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OPINION	:	No. 82-1202
of	:	OCTOBER 4, 1983
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THE HONORABLE MARIAN BERGESON, ASSEMBLYWOMAN, SEVENTY-FOURTH DISTRICT, has requested an opinion on the following questions:

1. Do the provisions of article XIII A of the California Constitution and the legislation which implements it permit a school district to conduct a bond election and acquire funds for the purpose of property acquisition and school construction?

2. Must the requisite measure or measures submitted to the voters be approved by two-thirds of the registered voters, or by two-thirds of the registered voters who actually vote?

CONCLUSIONS

1. The provisions of article XIII A of the California Constitution and the legislation which implements it do permit a school district to conduct a bond election and acquire funds for the purpose of property acquisition and school construction.

2. The measure or measures submitted to the voters need only be approved by two-thirds of the voters who actually vote at an election called for such purpose. The "special tax" to fund the bonds may not, however, be an ad valorum property tax or a tax on the transfer of real property.

ANALYSIS

1. The Effect of Article XIII A on School Bond Elections

The first question presented for resolution herein is whether the provisions of Proposition 13, which added article XIII A to the California Constitution at the June 1978 Primary Election, and subsequent legislation enacted to implement it, authorize a school district to conduct a bond election for the purpose of property acquisition and school construction. In short, what was the effect of Proposition 13 on the ability of school districts to conduct bond elections?

Section 1 of article XIII A limits the "maximum amount of any ad valorem tax on real property [to] . . . one percent (1%) of the full cash value," which tax is "to be collected by the counties and apportioned according to law to the [cities and] districts within the counties." This limitation, however, is not applicable to "ad valorem taxes . . . to pay the interest and redemption charges on any indebtedness approved by the voters" prior to July 1, 1978, the effective date of most of article XIII A.

Our main focus herein is on section 4 of article XIII A, and the legislation which has been enacted to implement it. Section 4 provides:

> "Cities, counties and *special districts*, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Emphasis added.)

To implement the "authorization" granted to cities, counties and "special districts" by section 4 to impose "special taxes" other than real property taxes or taxes on real estate transactions, the Legislature has enacted sections 50075 through 50077 of the

Government Code. (See, generally, *Los Angeles County Transportation Com.* v. *Richmond* (1982) 31 Cal.3d 197, 206-207.)[1]

Accordingly, section 50075 provides:

> "It is the intent of the Legislature to provide *all* cities, counties, and *districts* with the *authority* to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution." (Emphases added.)

Section 50076 then excludes from the meaning of "special tax" any "user fee," that is, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."

Finally, section 50077 provides for the mechanics for levying the "special tax," including a designation of "the type of tax and rate of tax to be levied." Significant for our resolution of question one, it defines "district" for the purposes of section 50075 et seq. as:

> ". . . an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."[2]

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[1] We place the word "authorization" in quotations because, as the Court explained in *Richmond*, although the language appears to authorize local entities to adopt "special taxes" by a two-thirds vote, "section 4 is actually a limitation on the imposition of 'special taxes' because it requires a two-thirds vote for their approval." (31 Cal.3d at p.197; see also *City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47, 53.)

[2] Section 50077 provides in full:

> "(a) The legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of such tax. Such proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon such proposition, the city, county, or district may levy such tax.
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> "(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If such special taxes are collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for such service before remittal of the balance to the city.

The general authority of school districts to issue bonds is found in section 15000 et seq. of the Education Code. Section 15100 of that code provides the purposes for which bonds may be issued, including the purchase of school lots and the construction of school buildings. Section 15120 et seq. then contains the detailed provisions relating to conducting elections. Most significant for our purposes as to question one is section 15250 et seq. Prior to the adoption of article XIII A, these sections required that the board of supervisors of the appropriate county or counties should annually levy a *real property tax* sufficient to service the bonds which were issued, that is, sufficient to pay the principal and interest thereon as it became due. Thus, section 15250 of the Education Code provided and still provides:

> "The board of supervisors of the county, the superintendent of schools of which has jurisdiction over any district, shall annually at the time of making the levy of taxes for county purposes, levy a tax for that year *upon the property in the district* for the interest and redemption of all outstanding bonds of the district. The tax shall not be less than sufficient to pay the interest on the bonds as it becomes due and to provide a sinking fund for the payment of the principal on or before maturity and may include an allowance for an annual reserve, established for the purpose of avoiding fluctuating tax levies. The tax shall be sufficient to provide funds for the payment of the interest on the bonds as it becomes due and also such part of the principal and interest as is to become due before the proceeds of a tax levied at the time for making the next general tax levy can be made available for the payment of the principal and interest." (Emphasis added.)

