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LAFCO
San Bernardino County

# MEMORANDUM

**To:** San Bernardino Local Agency Formation Commission and Kathleen Rollings-McDonald, Executive Officer

**File No.:** 14141.00000

**From:** Clark Alsop and Alison Gomer, Legal Counsel

**Date:** February 3, 2012

**Re:** The Gann Limit and the Bear Valley Community Healthcare District

## BACKGROUND

In November 1979, California voters passed Proposition 4, which created Article XIII B of the California Constitution, also known as the "Gann Act," and imposed a limit on most state and local government expenditures from tax sources. This limit is often called the "Gann limit," and it is calculated annually according to a formula based on population and cost of living; when the Gann limit is exceeded, the surplus must be returned to the taxpayers within two years.

The San Bernardino County Local Agency Formation Commission ("LAFCO") staff report recently stated in its January 9, 2012 Service Review for the Mountain Region Healthcare Districts that the Bear Valley Community Healthcare District ("BVCHCD") is out of compliance with the Gann Act and related Government Code sections 7900 et seq. because BVCHCD has not adopted an appropriation limit. BVCHCD disagrees with LAFCO's findings and believes BVCHCD is exempt from the Gann Act because it is organized under the provisions of California Health and Safety Code sections 32000 et seq.

## QUESTION PRESENTED

Does the Gann Limit apply to the Bear Valley Community Healthcare District?

## SHORT ANSWER

There is no clear legal authority as to whether the Gann Limit applies to the California's healthcare districts, including the Bear Valley Community Healthcare District. Some healthcare districts in California establish yearly appropriation limits according to the Gann Act and others do not.

## ANALYSIS

This analysis evaluates both LAFCO's position in favor of applying the Gann Limit to BVCHCD and BVCHCD's position against applying the Gann Limit to BVCHCD.

### 1. The Gann Limit Applies to Bear Valley Community Healthcare District

LAFCO states that BVCHCD must set an appropriation limit as stated in the Gann Act. Government Code section 7900 et seq. provides for "the effective and efficient implementation of Article XIII B of the California Constitution," and LAFCO specifically looks to Government Code section 7910, subdivision (a) to support its position. That section states:

> "Each year the governing body of *each local jurisdiction shall, by resolution, establish its appropriations limit* and make other necessary determinations for the following fiscal year pursuant to Article XIII B of the California Constitution at a regularly scheduled meeting or noticed special meeting." (Emphasis added.)

Government Code section 7901, subdivision (e) provides the definition of "local agency" as follows: a "local agency" is "a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools." (Govt. Code § 7901(e).) LAFCO believes BVCHCD is a "special district" under the provided definition of a "local agency." Government Code section 7901, subdivision (e) goes on to describe the two exceptions to the "special district" designation:

> "The term 'special district' shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 1/2 cents per one hundred dollars ($100) of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution."

LAFCO states in its January 9, 2012 Service Review for BVCHCD that the tax rate for BVCHCD in 1977-78 was $0.40 per $100 of assessed value, meaning that it is not exempted from the "special district" designation under the first exception in Government Code section 7901, subdivision (e). BVCHCD also does not qualify for the second exception because it is not "totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of section 8 of Article XIII B of the California Constitution." (Government Code § 7901(e).) Subdivision (c) of section 8 of the Gann Act states:

> "'Proceeds of taxes' shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions."

The section 6 subventions excluded from the definition of "proceeds of taxes" in section 8 of the Gann Act relate to the following situation:

> "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to

reimburse that local government for the costs of the program or increased level of service..."

According to the pertinent provisions of Government Code section 7901 and sections 8 and 6, BVCHCD does not meet the second exception either because it receives subventions from the State. Given that BVCHCD does not fall under these exceptions to the definition of a "special district," LAFCO concludes that BVCHCD is a "special district" and must follow the Gann Act by setting an appropriation limit.

