TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 83-614
of	:	JANUARY 10, 1984
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THE STATE WATER RESOURCES CONTROL BOARD has requested an opinion on the following question:

Is the State of California exempt from that part of a charge for sewerage service, determined in accordance with a schedule of rates applicable to all users, which is charged by a county for the retirement of revenue bonds issued to finance the expansion of a wastewater treatment plant?

CONCLUSION

The State of California is exempt, in the absence of express legislative authorization, from any charge for the retirement of revenue bonds issued by a county to finance expansion of a wastewater treatment plant.

ANALYSIS

In order to finance its share[1] of the costs of upgrading and expanding an existing sewerage treatment facility, a county derived funds in equal parts from the sale of previously authorized general obligation bonds, of revenue bonds, and from existing resources. Thirty-two and one-half percent of the plant capacity is utilized by a state hospital. Seeking participation from the state for the repayment of the revenue bonds, the county proposes to charge all users of the facility, including the state hospital, a one hundred ten dollar per year per equivalent single-family dwelling charge which includes repayment of the revenue bonds.

The inquiry presented is whether the state is exempt from that part of a charge by a local agency for the retirement of a debt incurred for capital construction. As distinguished from a sewerage service charge based solely upon the extent or nature of the use made of the facilities (see 19 Ops.Cal.Atty.Gen. 195, 197 (1952)), the proposed increment is directly attributable to the cost of capital construction.

Article XIII, section 3, of the California Constitution provides that property owned by the state is exempt from property taxation. As distinguished from a tax levied for general governmental or public purposes, however, the constitutional exemption does not apply to special assessment. (*Inglewood* v. *County of Los Angeles* (1929) 207 Cal. 697, 702-703.) (A special assessment is generally defined as a charge imposed on property owners within a limited area to help pay the cost of a local improvement, such as a sewerage facility, designed to enhance the value of the property within that area.) (*Regents of the University of California* v. *City of Los Angeles* (1979) 100 Cal.App.3d 547, 549.)[2] Nevertheless, while publicly owned and used property is not exempt from special assessments under the constitution or statutory law of this state, there is an implied exemption of such property from such burdens. (*Inglewood* v. *County of Los Angeles*, *supra*, at 703; 19 Ops.Cal.Atty.Gen., *supra*.) The rule is that unless the Legislature expressly so authorizes, property publicly owned and used is exempt from special assessments. (*Id.*, at 704, 707; *County of Riverside* v. *Idyllwild County Water District* (1978) 84 Cal.App.3d 655, 659-660; *County of Santa Barbara* v. *City of Santa Barbara* (1976) 59 Cal.App.3d 364, 369.)[3]

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[1] Eighty-seven and one-half percent of the eligible costs of construction of necessary wastewater treatment works were funded with federal and state grants.

[2] We find no distinction between a charge for future capital construction and a charge to repay a debt incurred for such construction already completed; it is nevertheless a special assessment to finance the cost of a local improvement.

[3] The language is *Regents of the University of California* v. *City of Los Angeles*, *supra*, 100 Cal.App.3d at 550 would suggest that the exemption from special assessments is constitutionally

In the absence of any such express legislative authorization, the voluntary payment of any such charge would be *ultra vires*. (Cf. 65 Ops.Cal.Atty.Gen. 267, 273, n. 9 (1982); *County of Riverside* v. *Idyllwild County Water District*, *supra*, at 660.)

Assuming that the increment in question is attached to a user fee based on actual use as distinguished from an assessment (cf. 62 Ops.Cal.Atty.Gen. 831, 840 (1979)), the fact remains that the *purpose* of the increment is to finance capital construction. In *Regents of the University of California* v. *City of Los Angeles*, *supra*, 148 Cal.App.3d at 455, the court stated:

> "The city contends that the sewer service charge is not equivalent to a special assessment. The city argues that the sewerage facilities charge prohibited in *Regents* differs from the sewer service charge here because the former was based on an anticipated use (*Regents of the University of California* v. *City of Los Angeles*, *supra*, 100 Cal.App.3d at p. 548), while the latter is based on actual use, and that a charge based upon actual use is not an assessment. We find this argument unpersuasive. The *Regents* test is the *purpose* of the disputed charge. (*Regents of the University of California* v. *City of Los Angeles*, *supra*, at p. 549.)
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> "Nor does the method of calculating the charge define its nature. Whether the charge is a one time occurrence or a monthly assessment is irrelevant to the purpose for which the collection is made. The character of the assessment is also not affected by the fact that the sewer service charge is unrelated to property value. (*Regents of the University of California* v. *City of Los Angeles*, *supra*, at pp. 549-550.)
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> "The city attempts to distinguish a case cited in *Regents* from the case before us. in *County of Riverside* v. *Idyllwild County Water Dist.*, *supra*, 84 Cal.App.3d 655, the sewer charge for capital construction was only imposed upon tax exempt entities. In the case at bench, the sewer service charge was imposed on all users. In *Regents*, the charge was also imposed on all users. That case makes city's attempted distinction ineffective.
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> "Similarly, the Attorney General's opinion, 19 Ops.Cal.Atty.Gen. 195 (1952), and *Board of Ed.* v. *Greater Peoria San. & Sewage* (1980) 80

