



Information presented to the Commission during
the 4-17-13 LAFCO hearing.

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GANN LIMIT: HEALTH CARE DISTRICT - #1301612

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Dear Mr. Gordon:

QUESTION

You have asked us whether a health care district, organized under the Local Health Care District Law, is subject to the spending limitation imposed by article XIII B of the California Constitution. We have considered your question, and our analysis of and opinion on the issues presented are set forth below.

ANALYSIS

1. Overview of article XIII B of the California Constitution

In order to analyze the issues presented by your question, we must first discuss the legal context in which your question arises. Article XIII B of the California Constitution imposes a limitation on the amount of money that the state or a local government entity may annually appropriate from the proceeds of taxes levied by or for the state or local government entity (hereafter the Gann limit).¹ The Gann limit is calculated each year using the amount of revenue from the proceeds of taxes, as defined by article XIII B, that the state or a local government entity appropriated in the prior fiscal year, adjusted for inflation, change in population, transfers of responsibility between governmental entities, and emergencies.² If a local government entity takes in more revenue from the proceeds of taxes, as defined, than it

¹ Cal. Const., art. XIII B, § 1.

² Cal. Const., art. XIII B, §§ 1 & 3.

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is allowed to spend under that cap, then that local government entity must return that excess revenue to the taxpayers in accordance with certain procedures.³

As an initial matter, a local government entity is defined for purposes of the Gann limit to include, among other things, any special district.⁴ However, a special district is exempt from the Gann limit if either it existed on January 1, 1978, and did not as of the 1977-1978 fiscal year levy an ad valorem tax on property in excess of 12½ cents per \$100 of assessed value, or it is totally funded by revenues other than the proceeds of taxes.⁵

The Local Health Care District Law⁶ authorizes the creation of a type of special district known as a local health care district.⁷ Consequently, in our view, a health care district is a local government entity to which the Gann limit applies unless either it receives no revenue from the proceeds of taxes or it existed on January 1, 1978, and did not as of the 1977-1978 fiscal year levy an ad valorem tax on property in excess of 12½ cents per \$100 of assessed value.⁸

In order to establish whether the exception for appropriations of a health care district that receives no revenue from the proceeds of taxes applies, and in order to calculate the Gann limit, we must determine what constitutes the proceeds of taxes. Proceeds of taxes are defined to include all tax revenue received by a local government entity, including any "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," any revenue earned by the "investment of tax revenues," and any revenues subvended to the entity by the state, except as specified.⁹ The phrase "proceeds of taxes" has been interpreted broadly by courts to include any imposition that raises "general tax revenue for the entity."¹⁰

Additionally, even if a health care district is a local government entity to which the Gann limit generally applies, certain types of appropriations are exempted from the limit, including appropriations for debt services, certain appropriations required to comply with mandates of the courts or the federal government, appropriations for special districts meeting certain factual requirements, appropriations for qualified capital outlay projects, or appropriations of revenue derived from certain motor vehicles fuel taxes, sales and use taxes, and weight fees.¹¹

³ Cal. Const., art. XIII B, § 2, subd. (b).

⁴ Cal. Const., art. XIII B, § 8, subds. (b)-(d).

⁵ Cal. Const., art. XIII B, § 9, subd. (c); Gov. Code, § 7901, subd. (e).

⁶ Health & Saf. Code, div. 23 (§ 32000 et seq.).

⁷ Health care districts, formerly called hospital districts, were originally authorized in 1945. (Stats. 1945, ch. 932, adding Health & Saf. Code, § 32000 et seq.)

⁸ Cal. Const., art. XIII B, § 9, subd. (c).

⁹ Cal. Const., art. XIII B, § 8, subd. (c).

¹⁰ See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

¹¹ Cal. Const., art. XIII B, § 9.

To answer your question, we must first determine if the health care district receives any revenue from the proceeds of taxes.¹² If it does, then the Gann limit applies to the health care district, and any nonexempt appropriations of the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity, except as specified, would be subject to the Gann limit. Below, we discuss certain types of revenue that a health care district may receive, whether those types of revenue are proceeds of taxes that would render the Gann limit applicable to a health care district, and whether the appropriation of those particular types of revenues would be subject to the Gann limit.