**2. The Gann Limit Does Not Apply to Bear Valley Community Healthcare District**

BVCHCD, as a healthcare district, considers itself not subject to the Gann limit. Its major argument against applying the Gann limit to BVCHCD is BVCHCD is organized under California Health and Safety Code sections 32000 et seq., and these provisions provide for a separate way of limiting the tax levy for a healthcare district. BVCHCD argues that healthcare districts are specifically limited in the amount of any tax levy, $.20 on each $100 of property value, and healthcare districts may call an election to raise the tax rate beyond that amount for a period of no more than five years. (Health and Saf. Code §§ 32202 and 32203.) This amount is levied by a County on behalf of a healthcare district and is separate from the 1% general ad valorem property tax, though the funds may be received as part of the 1% general ad valorem property tax. Because healthcare districts are separately regulated under the Health and Safety Code, BVCHCD believes it is not subject to the Gann Act or Government Code sections 7900 et seq.

Additionally, BVCHCD cites to the fact that the State Controller lists BVCHCD as an "enterprise activity" and does not report appropriation limits for enterprise activities on the Special Districts Annual Report produced by the State Controller. Enterprise activities are "accounted for in a manner similar to a private business....The acquisition, operation, and maintenance of governmental facilities and services are entirely or predominantly self-supporting through user charges or fees." (State Controller, Special Districts Annual Report 2009-10, p. vi.) Non-enterprise activities are activities that have "an accounting system organized on a governmental fund basis." (*Id.*) Based on the State Controller's categorization and reporting of enterprise and non-enterprise activities, BVCHCD believes its position is furthered by its label as an "enterprise activity."

**3. No Clear Legal Authority Available**

As far as we are aware, the two conflicting positions described above have never been resolved by courts or the Legislature in California. At present, some healthcare districts in California follow LAFCO's position and set appropriation limits for themselves; other healthcare districts agree with BVCHCD's conclusion that healthcare districts are not subject to the Gann Act and do not set appropriation limits in accordance with Article XIII B of the California Constitution and Government Code sections 7900 et seq. For example, LAFCO offers Palomar Pomerado Health in the northern San Diego area and San Bernardino Mountains Community Healthcare District as two examples of healthcare districts that follow the Gann Act and set yearly appropriation limits.

BVCHCD also provides examples supporting its position that healthcare districts are not required to set Gann limits. BVCHCD points to the fact that healthcare districts have never been on the Department of Finance's distribution list to receive the population and change in cost of living information required for setting yearly appropriation limits under the Gann Act. Additionally, no auditor for BVCHCD has ever raised the question of whether BVCHCD is in compliance with the Gann Act, and according the BVCHCD's auditor, TCA Partners, LLP, audit firms in California do not review Gann limit issues for healthcare districts.

It appears healthcare districts have been functioning under two separate applications of the law in California—Article XIII B of the California Constitution and Government Code sections 7900 et seq. or Health and Safety Code section 32000 et seq.

## CONCLUSION

Because there is presently no clear legal authority stating whether healthcare districts are subject to the Gann Act or not, LAFCO has several options based on the different positions described above:

1. LAFCO can take no action and let BVCHCD continue to operate without establishing an appropriation limit.

2. LAFCO can seek a California Attorney General opinion on the matter in order to resolve the disagreement between LAFCO and BVCHCD over their different interpretations of the Gann Act, Government Code sections 7900 et seq., and Health and Safety Code sections 32000 et seq.

## Approval: Establishment of Appropriations Limit for Fiscal Year 2012

**TO:** Board Finance Committee

**MEETING DATE:** Monday, July 25, 2011

**FROM:** Robert A. Hemker, CFO

**BACKGROUND:** The Board of Directors of Palomar Pomerado Health annually adopts the Appropriations Limit for the district, pursuant to Article XIIIB of the California Constitution. This action requests approval of the County's Appropriations Limit for Fiscal Year 2012. This limit applies to only unrestricted appropriations and is not related to any appropriations that are restricted for the General Obligation Bonds.

The Appropriations Limit is calculated to be $64,397,770 for fiscal year 2012 *(See Addendum D)*. The District is substantially under that limit and is expected to receive approximately $13,000,000 in unrestricted property tax revenues in fiscal year 2012.