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based and subject to modification only by constitutional amendment. However, the court relies exclusively upon the cases above cited which leave no doubt that liability of public property for special assessments may be effected by express legislation. (See *Regents of the University of California* v. *City of Los Angeles* (1983) 148 Cal.App.3d 451, 454, n. 2.)

Ill.App.3d 1101 [400 N.E.2d 654], are inapposite. Both deal with a true sewer service charge, i.e., a fee for the use of sewage facilities, not for capital construction of those facilities."

The question remains, however, whether any such assessment or fee is statutorily authorized. It is well settled that in the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute if such inclusion would impair sovereign governmental powers. (*Inglewood* v. *County of Los Angeles*, *supra*, 207 Cal. at 707; 19 Ops.Cal.Atty.Gen., *supra*; 65 Ops.Cal.Atty.Gen. 267, 272 (1982).) We have found no such express words in connection with the authority of a county or county water district to prescribe or collect fees, rates, or charges for its sanitation or sewerage system services and treatment facilities. (Gov. Code, § 54344; Wat. Code, § 31101; Health and Saf. Code, § 5471.) Thus, the section last cited provides:

"Any entity shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges, including sewer standby or immediate availability charged, for services and facilities furnished by it, either within or without its territorial limits, in connection with its sanitation or sewerage system; . . . Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance and operation of water systems and sanitation or sewerage facilities, to repay principal and interest on bonds issued for the construction or reconstruction of such water systems and sanitary or sewerage facilities and to repay federal or state loans or advances made to such entity for the construction or reconstruction of water systems and sanitary or sewerage facilities; . . ."

By way of comparison, and prior to its repeal (Stats. 1959, ch. 1309); Health and Safety Code section 5546.5, as last amended (Stats. 1951, ch. 429, § 1), provided:

"It shall fix and collect user taxes, fees, tolls or charges for the use of facilities maintained and operated by the district sufficient in amount to pay principal and interest of bonds and for expenses of the district in maintaining, operating, extending and repairing any work or improvement of the district, and to defray all other expenses incidental to the exercise of any of the district's powers. Such charges, in the amount fixed, shall be paid by the user of the facilities, *including but not limited to the State, any department, or agency thereof, counties, cities, districts, or any public corporation*, and shall constitute a debt owed by such user to the district. The charges fixed for

public agencies shall not be higher proportionately than the rates fixed for similar use by other users." (Emphasis added.)

Section 2 of chapter 429 further provided:

> "This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:
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> "A question has been raised as to whether the State or agencies or political subdivisions thereof are required to pay the taxes, fees, tolls, or charges fixed by county sewerage and water districts for use of facilities maintained and operated by such districts. In order to clear up this important question and thereby foster the early construction of urgently needed sewer systems, sewerage treatment plants, and other similar facilities, which are necessary for use by governmental agencies and private individuals and corporations alike, and which are essential for the health and well-being of the citizens of this State, it is necessary that this act take effect immediately."

It is to be noted, however, that the act of repeal contained a savings clause:

> "Notwithstanding the repeal effectuated by this act, the organization, existence, and powers of any district heretofore created by or organized pursuant to the provisions of the chapters or acts which are repealed shall remain unaffected by such repeal, and any such district shall continue to exist and may exercise any of the powers conferred upon it by the statute under which it was formed. No district shall be created or organized pursuant to said chapters or acts after the effective date of this act."

With regard, therefore, to any county sewerage and water district formed under the repealed provisions (i.e., the Sewerage and Water District Act of 1949), the authority expressly granted to charge the state and its agencies and subdivisions remains in effect.

We are neither asked nor apprised with respect to, nor do we undertake an examination of, these principles as applied to any particular county or district water facility. it is concluded generally that the state is exempt, in the absence of express legislative authorization, from any charge for the retirement of revenue bonds issued by the county to finance expansion of a wastewater treatment plant.

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