(See also, Ed. Code, § 15260: levy of property tax for bonds issued by school districts lying in more than one county.) However, by Statutes of 1980, chapter 49, the Legislature enacted sections 15254 and 15262 of the Education Code, making the provisions with respect to levying a property tax for bond service applicable only to bonds which were authorized by the voters of the school district prior to July 1, 1978, the effective date of

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"(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

"(d) As used in this section 'district' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

article XIII A, to conform to the requirements of section 1 of that article. (See also generally, e.g., *Carmon* v. *Alvord* (1982) 31 Cal.3d 318.)[3]

The above provisions of the Education Code are the only provisions with respect to the raising of the requisite funds to service and retire school district bonds. Nor are we aware of any other provisions of law, other than section 50075 et seq. of the Government Code, which might provide authority for the raising of such funds. Thus, the Education Code still provides general authority for school districts to issue bonds and hold an election for that purpose. However, absent the ability to *fund* such bonds, that general authority would constitute a naked grant of power which could not be implemented. Accordingly, the critical question to be answered is whether a school district is a "special district" within the meaning of article XIII A, section 4, and a "district" within the meaning of section 50075 et seq. of the Government Code, so that a school district, with the approval of two-thirds of the voters, may levy a "special tax" to fund such bonds.[4]

A. The Status of a School District As a "Special District" or a "District"

As noted, prior to the adoption of article XIII A, the Education Code provided for a levy of a property tax for purposes of school financing. Section 1 of article XIII A provides for the allocation of the aggregate one percent real property tax to cities, counties and "*districts*" according to law, that is, according to the legislative formula now provided in section 26912 of the Government Code.

Also as noted, section 4 of article XIII A provides for a "special tax" if approved by the affirmative vote of two-thirds of the electorate of a city, county, or "*special district*."

In 57 Ops.Cal.Atty.Gen. 155 (1974) we were presented with the question whether school district officers were *state* constitutional officers within the meaning of the Moscone Governmental Conflict of Interest Act, the precursor to the Political Reform Act of 1974. In concluding that they were not, we decided they were *district* officers for

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[3] Section 15254 and 15265 both read as follows:

"This article shall apply only to bonds which were approved by the electors prior to July 1, 1978."

[4] The element of the question relating to bond funding arises because under the provisions of law, the *only* tax a school district has been authorized to levy has been a real property tax. (See prior §§ 14200-14205 of the Ed. Code, repealed by Stats. of 1981, ch. 470, § 27.) Now, the one percent property tax is allocated to cities, counties, school districts and other districts pursuant to legislative formula. (See Gov. Code, § 26912.)

purposes of that act. In so doing, we noted the various ways in which the courts have characterized school districts. We stated:

> "If one were to follow the argument that school district board members are 'state officers' to its ultimate conclusion, it would mean that a school district is the state. However, school districts have been variously described as 'corporation[s] organized for educational purposes,' *Barber* v. *Mulford*, 117 Cal. 356, 358 (1897); 'political subdivision[s] of the state,' *Gould* v. *Richmond Sch. Dist.*, 58 Cal.App.2d 497, 502 (1943); 'public quasi municipal corporations,' *Merill Etc. School Dist.* v. *Repose*, 125 Cal.App.2d 819, 820 (1954); 'public entit[ies] with limited powers,' *Uhlmann* v. *Alhambra Etc. School Dist.*, 221 Cal.App.2d 228, 234 (1963); as well as 'agencies of the state for the local operation of the state school system,' *Hall* v. *City of Taft*, 47 Cal.2d 177, 181 (1956). In fact, the recent case, *Gonzales* v. *State of California*, 29 Cal.App.3d 585, 590 (1972) held with respect to a school district that '[s]tate agencies, even though exercising a portion of the state's powers of government, are not the state or a part of the state.' See also, *Board of Education* v. *Calderon*, 35 Cal.App.3d 490, 496 (1973).
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> "Thus, though several cases have described school board members as 'state officers' it would seem to follow that they are also officers of their own entity, which is not the state, but the school district. See also *Becker* v. *Council of the City of Albany*, 47 Cal.App.2d 702, 705 (1941). *Thus*, *their status as 'state elected officials' vis-a-vis 'district officials' within the meaning of the Governmental Conflict of Interest Act is at least ambiguous*, *assuming there is no insurmountable barrier to including a school district within the generic term 'district.' In our view*, *no such barrier exists*. *The Legislature itself in at least several instances in defining the term 'district' or 'special district' in legislation has specifically seen the necessity to exclude 'school districts,' thus indicating that they may well be considered districts generically*. See, e.g., § 54775, subd. (m) (Knox-Nisbet Act); § 56039, subd. (d) (District Reorganization Act of 1965). See also letter to Honorable Verne Orr, Director of Finance, dated July 11, 1973, I.L. 73-110, L.B. 383, p. 98a. Also, the Legislature has on numerous occasions included school districts within the definition of 'local agency,' thus demonstrating that they [and presumably, their officers] have not only state characteristics, but also local ones, as do other districts. See, e.g., §§ 53200, 53460, 53850, and 54951. Therefore, it is necessary to attempt to determine the legislative intent and purpose of the act, and resolve the ambiguity as to school district boards in conformity with legislative intent." (*Id.*, at p. 158, emphasis added.)

