

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-1212
	:	
of	:	<u>AUGUST 18, 1982</u>
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THE HONORABLE ROBERT G. BEVERLY, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What legislative majority is required to increase the bank and corporation tax, and the gross premiums tax?

CONCLUSION

A two-thirds majority of all members elected to each of the two houses is required to increase the bank and corporation tax, and the gross premiums tax.

ANALYSIS

Section 3 of article XIII A of the California Constitution ("art. XIII A," *post*) adopted by the voters on June 6, 1978, effective July 1, 1978, provides:

"From and after the effective date of this article, *any changes in State taxes enacted for the purpose of increasing revenues* collected pursuant thereto whether by increased rates or changes in methods of computation *must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses* of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed. (Emphases added.)

Section 27 of article XIII of the California Constitution provides:

"The Legislature, *a majority of the membership of each house concurring, may tax corporations, including State and national banks*, and their franchises by any method not prohibited by this Constitution or the Constitution or laws of the United States. Unless otherwise provided by the Legislature, the tax on State and national banks shall be according to or measured by their net income and shall be in lieu of all other taxes and license fees upon banks or their shares, except taxes upon real property and vehicle registration and license fees." (Emphasis added.)

Subdivision (i) of section 28 of article XIII of the California Constitution, pertaining to the taxation of insurance companies, provides:

"The Legislature, *a majority of all the members elected to each of the two houses voting in favor thereof*, may by law change the rate or rates of taxes herein imposed upon insurers." (Emphasis added.)

Unlike the tax on "corporations" (cf. Rev. & Tax. Code, § 23038) and "banks" (cf. Rev. & Tax. Code, § 23039) which is based on net income, this section imposes a tax on "insurers" (Cal. Const., art. XIII, § 28, subd. (a)) upon annual "gross premiums" (Cal. Const., art. XIII, § 28, subd. (c)). As in the case of banks (Rev. & Tax. Code, § 23182; *Western States Bankcard Assn. v. City and County of San Francisco* (1977) 19 Cal.3d 208, 215-216), the tax is "in lieu" of "all other taxes" except, inter alia, taxes on real property (Cal. Const., art. XIII, § 28, subd. (f); *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco* (1982) 129 Cal.App.3d 876, 879-881).

The present inquiry, more specifically stated, is whether an increase¹ in the bank and corporation tax, or in the gross premiums tax, must be imposed by a simple

¹ It is assumed for purposes of this analysis that the term "increase" refers to a change in state taxes "enacted for the purpose of increasing revenues" within the meaning of article XIII A, section 3.

majority of the membership of each house, as prescribed by article XIII, sections 27 and 28, respectively, or by two-thirds² of the membership as specified in article XIII A. We observe initially that the rules of construction and interpretation which are applicable when considering statutes are equally applicable with respect to constitutional provisions. (*County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 979.) Among these rules is the fundamental proposition that in the event of an ostensible conflict between two state statutes, the more specific enactment will control over the more general one. (*Fleming v. Kent* (1982) 129 Cal.App.3d 887, 891; 65 Ops.Cal.Atty.Gen. 11, 18 (1982).) Thus, it is generally stated that where the same subject is covered by inconsistent provisions, one of which is special and the other general, the special one, *whether or not first enacted*³, is an exception to the general statute and controls unless an intent to the contrary⁴ *clearly* appears. (*Fleming v. Kent, supra*, 892; 65 Ops.Cal.Atty.Gen., *supra*, 18.) Thus, it might be argued that the special provisions, sections 27 and 28 of article XIII, would prevail over the general, section 3 of article XIII A.

Nevertheless, as stated in *Massachusetts Mutual Life Ins. Co. v. City and County of San Francisco, supra*, 129 Cal.App.3d at pages 880-881:

"A cardinal rule is that laws should be given a reasonable construction which comports with the apparent purpose and intent of the lawmaker. (*Gerkin v. Santa Clara Valley Water Dist.* (1979) 95 Cal.App.3d 1022, 1025;

² Since the super-majority requirement may not be deemed to represent an identifiable class, it does not constitute a violation of equal protection. (Cf. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 237; *Coffineau v. Eu* (1977) 68 Cal.App.3d 138, 143; and see, *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 203.)

³ A later provision may, of course, supersede, modify, or so affect the operation of an earlier law as to repeal the conflicting earlier law by implication. (*Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal.3d 945, 954, fn. 8.) Repeals by implication are, however, not favored. (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 828.) In the absence of express terms it will be presumed that the Legislature did not intend by a later act to repeal a former one if by a fair and reasonable construction effect can be given to both. (*Hammond v. McDonald* (1939) 32 Cal.App.2d 187; 61 Ops.Cal.Atty.Gen. 424, 433 (1978).) In any event, it may not be suggested that section 3 of article XIII A is so inconsistent, repugnant, and irreconcilable with sections 27 and 28 of article XIII that they cannot have concurrent operation where the extent of inconsistency is limited to specification of legislative majority by which the rate of tax may be changed, and where such inconsistency is readily resolved by application of the principle that the specific provision shall control.