2. Types of revenue collected by or for a health care district

Generally, a special district, including a health care district, has no authority to levy a tax without authorization by the Legislature.¹³ The Legislature has authorized health care districts to collect revenue in various ways, including by imposing an ad valorem property tax,¹⁴ a special tax,¹⁵ a special assessment,¹⁶ or a fee.¹⁷ We will discuss each of these types of revenue sources in turn.¹⁸

2.1. General ad valorem property tax

An ad valorem property tax is a tax "derived from applying a property tax rate to the assessed value of [real or personal] property."¹⁹ As such, revenue received from an ad valorem property tax would be "proceeds of taxes" for purposes of the Gann limit. However, the statutory authority granted by the Local Health Care District Law to a health care district to levy a general ad valorem property tax was limited by the enactment of the constitutional provisions of Proposition 13 in 1978, and subsequent statutory changes, which set the general ad valorem property tax rate in a county to a maximum of 1 percent of the

¹² We will not discuss whether any particular health care district is exempt because it existed on January 1, 1978, and did not as of the 1977-1978 fiscal year levy an ad valorem tax on property in excess of 12½ cents per \$100 of assessed value. Thus, the analysis addresses only health care districts to which that that exception does not apply.

¹³ Cal. Const., art. XIII A, § 4.

¹⁴ Health & Saf. Code, div. 23, ch. 3, art. 1 (§ 32200 et seq.).

¹⁵ Gov. Code, § 53730.01.

¹⁶ Health & Saf. Code, div. 23, ch. 3, art. 3 (§ 32240 et seq.).

¹⁷ Health & Saf. Code, § 32125.

¹⁸ If a health care district receives revenue from the proceeds of state subventions to a district or revenues from the investment of tax revenues, then the special district is subject to the Gann limit, except for state subventions provided under article XIII B, section 6 of the California Constitution. (Cal. Const., art. XIII B, § 8, subd. (c).) As such, we will not discuss those revenues.

¹⁹ *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 483.

assessed value of the property,²⁰ and prohibit a local agency, including a health care district, from levying a general ad valorem property tax (hereafter Proposition 13).²¹ If there is a conflict between a statutory provision and the California Constitution, then the statute is void.²² Accordingly, in our view, a health care district no longer has the power to levy a general ad valorem property tax.²¹

Although a health care district no longer has the authority to levy a general ad valorem property tax, a health care district may still receive a portion of the ad valorem property tax levied by the county. Proposition 13 establishes a general limit of 1 percent upon the ad valorem property tax rate in each county, and requires the county to annually collect a 1 percent ad valorem property tax. Those property tax revenues collected in each county with respect to that 1-percent rate must be "apportioned according to law" among the jurisdictions in that county.²⁴ This requirement is implemented in statute by Revenue and Taxation Code, division 1, part 0.5, chapter 6 (§ 95 et seq.) (hereafter chapter 6). That chapter generally requires that each jurisdiction in a county, including special districts,²⁵ be annually allocated, from those revenues derived from the county's 1-percent annual general ad valorem property tax rate, an amount equal to the total amount of county property tax revenue allocated to that jurisdiction in the prior fiscal year²⁶ and that jurisdiction's portion of the annual tax increment, as defined, with specified modifications.²⁷ As one type of special district, a health care district is one of the local jurisdictions that receives, under the allocation formulas set forth in chapter 6, a share of those revenues derived from the 1-percent property tax rate annually levied by the county.²⁸

Because proceeds of local taxes are only subject to the Gann limit if they are levied "by or for" the local government, the question arises whether the general ad valorem property tax revenues that a health care district receives are the proceeds of a tax that was levied "by or for" the health care district.²⁹ Courts have construed the phrase "to levy taxes by or for another entity" to mean, generally, that the entity on whose behalf the tax was levied must

²⁰ Cal. Const., art. XIII A, § 1, subd. (a).