Accordingly, it is evident that a school district is sometimes a "district" for purposes of legislation, and sometimes it is not.

At least for purposes of section *1* of article XIII A, there appears to be little doubt that the term "districts" encompasses school districts. The analysis of article XIII A by the Legislative Analyst at the June 1978 Primary election, contained in the Ballot Pamphlet which was distributed to the voters pointed out, inter alia, that "[s]chools receive about 47 percent [of their income] from property tax revenues." (Ballot Pamp., p. 56.) In response to the "Argument Against Proposition 13" that "[i]t will drastically cut police and fire protection *and bankrupt schools* unless massive new tax burdens are imposed on California tax payers (Ballot Pamp., p. 59, emphasis added), the proponents of Proposition 13 counteracted with the statement that "Proposition 13 will *NOT* prohibit the use of property taxes to finance schools." (*Ibid.*)

Arguments and other materials submitted to the voters in the voters pamphlet may be used to ascertain the meaning of uncertain language in ballot measures. (*Los Angeles County Transportation Com.* v. *Richmond*, *supra*, 31 Cal.3d at p. 215, and cases cited therein.) Clearly, the voters in approving Proposition 13 intended not only that the power of school districts to levy a property tax should be curtailed, but also intended that the schools should share in the apportionment of the one percent limitation as a "district." Furthermore, the Legislature has also so concluded in its apportionment formula found in section 26912 of the Government Code. Such legislative interpretation or understanding of the term "districts" in section 1 of article XIII A carries a strong presumption as to its correctness. (*Methodist Hosp. of Sacramento* v. *Saylor* (1971) 5 Cal.3d 685, 692-694.)

The Legislative Analyst's Analysis of Proposition 13 further indicates that "districts" as used in section 1 of article XIII A is the same as "special districts" as used in section *4* thereof with respect to the levy of a "special tax." Thus, such analysis stated with reference to the provisions of section 4:

> "5. Alternative local taxes. This measure would authorize cities, counties, special districts *and school districts* to impose unspecified 'special' taxes only if they receive approval by two-thirds of the voters. Such taxes could not be based on the value or sale of real property.
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> "The Legislative Counsel advises us that provisions in the existing Constitution would prohibit general law cities, counties, *school districts* from imposing new 'special taxes' without specific approval by the Legislature. Such restrictions limit the ability of these local governments, even with local voter approval, to replace property tax losses resulting from the adoption of this initiative." (Ballot Pamp., pp. 56, 60, emphasis added.)

Again, such materials may be used to ascertain the probable meaning of the term "special districts" as used in section 4 of article XIII A. (*Los Angeles County Transportation Com.* v. *Richmond*, *supra*, 31 Cal.3d at p. 215.) We accordingly conclude that the term was intended to encompass school districts. The above-quoted language appears to also portend the enactment of sections 50075 through 50077 of the Government Code. By such legislation, already discussed above, the Legislature has stated its intent to authorize *all* cities, counties and *districts* "to impose special taxes pursuant to the provisions of article XIII A." (Gov. Code, § 50075.) We conclude that "districts" as used in these provisions include "school districts."

In reaching such determination we initially point out that section 50077 defines "district" in terms which can well include a school district. A "district" is

> ". . . an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

School districts are formed pursuant to the provisions of general law, the Education Code, and operate within their own limited boundaries. In the terms of the leading case, *Hall* v. *City of Taft* (1956) 47 Cal.2d 177, 181, cited by us in 57 Ops.Cal.Atty.Gen., 155, 158, *supra* , "[s]chool districts are agencies of the state for the local operation of the state school system." Accordingly, school districts meet the definition set forth in section 50077.

