The California Court of Appeal Issues Landmark Local Government Finance Decisions

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Key Points

- California Court of Appeal issues two landmark local government finance decisions.
- Propositions 13 and 218 do not require two-thirds voter approval for special taxes proposed by initiative.
- A toll is not a tax.

The California Court of Appeal in San Francisco has issued two blockbuster decisions in the last week impacting local government finance. Both were big wins for local government!

Tolls Are Not a Tax

First, on June 29, 2020, the Court of Appeal issued its opinion in *Howard Jarvis Taxpayers Association v. Bay Area Toll Authority*. The Howard Jarvis Taxpayers Association ("HJTA") challenged 2018's Regional Measure 3, by which the voters approved a toll increase on the State-owned bridges in the San Francisco Bay Area (not including the Golden Gate Bridge), with the proceeds dedicated to regional transportation projects specified in a plan set forth in State legislation. The measure was approved by 55% of voters, but HJTA asserted that the toll increase was a special tax, thereby requiring two-thirds voter approval or two-thirds legislative approval (which it also did not receive).

The Court unanimously affirmed the trial court's decision that a toll is not a tax, and that Bay Area Toll Authority could collect the toll increase approved by the voters in 2018. The appellate court concluded that the toll increase constitutes "a charge imposed for entrance to or use of state property" and is accordingly excepted from the constitutional definition of a tax, set out in Article XIII C, section 1(e). The Court found irrelevant the fact that (1) the amount of the toll increase was not necessarily related to the actual cost of crossing a bridge, and (2) most of the proceeds from the toll increase would be used not for the direct benefit of those who pay the toll, but rather for those who use other means of transportation. The California Constitution limits other types of fees and charges based on governmental costs incurred and benefits conferred, but those limits do not apply to fees for use of government property.

In a lengthy footnote that is sure to prompt considerable analysis, the Court of Appeal in this decision disagreed with another panel of the First District in its recent decision in *Zolly v. Oakland*. In that case, the Court of Appeal held that fees for use of government property are limited by the cost/benefit considerations that the Court of Appeal *here* found inapplicable to bridge tolls. A petition for review to the California Supreme Court is already pending in *Zolly*.

Voters Maintain the Power to Tax Themselves

Second, on June 30, 2020, the Court of Appeal issued its opinion in *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C*. The background of the case stems from the 2017 *Upland* decision, in which the California Supreme Court held that a tax measure proposed by a voter initiative was legal even though it appeared at a special election rather than a general election. The Court held that Article XIII C of the California Constitution's requirement for a general election applied only to taxes imposed by "local government" action, which term does not include a voter-sponsored initiative. This decision inevitably raised the question of what *other* Constitutional requirements might apply differently to voter initiatives, most importantly the requirement for supermajority voter approval of special taxes.

In 2018, San Francisco voters placed Measure C on the ballot to increase the City's business license tax to fund increased services for the City's growing homeless population. Because the increased tax revenue would be devoted to specified purposes, it unquestionably qualified as a “special tax.” 61% of San Francisco voters approved the measure, and the City filed a validation action to confirm that it was valid, despite having passed with less than two-thirds of the vote. A group of business associations, as well as HJTA, responded, asserting that the two-thirds voter approval requirement for special taxes under Articles XIII A and XIII C of the California Constitution—added via Propositions 13 and 218, respectively—apply to all special taxes, regardless of whether they are proposed by local government or by voters themselves.

The Court of Appeal rejected the associations’ arguments. It held that the Constitution does not require supermajority approval for *initiative* special taxes. Exhaustively analyzing the long line of cases broadly construing the initiative power in California, and closely following the California Supreme Court’s recent *Upland* decision, the court concluded the supermajority vote requirement applies only to special taxes imposed by “local government.” Nothing in the text or background of Propositions 13 or 218 indicated an intent to constrain the power of voters to tax themselves or suggested that the phrase “local government” included the electorate's decision to govern itself through the initiative process.

Next Steps

The tax challengers in both cases may petition for rehearing in the Court of Appeal, or they may petition for review by the California Supreme Court. Statistically speaking, there is little chance the High Court will grant review in any case. But these cases may have a better than average chance, given both the importance of the underlying issues and, in particular, the potential conflict within the First Appellate District relative to the *Zolly* decision.

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