**BUDGET IMPACT:** None

**STAFF RECOMMENDATION:** Approval of Appropriations Limit for Palomar Pomerado Health.

**COMMITTEE QUESTIONS:**

**COMMITTEE RECOMMENDATION:**

**Motion:**

**Individual Action:**

**Information:**

**Required Time:**

**Posted**
**FRIDAY**
**JULY 8, 2011**

PALOMAR
POMERADO
HEALTH

## PUBLIC NOTICE

The Board of Directors of Palomar Pomerado Health will establish its Appropriations Limit for the 2011/2012 fiscal year at its regularly scheduled meeting, to be held at 6:30 p.m. on Monday, August 8, 2011, in the Graybill Auditorium of Palomar Medical Center, 555 East Valley Parkway, Escondido, California 92025. This Appropriations Limit is for the unrestricted appropriations and is in no way related to the appropriations for the General Obligation Bonds issued in 2005, 2007, 2009 and 2010. The documentation used in the determination of the Appropriations Limit is available to the public at the office of the President and Chief Executive Officer, 456 E. Grand Avenue, Escondido, California 92025.

DATED: 7/8/11

PALOMAR POMERADO HEALTH
A California Health Care District

BY: _____
Michael H. Covert
President & CEO

RESOLUTION NO. 08.08.11(02) – 02

RESOLUTION OF THE BOARD OF DIRECTORS OF
PALOMAR POMERADO HEALTH
ESTABLISHING APPROPRIATIONS LIMIT OF THE DISTRICT
FOR THE FISCAL YEAR JULY 1, 2011 - JUNE 30, 2012
PURSUANT TO ARTICLE XIII(B) OF THE CALIFORNIA CONSTITUTION

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WHEREAS, Government Code Section 7910 requires that each year the Board of Directors of this District shall, by resolution, establish the District's appropriations limit for the following fiscal year pursuant to Article XIII (B) of the California Constitution; and

WHEREAS, for not less than fifteen days prior to this meeting the documentation attached hereto as Exhibit "A" used in the determination of the appropriations limit has been available to the public in accordance with Government Code 7910.

NOW THEREFORE, IT IS HEREBY RESOLVED by the Board of Directors as follows:

Section 1. The appropriations limit of Palomar Pomerado Health for fiscal year July 1, 2011 - June 30, 2012, pursuant to Article XIII(B) of the California Constitution is hereby established at $64,397,770.

Section 2. This resolution is effective immediately upon its adoption by the Board of Directors.

PASSED AND ADOPTED at the meeting of the Board of Directors of Palomar Pomerado Health, held August 8, 2011, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAINING:

ATTEST:

_____
T.E. Kleiter
Chair

_____
Jerry Kaufman, PT MA
Secretary

EXHIBIT "A"

PALOMAR POMERADO HEALTH
APPROPRIATIONS LIMIT
2011/2012

| | | | |
|---|---|---|---|
| **2010/2011 APPROPRIATIONS LIMIT** | | | **$62,334,753** |
| PRICE FACTOR | 2.51% | = | 1.0251 |
| **-- OR --** | | | |
| CHANGE IN LOCAL ASSESSMENT ROLL DUE TO NON-RESIDENTIAL NEW CONSTRUCTION | -22.87% | | |
| **-- AND --** | | | |
| **POPULATION FACTOR** | 0.78% | = | 1.0078 |
| CALCULATION OF FACTOR FOR FY 2011/12 | 1.0251 x 1.0078 | = | 1.0331 |
| | $62,334,753 x 1.0331 | = | $64,397,770 |
| **2011/2012 APPROPRIATIONS LIMIT** | | | **$64,397,770** |

## NARRATIVE ON THE RECENT HISTORY OF TAXATION

Palomar Pomerado Health has two types of property taxes available as follows:

### SPECIAL ASSESSMENT FOR GENERAL OBLIGATION BONDS

The taxes necessary to pay the interest and principal for Election of 2004, Series 2005A, 2007A, 2009A and 2010A, Palomar Pomerado Health General Obligation Bonds that were approved by a two thirds majority of the voters in November, 2004. These tax revenues are restricted for the specific purpose of the election campaign of 2004.

### OTHER PROPERTY TAXES

A tax equal to 1% of the full cash value of property is levied each fiscal year by the county and distributed to governmental agencies within the county according to a formula mandated by the state legislature. (California Constitution Article XIII(A); Revenue and Taxation Code Section 97). The state legislature and the county place no restrictions on the tax monies granted to local government agencies, such as Palomar Pomerado Health. (Part 0.5, Division 1 of the Revenue and Taxation Code.) Since these tax revenues are unrestricted, it is not necessary to inform the public regarding the intended use of the funds.