Secondly, as also noted by us in 57 Ops.Cal.Atty. Gen. 155, 158, *supra*, when the Legislature desires to exclude school districts from the term "district" or "special district," or the context in which the term is used requires such an exclusion, the Legislature normally so states. (See, e.g., Gov. Code, § 54775, subd. (n) of the Knox-Nisbet Act; Gov. Code, § 16271 re "bail-out" funds; Gov. Code, § 26912, subd. (a) re apportionment of the one-percent real estate tax; Rev. & Tax. Code, § 2215 re reimbursement to local agencies of state mandated costs; compare, e.g., Gov. Code, § 53090 et seq. re compliance by local agencies with building and zoning ordinances, "local agency" defined the same as in Gov. Code, § 50077, and includes school districts.) In section 50075 et seq. the Legislature in no way purports to exclude school districts from the term "district" as used therein.

Thirdly, in view of the fact that sections 50075 through 50077 of the Government Code are intended to implement section 4 of article XIII A, it logically follows that the Legislature intended that the term "district" as used in the Government Code provisions should parallel and encompass the same entities as are encompassed with the term "special districts" in section 4. As demonstrated above, that term includes "school districts."

Finally, the Legislature has *recently* amended several provisions of the Education Code relating to the issuance of bonds by school districts, thus presenting some indication that the Legislature contemplates that their approval as well as their issuance is still permitted even after the adoption of Proposition 13. (See Ed. Code §§ 15102, 15106 as amended by Stats. 1980, ch. 1208, §§ 12-13, reducing the permissible ratio of bonds issued to taxable property in the school district.)

Accordingly, we conclude that a school district is authorized to levy a "special tax" pursuant to the provisions of article XIII A, section 4, and its implementing provisions found in Government Code section 50075 et seq. In so concluding, we note that no particular types of taxes are specified as "authorized." However, the same can probably be said about many types of districts whose organic law limits their taxing powers to the levy of a property tax. However, unless the California Constitution requires *specific* legislation for the exaction of a particular type of tax, it would seem that the Legislature may, through general legislation such as Government Code section 50075 et seq., leave the choice of the type of tax to be levied to the discretion of the school district board. The "special tax" must, however, be exacted for a "special purpose" and not for the general operation of the school district. (See *City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47.)[5]

The funding of bonds for school site acquisition and construction would appear to clearly satisfy such "special purpose" test.[6]

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[5] We note the pendency of Assembly Bill No. 1847, introduced March 4, 1983, which would amend section 50075 to clarify that districts as used therein include school districts.

[6] We note that school districts are not exempt from the provisions of article XIII A under the rationale of *Los Angeles Transportation Com.* v. *Richmond*, *supra*, 31 Cal.3d 197, which held that Proposition 13 does not apply to districts which do not have the power to levy a property tax. As noted, at the time Proposition 13 was approved, school districts levied a property tax for their general operations, as well as to fund bond issues.

We also note that the "annual tax" to service the bonds required by article XVI, sec. 18 of the California Constitution (see note 7, *post*) need not necessarily be a property tax. (See *City of Redondo Beach* v. *Taxpayers, Property Owners, Etc., City of Redondo Beach* (1960) 54 Cal.2d 126, 134-136; *City of Palm Springs* v. *Ringwald* (1959) 52 Cal.2d 620, 627.)

2. The Requisite Vote on the Measure or Measures Submitted to the Voters

Since the adoption of article XIII A, there are essentially two propositions or measures which must be approved by the voters of a school district with respect to whether to issue and fund school bonds for the purpose of acquisition of property and school construction. These are (1) whether to exceed the debt limitation provided in article XVI, section 18 of the California Constitution and (2) whether to approve a "special tax" within the meaning of article XIII A, section 4 of the California Constitution.

Article XVI, section 18, the debt limitation provision, provides as material herein that a school district may not incur an indebtedness exceeding in any year its income and revenue for that year "without the assent of two-thirds of the *qualified electors* thereof, voting at an election to be held for that purpose, . . ." (Emphasis added.)[7]

Reiterating the provisions of article XIII A, section 4, we see that an election to impose a special tax requires that the approval be "by a two-thirds vote of the *qualified electors* of such district."[8]

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[7] Article XVI, section 18 provides in full:

"*No* county, city, town, township, board of education, or *school district shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the qualified electors thereof*, *voting at an election to be held for that purpose*, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the qualified electors of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; *provided*, *however*, *anything to the contrary herein notwithstanding*, *when two or* m*ore propositions for incurring any indebtedness or liability are submitted at the same election*, *the votes cast for and against each proposition shall be counted separately*, *and when two-thirds or a majority of the qualified electors*, *as the case may be*, *voting on any one of such propositions*, *vote in favor thereof*, *such proposition shall be deemed adopted*." (Emphases added.)

