

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

| | | |
|-------------------------|---|-----------------------|
| OPINION | : | No. 85-104 |
| | : | |
| of | : | <u>AUGUST 6, 1985</u> |
| | : | |
| JOHN K. VAN DE KAMP | : | |
| Attorney General | : | |
| | : | |
| ANTHONY S. DA VIGO | : | |
| Deputy Attorney General | : | |
| | : | |

THE HONORABLE CHRISTY M. CAMPBELL, DIRECTOR,
DEPARTMENT OF COMMERCE, has requested an opinion on the following question:

May a county tax collector accept for current expenditure voluntarily prepaid property tax to be applied against future tax liability?

CONCLUSION

A county tax collector may not accept for current expenditure voluntarily prepaid property tax to be applied against future tax liability.

ANALYSIS

We are advised that within a number of the state's communities, economic development is being limited by the lack of adequate infrastructure. Thus, we are asked

whether a county tax collector may enter into an agreement with, e.g., an industrial corporation considering location within the community, to accept for purposes of providing such facilities as an improved or expanded transportation system or communications network as would accommodate industrial requirements, prepaid property tax to be applied against the tax liability and revenues of future fiscal years.

The tax collector of a county is charged with the general authority and responsibility to collect all property taxes. (§ 2602.)¹ We pause initially to identify the extent and limitation of powers of a county, an administrative agency, and a public officer, respectively. Generally, a county possesses and can exercise only such powers as are granted it by the constitution or statutes, together with those powers as arise by necessary implication from those expressly granted. (*Byers v. Board of Supervisors* (1968) 262 Cal.App.2d 148, 157; Gov. Code, 23003, 25207; 66 Ops.Cal.Atty.Gen. 293, 296 (1983); 66 Ops.Cal.Atty.Gen. 287, 292 (1983).) While a county has the authority generally to enter into contracts (*Alioto's Fish Co. v. Human Rights Com.* (1981) 120 Cal.App.3d 594, 604-605; Gov. Code, 24004, subd. (c); 66 Ops.Cal.Atty.Gen., *supra*, at 292), an agreement made without authority of the law in force at the time it is made is void (*Pac. Inter-Club Yacht Assn. v. Richards* (1961) 192 Cal.App.2d 616, 619; Gov. Code, 23006; 66 Ops.Cal.Atty.Gen., *supra*, at 292).

With respect to an administrative agency, the court stated in *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104:

"It is settled principle that administrative agencies have only such powers as have been conferred on them, expressly or by implication, by constitution or statute. [Citations.] An administrative agency, therefore, must act within the powers conferred upon it by law and may not validly act in excess of such powers. [Citations.] In accordance with these principles, it has been held in this state . . . that when an administrative agency acts in excess of, or in violation, of the powers conferred upon it, its action thus taken is void. [Citations.]"

(See also 66 Ops.Cal.Atty.Gen. 17, 24 (1983); 63 Ops.Cal. Atty.Gen. 840, 841 (1980).) With respect to those powers which may be implied, the court expounded in *Addison v. Department of Motor Vehicles* (1977) 69 Cal.App.3d 486, 498:

"But the doctrine of implied powers is not without limitations. It cannot be invoked where the grant of express powers clearly excludes the exercise of others, or where the claimed power is incompatible with, or

¹ All section references herein not otherwise designated are to the Revenue and Taxation Code.

outside the scope of, the express powers. For a power to be justified under the doctrine, it must be essential to the declared objects and purposes of the enabling act—not simply convenient, but indispensable. Any reasonable doubt concerning the existence of the power is to be resolved against the agency.' [Citation.]"

(See also 67 Ops.Cal.Atty.Gen. 325, 330 (1984).)

Similarly, a public officer has only such powers as have been conferred by law, expressly or by implication. (65 Ops.Cal.Atty.Gen. 321, 325 (1982)—county recorder; 65 Ops.Cal.Atty.Gen. 467, 468 (1982)—Governor; 63 Ops.Cal.Atty.Gen. 840, 841 (1980)—State Treasurer without authority and therefore precluded from borrowing against time deposits even for purposes of reinvestment at higher rates without increase in attendant risk.)

We find nothing in the statutory scheme which would suggest the precalculation, prepayment or precollection of property taxes. Section 2608 provides that the tax collector "may fix a date preceding the due date *when payments may be made.*" (Emphasis added.) Section 2609 provides that on or before the day when taxes are payable the tax collector shall publish a notice specifying, inter alia, the "*times and places at which payment of taxes may be made.*" (Emphasis added.) The extent to which taxes are prepayable, i.e., prior to the due date, is determined by these statutes which clearly pertain to the current fiscal year. Thus, no tax is due until levied by the board of supervisors on or before September 1st of each year in accordance with section 2151 and Government Code section 29100 et seq. The amount due is computed and entered on the roll by the auditor. (§ 2152.) The secured roll is delivered to the tax collector on or before the fourth Monday in September. (§ 2601.) The tax bill must be mailed before November 1st. (§ 2610.5.) The first installment equal to one half (to the nearest cent) of the full amount is due November 1st. (§ 2605, subd. (b).) Only the amount in full or of the first installment may be paid. (§ 2607.)² Clearly, the amount due must be precisely known before such taxes may be paid, but are not known prior to each year's levy and computation. Further, the tax collector is required to mark the fact and date of payment on the roll opposite the tax to which the payment relates. (§ 2614.) That duty cannot be performed prior to the delivery of that year's roll to the tax collector. Thus, in our view, payment of tax due in a future fiscal year or, for that matter, prior to the date "when payments may be made" within the meaning of section 2608, is not contemplated by the statutory scheme.

² While the tax collector may, with the approval of the board of supervisors, accept a partial payment, the difference between the amount paid and the amount due must be treated in all respects as a delinquency. (§§ 2708, 2927.6.)

Finally, no authority has been found for the expenditure of prepaid future revenue, and such an expenditure by an administrative official would therefore be improper. (Cf. *Stanson v. Mott* (1976) 17 Cal.3d 206, 213.) Hence, prepayment and collection would be a superfluous engagement. Even assuming, however, that such authority were found, the precollection of taxes to be applied against future revenue, for purposes of expenditure in the current fiscal year, raises a significant constitutional issue. It has been held in the context of the constitutional debt limitation provisions of the California Constitution (art. XVI, §§ 1 & 18) that each year's income and revenue must pay each year's indebtedness and liability, and no indebtedness or liability incurred in one year shall be paid out of the income or revenue of any future year. (*McBean v. City of Fresno* (1896) 112 Cal. 159, 164; 66 Ops.Cal.Atty.Gen. 102, 104-105 (1983); 58 Ops.Cal.Atty.Gen. 691, 694 (1975).) Inasmuch as our conclusion herein is predicated entirely upon the foregoing statutory analysis, we do not proceed to examine the constitutional dimension.

It is concluded that a county tax collector may not accept for current expenditure voluntarily prepaid property tax to be applied against future tax liability.