²¹ Rev. & Tax. Code, § 93.

²² *Hotel Employees and Restaurant Employees Intern. Union v. Davis* (1999) 21 Cal.4th 585, 602.

²³ See part 2.2, *infra*, for a discussion of a health care district's authority to impose a special ad valorem property tax.

²⁴ Cal. Const., art. XIII A, § 1, subd. (a)

²⁵ Rev. & Tax. Code, § 95, subds. (a), (b) & (m).

²⁶ Rev. & Tax. Code, § 96.1, subd. (a).

²⁷ Rev. & Tax. Code, §§ 96.1 & 96.5.

²⁸ Cal. Const., art. XIII A, § 1, subd. (a); Rev. & Tax. Code, § 95, subd. (b).

²⁹ Cal. Const., art. XIII B, § 8, subd. (b).

have had the power to levy the tax itself.³⁰ For example, in *Bell Community Redevelopment Agency v. Woosley*, *supra*, 169 Cal.App.3d 24, 32-33, the court applied that construction to hold that redevelopment agencies were not subject to the Gann limit because a redevelopment agency had never had the independent power to tax and, thus, a county does not levy taxes "by or for" a redevelopment agency for purposes of California Constitution, article XIII B. Similarly, because Proposition 13 took away the power of a health care district to levy an ad valorem property tax, an argument could be made that the portion of the general ad valorem property tax collected by the county and distributed to special districts is not levied "by or for" the health care district.

However, we do not find this argument compelling for two reasons. First, health care districts are distinguishable from redevelopment agencies because, unlike redevelopment agencies, they historically had the power to impose a general ad valorem tax. Second, to construe the phrase "by or for" in a way that would exempt the portion of the general ad valorem property tax distributed to special districts from the Gann limit would be inconsistent with the purposes of article XIII B.³¹ It has been the longstanding policy of this state that general ad valorem property tax is to be used for local revenue purposes.³² Indeed, prior to the passage of Proposition 13, general ad valorem property tax was the primary source of revenue for local jurisdictions. In 1978, the voters passed Proposition 13, which, as stated above, limited the amount of ad valorem property tax assessed on real and personal property.³³ Less than a year later, the Gann limit was adopted by the voters as Proposition 4 in the November 6, 1979, special statewide election. In the ballot arguments for Proposition 4, the proponents characterized it as the "next logical step" to Proposition 13, which had been enacted less than a year before and had limited the amount of ad valorem property tax assessed on real and personal property.³⁴ While Proposition 13 limited the amount of ad valorem property tax that the government can collect, Proposition 4 sought to limit the growth of spending in general in order to encourage "discipline in tax spending" by the

³⁰ See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32-33.

³¹ The holding in *Bell Community Redevelopment Agency v. Woosley*, *supra*, 169 Cal.App.3d at page 32, is distinguishable on additional grounds: (1) unlike a special district, a redevelopment agency has no appropriation limit, and (2) the appropriation in this case was for debt service, which is expressly exempt from the Gann limit.

³² *San Francisco & S.M. Elec. Ry. Co. v. Scott* (1903) 142 Cal. 222, 229, cited in *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929, 940.

³³ See Cal. Const., art. XIII A, § 1.

³⁴ Ballot Pamp., Special Statewide Elec. (November 6, 1979) argument in favor of Prop. 4, p. 18; *Oildale Mutual Wat. Co. v. North of the River Mun. Wat. Dist.* (1989) 215 Cal.App.3d 1628, 1632.

government.³⁵ Accordingly, the Gann limit should be construed consistently with Proposition 13 in order to accomplish the dual objectives of controlling taxes and limiting spending of those taxes.³⁶ To construe the Gann limit as excluding the appropriation of general ad valorem taxes that are distributed to a local government entity under Proposition 13 would result in allowing all local government entities, except for a county, that receive a portion of the property tax allocation to spend that amount without limitation. This result would be inconsistent with the intent behind the Gann limit to encourage "discipline in tax spending."³⁷