The following is a schedule reflecting our total tax revenues by fiscal year for the past thirty-four years.

| Fiscal Year | Total Received Cash Basis | Restricted for Bond Interest & Principal | Unrestricted | From Prior Year (Unrestricted) Increase (Decrease) $ | % |
|---|---|---|---|---|---|
| 1977/78 | $2,460,384 | $445,211 | $2,015,173 | ------- | ------- |
| 1978/79 | 1,513,554 | 518,736 | 994,818 | (1,020,355) | -50.63% |
| 1979/80 | 1,621,350 | 428,585 | 1,192,765 | $197,947 | 19.90% |
| 1980/81 | 1,914,882 | 458,941 | 1,455,941 | 263,176 | 22.06% |
| 1981/82 | 2,157,298 | 425,948 | 1,731,350 | 275,409 | 18.92% |
| 1982/83 | 2,245,799 | 431,669 | 1,814,130 | 82,780 | 4.78% |
| 1983/84 | 2,453,236 | 454,544 | 1,998,692 | 184,562 | 10.17% |
| 1984/85 | 2,618,899 | 429,139 | 2,189,760 | 191,068 | 9.56% |
| 1985/86 | 2,922,025 | 400,336 | 2,521,689 | 331,929 | 15.16% |
| 1986/87 | 3,325,080 | 476,027 | 2,849,053 | 327,364 | 12.98% |
| 1987/88 | 3,590,335 | 415,348 | 3,174,987 | 325,934 | 11.44% |
| 1988/89 | 4,009,992 | 389,724 | 3,620,268 | 445,281 | 14.02% |
| 1989/90 | 4,644,106 | 451,969 | 4,192,137 | 571,869 | 15.80% |
| 1990/91 | 4,898,609 | 404,912 | 4,493,697 | 301,560 | 7.19% |
| 1991/92 | 5,305,810 | 435,226 | 4,870,584 | 376,887 | 8.39% |
| 1992/93 | 5,230,679 | 455,415 | 4,775,264 | (95,320) | -1.96% |
| 1993/94 | 5,405,901 | 429,917 | 4,975,984 | 200,720 | 4.20% |
| 1994/95 | 5,589,446 | 422,427 | 5,167,019 | 191,035 | 3.84% |
| 1995/96 | 5,604,306 | 452,813 | 5,151,493 | (15,526) | -0.30% |
| 1996/97 | 5,641,183 | 473,160 | 5,168,023 | 16,530 | 0.32% |
| 1997/98 | 5,862,721 | 358,706 | 5,504,015 | 335,992 | 6.50% |
| 1998/99 | 5,915,399 | 0 | 5,915,399 | 411,384 | 7.47% |
| 1999/00 | 6,432,482 | 0 | 6,432,482 | 517,083 | 8.74% |
| 2000/01 | 7,061,136 | 0 | 7,061,136 | 628,654 | 9.77% |
| 2001/02 | 7,693,200 | 0 | 7,693,200 | 632,064 | 8.95% |
| 2002/03 | 8,391,961 | 0 | 8,391,961 | 698,761 | 9.08% |
| 2003/04 | 9,077,863 | 0 | 9,077,863 | 685,902 | 8.17% |
| 2004/05 | 10,180,831 | 0 | 10,180,831 | 1,102,968 | 12.15% |
| 2005/06 | 20,853,221 | 9,303,843 | 11,549,378 | 1,368,547 | 13.44% |
| 2006/07 | 23,604,928 | 11,040,737 | 12,564,191 | 1,014,813 | 8.79% |
| 2007/08 | 25,130,428 | 11,730,239 | 13,400,189 | 835,998 | 6.65% |
| 2008/09 | 25,440,143 | 11,975,665 | 13,464,478 | 64,289 | 0.48% |
| 2009/10 | 24,580,410 | 11,621,467 | 12,958,943 | (505,535) | -3.75% |
| 2010/11 | 27,616,427 | 14,995,884 | 12,620,543 | (338,400) | -2.61% |