitted by Government Code section 27361.4 in addition to the \$6.00 fee specified by section 27361.3 for the recordation of a release of lien for property tax postponement.

## ANALYSIS

Government Code section 27361.3,<sup>1</sup> referred to in the present opinion request, provides in pertinent part:

“Notwithstanding any contrary provision of the law, the fee for recording every release of lien, encumbrance, or notice executed by the state, or any municipality, county, city, district or other political subdivision shall be six dollars (\$6) if the original lien, encumbrance, or notice was recorded without fee as provided by Section 27383 of the Government Code. . . . (Emphasis added.)

Section 27361.4, the other section referred to in the opinion request, provides in pertinent part:

“The board of supervisors, of any county may provide for an additional fee of one dollar (\$1) for filing every instrument, paper, or notice for record, in order to defray the cost of converting the county recorder’s document storage system to micrographics. . . .”

Thus the \$6 fee authorized by section 27361.3 applies to the recording of release of liens and other specified documents executed by the state or by local governments, while section 27361.4 is a general statute authorizing a \$1 fee that is applicable to the filing of all documents. The question arising from these provisions is whether, in addition to the \$6 fee authorized by section 27361.3, the county recorder can charge the State Controller the \$1 filing fee provided for in section 27361.4 when the Controller has recorded a release of a property tax postponement lien.<sup>2</sup>

Most pertinent to any question involving the obligation of a state agency to pay official fees are the provisions of sections 6103 and 27383. Section 6103, enacted in 1943 (Stats. 1943, ch. 134, § 6103, p. 990, derived from earlier provisions in the former Political Code), constitutes a general exemption of state and local government entities from the obligation to pay official fees. That section provides:

---

<sup>1</sup> Hereafter all section references are to the Government Code unless otherwise indicated.

<sup>2</sup> The lien for property tax postponement arises out of the “Senior Citizens Property Tax Postponement Law.” (Rev. & Tax. Code § 20581 *et seq.*) The state acquires such a lien upon the recording of a “notice of lien for postponed property taxes.” (§ 16182.) Upon the payment of the obligation secured by such lien, the Controller is required to have the county recorder record a release of such lien. (§ 16186(a).)

“Neither the State nor any county, city, district, or other political subdivision, nor any public officer or body, acting in his official capacity on behalf of the State, or any county, city, district or other political subdivision, shall pay or deposit any fee for the filing of any document or paper, for the performance of any official service, or for the filing of any stipulation or agreement which may constitute an appearance in any court by any other party to the stipulation or agreement. This section does not apply to the State Compensation Insurance Fund, or Public Housing Authority, nor where a public officer is acting with reference to private assets or obligations which have come under his jurisdiction by virtue of his office, or where it is specifically provided otherwise. No fee shall be charged for the filing of a confession of judgment in favor of any of the public agencies named in this section.”

Section 27383, enacted in 1955 (Stats. 1955, ch. 488, § 1, p. 963), similarly exempts the state and local government entities from the payment of official fees but is operative only with respect to those fees that are charged by a county recorder. (See 54 Ops. Cal. Atty. Gen. 218, 220 (1971).) Section 27383 provides:

“No fee shall be charged by the recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record.”

Therefore by virtue of these two sections the state and local governments are generally exempted from the requirement of paying those fees charged by a county recorder. As stated in 26 Ops. Cal. Atty. Gen. 49, 50 (1955):

“Without a doubt the recordation of a release of lien is the filing of a document or paper, the performance of an official service, and a service rendered by a county recorder within the meaning of Government Code sections 6103 and 27383. Moreover, when the recordation of a release is requested by the State Board of Equalization or one of its authorized representatives, it is done by the State or on behalf of the State within the meaning of Government Code section 6103. In addition, the recordation of such a release by the county recorder at the request of the State Board of Equalization is a service rendered to the State within the meaning of the new Government Code section 27383.” (See also 54 Ops. Cal. Atty. Gen. 218, 220–221 (1971); 24 Ops. Cal. Atty. Gen. 48 (1954).)

Thus in 1974 when it enacted section 27361.3 (Stats. 1974, ch. 220, § 1, p. 419) obligating the state and local governments to pay \$6 for the recording of release of liens, etc., the

Legislature, in effect, had instituted an exception to the general exemption of those governmental entities from the requirement of paying official fees.<sup>3</sup> The Legislature amplified the fact that section 27361.3 constitutes such an exception by its declaring that the section's \$6 fee requirement is applicable "[n]otwithstanding any contrary provision of the law. . . ." On the other hand, in the subsequently enacted section 27361.4 (Stats. 1980, ch. 1002, § 1, p.-) there is no language expressing any intent that its \$1 fee requirement is to be applicable "[n]otwithstanding any contrary provision[s] of the law, . . ." nor indeed is there any reference at all in that section to state or local governments. Thus there is no basis for concluding that, like section 27361.3, section 27361.4, was also intended to constitute an exception to the general exemption of government entities from the obligation to pay official fees. "Where the Legislature omits a particular provision in a later enactment related to the same subject matters such deliberate omission indicates a different intention which may not be supplanted in the process of judicial construction." (*Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal. App. 3d 662, 667; accord, *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal. App. 3d 1, 8.)

A finding that state and local governments are excluded from the operation of section 27361.4 is also consistent with the "general rule of statutory interpretation that, in the absence of a specific expression of legislative intent, statutory language should not be construed to apply to governmental bodies where such interpretation would result in the infringement of 'sovereign governmental powers.'" (*Estate of Cooke* (1976) 57 Cal. App. 3d 595, 602; see *Marin Municipal Water Dist. v. Chenu* (1922) 188 Cal. 734, 736–737, where this rule was recognized in connection with a determination that a special district did not have to pay vehicle registration fees. And see *Phi/brick v. State Personnel Board* (1942) 53 Cal. App. 2d 222, 228–229, where the court observed that the fact that the state is expressly bound by certain statutes "only serves to emphasize the rule" that the state is not bound by similar statutes which do not expressly or by necessary implication apply to the state.)

We therefore conclude that because the provisions of section 27361.4 were not made applicable to governmental entities (unlike those of section 27361.3), the

---

<sup>3</sup> See also section 6103.8 specifying various types of releases which are not covered by the exemptions of sections 6103 and 27383. The term "notwithstanding" as generally defined as meaning "without prevention or obstruction from or by; in spite of." (*State v. Board of Education of Hardin County* (Ohio 1960) 165 N.E. 2d 918, 923. See also in re *Marriage of Dover* (1971) 15 Cal. App. 3d 675, 678, fn. 3.) Thus the use of that term in section 27361.3 renders its provisions operative "in spite of" any statute which might otherwise relieve the state of the obligation to pay official fees. Such provisions would appear to be applicable as an exception to contrary statutes whether such statutes were enacted before or after the enactment of section 26361.3. (See *People v. Gilbert* (1969) 1 Cal. 3d 475, 479; in re *Christopher S.* (1978) 80 Cal. App. 3d 903, 910; and see *State Comp. Ins. Fund v. McConnell* (1956) 46 Cal. 2d 330, 340.)

Controller does not have to pay the \$1 filing fee required under section 27361.4 in addition to the \$6 recording fee required under section 27361.3 when he has recorded a release of lien for postponed property taxes.

\*\*\*\*\*