Not only would that result be inconsistent with the purpose of the Gann limit, it would also be inconsistent with Proposition 13. Proposition 13 requires that the county collect the remaining general ad valorem property tax revenues and "[apportion those revenues] according to law" among the jurisdictions in that county.³⁸ In that way, the county is, in effect, collecting the general ad valorem property tax revenue by and for the local jurisdictions, and distributing a specified amount to local jurisdictions. A local jurisdiction may use any general ad valorem property tax revenue for the general support of that entity.³⁹ Because the general ad valorem property tax distributed to a health care district pursuant to Proposition 13 is an imposition that raises general tax revenue for the entity, we believe that a court would conclude that those revenues are proceeds of taxes levied "by or for" the health care district for purposes of the Gann limit.⁴⁰

Accordingly, it is our opinion that the Gann limit applies to a health care district that receives a portion of general ad valorem property tax collected and distributed by a county, and that a nonexempt appropriation of that revenue would be subject to the Gann limit.

2.2. Special ad valorem property tax

Although Proposition 13 prohibits a special district, including a health care district, from levying a general ad valorem property tax, special districts are still authorized to levy a special ad valorem property tax to pay the principal and interest on certain types of indebtedness.⁴¹ Generally, as we concluded above, a health care district that receives revenue from an ad valorem property tax would be a local government entity for purposes of article XIII B because those revenues constitute the proceeds of taxes. But the appropriation of

³⁵ Ballot Pamp., Special Statewide Elec. (November 6, 1979), *supra*, at p. 18; *Oildale, supra*, 215 Cal.App.3d at p. 1632.

³⁶ See *Oildale, supra*, 215 Cal.App.3d at p. 1633.

³⁷ Ballot Pamp., Special Statewide Elec. (November 6, 1979), *supra*, at p. 18.

³⁸ Cal. Const., art. XIII A, § 1, subd. (a).

³⁹ See *San Francisco & S.M. Elec. Ry. Co. v. Scott* (1903) 142 Cal. 222, 229.

⁴⁰ This conclusion is also consistent with the court's reasoning in *County of Placer v. Corin, supra*, 113 Cal.App.3d at page 451.

⁴¹ Cal. Const., art. XIII A, § 1, subd. (b).

revenue to pay the principal and interest of certain types of indebtedness is specifically exempted from the Gann limit.⁴² Therefore, it is our opinion that the Gann limit applies to a health care district that receives revenue from a special ad valorem property tax levied to pay the principal and interest on specified types of indebtedness, but that the appropriation of those particular revenues would not be subject to the Gann limit.

2.3. Special tax

A special tax is a tax that is levied for a specific purpose.⁴³ Accordingly, a tax is a special tax if the use of the revenues derived from that tax is limited to a specific purpose or specific purposes. This purpose is interpreted broadly to include a tax levied to generally support the operations of a special district.⁴⁴ For example, in *Neilson v. City of California*, *supra*, 133 Cal.App.4th at pages 1310-1312, the court held that a parcel tax levied to support public safety services, parks and recreation, street repair and maintenance, and water services was a special tax because it was levied to support specific governmental purposes. A health care district may levy a special tax, such as a parcel tax,⁴⁵ if (1) all the hospitals within the jurisdiction of the district are wholly owned and operated by the district, (2) the tax applies uniformly to all taxpayers or real property within the district, and (3) the district complies with certain procedures set out in the California Constitution and in statute, including specified voter approval.⁴⁶

It is our view that if a health care district levies a special tax, then any revenue earned from that special tax would be proceeds of taxes. Thus, in our opinion, the Gann limit

⁴² Cal. Const., art. XIII B, § 8, subd. (g), § 9, subd. (a).

⁴³ A general tax, which a health care district may not levy, is levied to support general governmental purposes. (Cal. Const., art. XIII C, § 2, subd. (a).) A general tax may be used for any and all governmental purposes. (*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296, 1309.)