[8] Section 4 of article XIII A provides in full:

"Cities, counties and special districts, by a two-thirds vote of the *qualified electors* of such district, may impose special taxes on such district, except ad valorem taxes on

Accordingly, both provisions speak in terms of a requisite approval of "two-thirds of the qualified electors." Article XVI, section 18, however, is followed by the addition of the phrase, set off by commas, "voting at an election to be held for that purpose."[9] The question presented for resolution herein is whether the measure or measures, to have the requisite approval of the voters, must be approved by a two-thirds vote of all registered voters in the school district, or only by a two-thirds vote of the registered voters who actually vote. We conclude that the latter alternative is the proper interpretation to be given to *both* constitutional provisions.

The "ambiguity" arises in both constitutional provisions because of the use of the term "qualified electors" in both. Prior to its amendment in 1972, the Elections Code defined the term "elector" in section 20 as "any person who qualifies under Section 1 of Article II of the Constitution". Article II, section 1 essentially at that time provided that an elector was anyone who was a United States citizen, 21 years of age or older, who had been a resident of the state for at least one year, and of the county 90 days and of the precinct 54 days. Section 21 of the Elections Code then defined a "voter" as "any elector who is registered under the provisions of this code." Thus an "elector" was not eligible or *qualified* to vote unless he was registered as a voter.

The term "qualified elector," although not defined in the Elections Code, was found in a portion of article II, section 1 of the California Constitution with respect to registered voters who had moved within the state within 90 days of an election, stating that such person "shall for the purpose of such election be deemed to be a resident and *qualified elector* of the precinct or county from which he so removed until after such election." (Emphasis added.) Since the simplification of article II, section 1 of the Constitution in 1972, the term is no longer found in that article. (See now, Cal. Const. art. II, §§ 2-4 for qualifications to vote.)

Thus, at least prior to 1972, a distinction existed between the terms "elector" and "qualified elector." In 44 Ops.Cal.Atty.Gen. 159, 160 (1964), we discussed this distinction as follows:

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real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Emphasis added.)

[9] Interestingly, article XVI, section 18, as originally adopted as article XI, section 18, did not contain the stated commas. It accordingly read that the assent was to be "of two-thirds of the qualified electors thereof voting at an election to be held for such purpose. The commas were added in 1900 when the text of article XI, section 18 was significantly expanded. Before the addition of such commas, at least one decision may be found indicating that the vote was intended only to be two-thirds of those voters who actually vote. (See *Howland* v. *Board of Supervisors* (1895) 109 Cal. 152.)

> "The term 'qualified elector' in this state has a precise meaning. It connotes a status and not a term of residency. 'Qualified elector' means an elector *who is entitled to vote*. In short, it is synonymous with the terms 'voter' or 'registered voter.' *Begevin* v. *Curtz*, 127 Cal. 86, 89 (1899); *Perham* v. *City of Los Altos*, 190 Cal.App.2d 808, 810-811 (1961); *People* v. *Darcy* 59 Cal.App.2d 342, 348-49 (1943); *McMillan* v. *Simeon*, 36 Cal.App.2d 721, 726 (1940); see also Cal. Const., art. II, § 1; Elec. Code §§ 20, 21 and 100, and former Pol. Code § 1083, the predecessor to § 100. As stated in *McMillan* v. *Simeon*, *supra*, at 726:
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> "'The term "qualified elector" is defined in section 1083 of the Political Code, which provides that a person who has certain qualifications (being the ones outlined in article II, section 1, of the Constitution) and "who has conformed to the law governing the registration of voters, shall be a qualified elector at any and all elections. . . ." *The term "qualified elector*, as used in article II, section 1 of the Constitution, we think, is used in the same sense and *means an elector who is entitled to vote. . . .*' (Emphasis added.)"

"Elector" is presently defined in section 17 of the Elections Code as "any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 29 days prior to an election." "Voter" is defined in section 18 of that code as "any elector who is registered under the provisions of this code." Thus, although since 1972 the California Constitution no longer contains the term "qualified elector," arguably there still may be a distinction between an "elector" and a "qualified elector."