⁴ Such would be the case, e.g., had the provisions of section 3 of article XIII A commenced with the words "notwithstanding any other provision of this Constitution." (Cf. 61 Ops.Cal.Atty.Gen. 424, 430 (1978).)

Cory v. Golden State Bank (1979) 95 Cal.App.3d 360, 367.) Language must be read in context, keeping in mind the nature and purpose of the enactment, and given an interpretation which will promote rather than defeat the objective of the drafters of constitutional provision and the people by whose vote it was adopted. (*Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495.) In *Flood v. Riggs* (1978) 80 Cal.App.3d 138, 152, we explained that 'the words used should be accorded the ordinary and usual meaning given them among people by whose vote they were adopted.'

"In fact, as noted in *People v. Davis* (1978) 85 Cal.App.3d 916, 924: ' . . . a persuasive and basic principle of statutory construction provides that . . . intent should prevail over a literal or plain-meaning construction.' And, as expressed in *English v. County of Alameda* (1977) 70 Cal.App.3d 226, 233-234: ' . . . intent may be ascertained not only by considering the words used, but also taking into account other matters as well, such as the objects in view, the evils to be remedied, the legislative history, public policy and contemporaneous administrative construction."

Further, where the provision in question has been adopted by initiative, ambiguities may be resolved by referring to the ballot summary, the arguments and analysis presented to the electorate, and any contemporaneous construction of the Legislature. (*Los Angeles County Transportation Com. v. Richmond, supra*, 31 Cal.3d at p. 203; 64 Ops.Cal.Atty.Gen. 597, 616 (1981).)

The electorate, by the adoption of article XIII A, did not expressly amend the specific preexisting provisions of article XIII, sections 27 and 28, nor is there found in the ballot pamphlet any particular reference to them. On the other hand, nothing in the ballot pamphlet suggests the exclusion from the terms of section 3 of article XIII A of bank, corporation, and gross premiums taxes, and specific references to the effect and import of section 3 reflect no such limitation. Thus, the ballot summary states generally that the initiative "[r]equires 2/3 vote of Legislature to enact *any change in state taxes* designed to increase revenues." (Emphasis added.) The ballot analysis relates that section 3 would "require a two-thirds vote of the Legislature to increase state tax revenues" The ballot argument in favor of the initiative asserts at the outset that it "requires two-thirds vote of both houses of the legislature to raise *any other taxes* . . ." (Emphasis added.) In the absence of any words limitation whatever, the "apparent purpose and intent" of section 3 is to require a two-thirds vote of the Legislature to enact *any* changes in state taxes, including bank, corporation, and gross premiums taxes, for the purpose of increasing revenues. The word "any" may connote, inter alia, a matter or subject which is "unmeasured, or unlimited in amount, quantity, number, time, or extent." (Webster's Third New Internat. Dict. (1961) p. 97.) This interpretation is most consistent with the

observation in *Amador Valley Joint Union High School Dist. v. State Bd of Equalization* (1978) 22 Cal.3d 208, 231 that the purpose of sections 3 and 4 of the initiative is to assure that the real property tax relief afforded by sections 1 and 2 is not "withdrawn or depleted" by the levy of other taxes.

It has been observed, however, that only two years prior to the adoption of article XIII A (Proposition 13, primary election of June 6, 1978) the electorate approved Senate Constitutional Amendment 1 (Proposition 5, primary election of June 8, 1976) specifically and expressly amending sections 27 and subdivision (i) of 28 to reduce the two-thirds requirement to a majority. This, it is argued, strongly contraindicates an intent of the electorate, two years thence, *sub silentio* or by implication to reverse their prior decisive action. Further, the 1976 amendment did not merely delete the two-thirds specification but inserted the explicit and unequivocal reference to a majority vote. This reference (which does not appear in most other constitutional tax provisions to which article XIII A, section 3 applies)⁵, it is said, bears a certain talismanic significance.

It is abundantly clear, however, from the ballot arguments presented to the people in conjunction with the 1976 constitutional amendment, that its purpose, and their intent, was simply to "*eliminate*" from the constitution a "discriminatory and archaic provision" giving "favored tax treatment to banks, corporations, and insurance companies."

"The Commission recommends a Constitutional Amendment which would permit the Legislature to change the bank and corporation tax by a majority vote of all the elected members—the same majority required to change most other taxes. There is no justification for placing the bank and corporation tax in a preferential position. The Legislature should be able to change this tax equally with other taxes."

Thus, the manifest purpose of the amendment was to provide a uniform standard; its effect was to place the bank, corporation, and gross premiums taxes in the same category as those subject to a majority vote under the general provisions of article IV, section 8, subdivision (b) of the California Constitution.

In our view, there is nothing inconsistent between the 1976 amendment providing a uniform standard and the 1978 initiative altering the standard uniformly. It is concluded that an increase in the bank and corporation tax, or in the gross premiums tax, requires approval by a two-thirds majority of all members elected to each of the two houses of the Legislature.

⁵ See, e.g., article XIII, section 26 - Income; article XIX, section 1—Motor Vehicle Fuel; article XIX, section 2 - Vehicle; article XX, section 22 - Alcoholic Beverages.