⁴⁴ *Hoogastan Flowers, Inc. v. State Board of Equalization* (1994) 23 Cal.App.4th 1264, 1281-1284 (tax levied by a special district for the purpose of supporting education was a special tax).

⁴⁵ A parcel tax, which is a flat tax on a parcel of real property without regard to the property's value, is distinguishable from an ad valorem property tax because a parcel tax is assessed without regard to the value of the property. (*Heckendorn, supra*, 42 Cal.3d at p. 487.) As such, a parcel tax would not be subject to the limitations on ad valorem property taxes in the California Constitution. (*Ibid.*) For example, as stated above, the ad valorem property tax rate in a county may not exceed 1 percent of the assessed value of the property (Cal. Const., art. XIII A, § 1, subd. (a)), and special ad valorem property tax revenue must be used for certain purposes. (See Cal. Const., art. XIII A, § 1, subd. (b).)

⁴⁶ Gov. Code, § 53730.01; see also Cal. Const., art. XIII A, § 4.

applies to a health care district that levies a special tax, and a nonexempt appropriation of that revenue would be subject to the Gann limit.⁴⁷

2.4. User fees and special assessments

Lastly, a health care district may impose various fees for its services.⁴⁸ Any revenue earned from a fee that does not exceed the reasonable costs of the health care district for providing the service is expressly exempted from the definition of proceeds of taxes.⁴⁹ Accordingly, it is our opinion that an appropriation of revenue earned by a health care district from user fees for services that do not exceed the reasonable costs of providing those services does not render a health care district subject to the Gann limit, and that an appropriation of that type of revenue would not be subject to the Gann limit.

A health care district may also levy a special assessment by complying with certain procedures set out in statute and in the California Constitution.⁵⁰ A special assessment is a levy or charge assessed on real property within a defined area in order to pay for a special benefit conferred on that property. Historically, a special assessment is distinguishable from a tax because a special assessment only benefits property within a defined area, while a tax benefits the public in general.⁵¹ As such, in our view, revenue earned from a special assessment would not be proceeds of taxes, as defined by article XIII B.⁵² Accordingly, it is our opinion that an appropriation of revenue earned by a health care district from a special assessment does not render a health care district subject to the Gann limit, and that an appropriation of that type of revenue would not be subject to the Gann limit.

3. Conclusion

In summary, it is our opinion that the revenues earned by a health care district from the countywide allocation of the general ad valorem property tax, from any special tax that the local health care district may have levied, from the investment of tax revenues, or from subventions received from the state, except as specified, are proceeds of taxes and subject to the Gann limit, unless the revenue is appropriated for an exempt purpose or unless appropriations of the district are exempt from the Gann limit. It is also our opinion that revenues appropriated by a health care district from a special ad valorem property tax levied by the health care district to pay the principal and interest on specified types of indebtedness are proceeds of taxes but are not subject to the Gann limit. In addition, in our opinion, revenues from user fees and special assessments are not proceeds of taxes, and the

⁴⁷ *Oildale*, *supra*, 215 Cal.App.3d at p. 1633.

⁴⁸ Health & Saf. Code, § 32125.

⁴⁹ Cal. Const., art. XIII B, § 8, subd. (c).

⁵⁰ Health & Saf. Code, div. 23, ch. 3, art. 3 (§ 32240 et seq.); Cal. Const., art. XIII D.

⁵¹ *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 450.

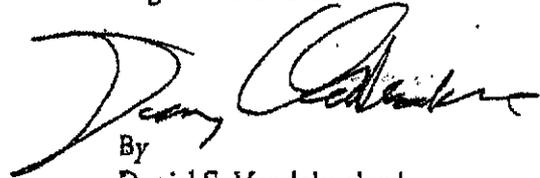
⁵² *Id.* at pp. 452-454; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 332-335.

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appropriation of those revenues would not be subject to the Gann limit. If a health care district receives revenue from multiple sources, some of which is proceeds of taxes, then it is also our opinion that nonexempt appropriations by the health care district of revenue that is proceeds of taxes would be subject to the Gann limit.

Very truly yours,

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By
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