Thus, as the term "qualified elector" is used in article XVI, section 18 and article XIII A, section 4 of the California Constitution it could mean "registered voter." However, in common parlance, it could also be urged that all that was intended was that the individual has the qualifications to vote (that is, be an "elector") whether actually registered or not.

With this background, we examine the specific provisions of article XVI, section 18 and article XIII A, section 4.

There are three possible interpretations of the two-thirds majority vote provisions of article XVI, section 18, and article XIII A, section 4:

1. That the requisite two-thirds majority is to be based upon all the electors in the district, whether registered or not, and whether or not they actually voted (2/3 of all "electors");

2. That the requisite two-thirds majority is to be based upon all registered voters, that is, "qualified electors" in the technical sense, whether or not they actually voted (2/3 of all registered voters); or

3. That the requisite two-thirds majority is to be based upon only those registered voters who actually voted. The Legislature, in implementing article XVI, section 18, the debt limitation provision with respect to school districts, has consistently adopted the third interpretation. Thus, section 15124 of the Education Code provides essentially that the requirements of article XVI, section 18 are met "[i]f it appears . . . that two-thirds *of the votes cast* on the proposition of issuing bonds of the district are in favor of issuing bonds." Similar language as to "two-thirds of the votes cast" on the proposition or measure may be found in the predecessors to section 15124, reaching back *as early as 1909*. (See Pol. Code, § 1746, as added by Stats. 1909, ch. 311, § 1; School Code, § 4.966, as added by Stats. 1931, ch. 297, § 2; Education Code of 1943, § 7407; Education Code of 1959, § 21756, as amended and renumbered § 21754.)

This legislative interpretation is also in accord with the almost universal rule, discussed at great length in *In re East Bay Etc. Water Bonds of 1925* (1925) 196 Cal. 725, 744-749 that:

> ". . . 'where the requirement is that the issue be approved by a prescribed majority of the *qualified voters* of the municipality, or other language of similar import, the decisions usually hold that a vote of the majority of all the qualified voters is not required but only the requisite majority of the qualified voters voting at the election'." (*Id.*, at p. 746, quoting Dillon on Municipal Corporations, 5th Ed., § 891.)

This rule was also early espoused by the United States Supreme Court in *Carroll County* v. *Smith* (1884) 111 U.S. 556, when the court was faced with a provision of the Constitution of the State of Mississippi that required "two-thirds of the qualified voters of such county" to assent to certain bonds. It was argued that the provisions required a two-thirds vote of eligible voters. The United States Supreme Court disagreed and held that it meant two-thirds of those voting.

Thus, insofar as the debt limitation provision of article XVI, section 18 is concerned, the Legislature itself has interpreted the two-thirds vote requirement as to school bonds to mean two-thirds of the voters who actually vote at the election. This interpretation by the Legislature is entitled to a strong presumption as to its correctness. (*Methodist Hospital of Sacramento* v. *Saylor*, *supra*, 5 Cal.2d 685.) Furthermore, it is in accord with the almost universal rule in this respect throughout this nation.

Insofar as article XIII A of the Constitution, and its two-thirds vote requirement found in section 4, is concerned, the Legislature has, in section 50077 of the Government Code, also interpreted that provision by providing that ". . . upon approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy such tax." For the same reasons as with article XVI, section 18, we conclude that the vote requirement of article XIII A, section 4 is two-thirds of the voters who actually vote. (*Methodist Hospital of Sacramento* v. *Saylor*, *supra*, 5 Cal.2d 685; *In Re East Bay Etc. Bonds of 1925*, *supra*, 196 Cal. 725.) As explained by the court in a sister jurisdiction, "[e]lectors who are qualified to vote at an election and yet do not avail themselves of this privilege are deemed to have assented that the question shall be determined by those who do vote." (*Harris* v. *Baden* (Fla. 1944) 17 So.2d 608, 609.)

Accordingly, it is concluded that the measure or measures submitted to the voters with respect to whether to approve school bonds for property acquisition and school construction and whether to fund such bonds through the levy of a "special tax" need only be approved by two-thirds of the voters who actually vote at the election called for such purpose.[10]

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[10] We thus reaffirm our conclusion reached in 62 Ops.Cal.Atty.Gen 831, 842 (1979) with respect to the two-thirds vote requirement of article XIII A with, however, greater analysis and hence greater resolve than expressed therein.