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MEMORANDUM OF LAW

DATE: February 25, 2010

TO: Councilmember Todd Gloria

FROM: City Attorney

SUBJECT: Validity of the Public Transportation Tax Authorized by San Diego Charter section 77b

INTRODUCTION

In a memorandum dated November 10, 2009, Councilmember Gloria asked this Office whether San Diego Charter section 77b, which authorizes the San Diego City Council [City Council] to levy a tax that would support the City's public transportation system, is still valid.

QUESTION PRESENTED

Is San Diego Charter section 77b still valid even though the tax has not been levied in more than thirty years and, if San Diego Charter section 77b is still valid, can the City Council now levy this tax without first obtaining a 2/3 vote?

SHORT ANSWER

San Diego Charter section 77b is still valid and the public transportation tax may be levied without approval by a 2/3 vote of qualified San Diego electors so long as the tax is used for the purpose approved by the voters in 1966. That is, "for discharging any obligations undertaken by the City to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system." The City transferred its public transportation system to the Metropolitan Transit Development Board [MTDB] in 1985; therefore, the ability to levy the tax will depend on the proposed use of the public transportation tax. San Diego Charter § 77b.

BACKGROUND

According to the San Diego Metropolitan Transit System website, a specially formed Transit Task Force recommended to the City Council in 1966¹ that the City of San Diego acquire the San Diego Transit System. Jesse L. Haugh had operated the San Diego Transit System² since 1948. Rail transit service terminated in 1949³ but a transit system comprised of a fleet of buses continued to operate in the City.

As a result of the Task Force's recommendation, the City placed a measure on the ballot that would allow it to purchase the San Diego Transit System and to levy a tax that would be used to support future operations of a public transportation system. The measure stated:

The Council may levy, in addition to all other taxes provided for in this Charter, a special tax in an amount not to exceed ten cents (\$0.10) on each one hundred dollars (\$100.00) of the assessed valuation of all real and personal property within the City, to be used for discharging any obligations undertaken by the City to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system.

The Council may establish special funds, execute contracts, acquire property by purchase, devise, lease, gift or condemnation, and may sell, lease, convey, exchange, dispose of, or lend property or funds in order to provide, promote or preserve a public transportation system. The enumerated powers in this section are in aid of public transportation and shall not be limited by any other provisions of this Charter. (*Addition voted 06-07-1966; effective 06-29-1966.*)

A majority of the qualified City electors approved this measure.⁴ The tax, hereinafter referred to as the "public transportation tax," was codified in San Diego Charter section 77b.

As a result of this Charter addition, the City began efforts to acquire the San Diego Transit System. See page 2 of Attachment A. The validity of the Charter amendment and the proposed acquisition became the subject of litigation which was decided in favor of the City

¹ See timeline attached hereto as Attachment A.

² Formerly the San Diego Electric Railway Company, which had been owned by John Spreckels.

³ Trolley service was re-introduced to the City of San Diego in 1981.

⁴ The "Corrected Certificate of City Clerk," attached hereto as Attachment B, certifies the results of the Special Municipal Election held on June 7, 1966. It shows that 154,321 votes were cast: 89,084 voted in favor of the tax (57.73 percent) and 65,237 voted against the tax (42.27 percent).

in 1967 and affirmed by the Fourth District Court of Appeals in 1968. *Id.* at 2, citing *Ruane v. City of San Diego*, 267 Cal. App. 2d 548 (1968); hearing denied by the California Supreme Court.

A City Attorney memorandum to the Mayor and the City Council, dated November 23, 1970, and attached hereto as Attachment C, notes that the public transportation tax generated approximately \$1,400,000 each year. The tax proceeds were used to subsidize transit system operations and to pay acquisition costs. The City continued to collect the tax until 1979. *See* City Attorney Report to the Transportation and Land Use Committee, dated January 30, 1979, attached hereto as Attachment D.

In 1967, San Diego Transit System became a non-profit corporation owned and operated by the City, and in 1985, the City transferred ownership of the San Diego Transit System to another public entity, the MTDB. The City has not owned or operated a public transportation system since 1985⁵.

ANALYSIS

I. Charter Section 77b, Which Authorized the Public Transportation Tax, is Valid Because the Voters Approved the Underlying Indebtedness.

In 1978, California voters approved Proposition 13. Cal. Const. art XIII A. Proposition 13 limits ad valorem taxes on real property to one percent of full cash value of real property. Cal. Const. art. XIII A, § 1(a). It also prevents cities from levying special taxes without two-thirds voter approval.⁶

San Diego Charter section 77b authorizes the City Council to levy a tax of “ten cents (\$0.10) on each one hundred dollars (\$100.00) of the assessed valuation of all real and personal property within the City.” If levied, tax would exceed the one percent ad valorem tax limit established by Proposition 13, thereby rendering the public transportation tax unconstitutional unless an exemption applies. Cal. Const. art. XIII A, § 1(b).

Proposition 13 exempts from the limitation “ad valorem taxes or special assessments [levied] to pay the interest and redemption charges on . . . [i]ndebtedness approved by the voters prior to July 1, 1978.” Cal. Const. art. XIII A, § 1(b). Thus, if City voters approved an “indebtedness” in 1966 by authorizing the levy of the public transportation tax, then the City Council may impose this tax without running afoul of Proposition 13.

⁵ In 2005, MTDB changed its name to the Metropolitan Transit System (MTS) which reflects the new relationship with SANDAG and the reorganization of five separate operations into one agency. *See* Cal. Pub. Util. Code § 132353.

⁶ The City of San Diego amended its Charter in response to the passage of Proposition 13 by adding section 76.1. Section 76.1 permits the City Council to levy a special tax if the tax is approved by a two-thirds vote of the qualified electors of the City.

In a City Attorney Report to the Transportation and Land Use Committee, dated January 30, 1979, this Office opined that the public transportation tax would not be exempt from Proposition 13 because it did not constitute an indebtedness approved by City voters. See Attachment D. The analysis states, “[w]e cannot opine as a matter of law that it is a legal obligation or indebtedness within the context of Section 1(b) of Article XIII A.” The Report further instructs the Committee to “include the levy in the Fiscal 1980 tax levy, direct the City Auditor to transmit the levy to the County Tax Collector and direct our office to commence such action as is appropriate to require the County Tax Collector to collect the tax” if the Committee wished to “raise this question in a court of law.” Attached to this Report is an opinion from the Legislative Counsel of California, dated July 17, 1978, which also analyzed San Diego Charter section 77b. It, too, concluded that the public transportation tax could not be imposed without violating Proposition 13 because the voters had not approved an indebtedness prior to July 1, 1978, the effective date of Proposition 13. The Committee did not direct the City Auditor to transmit the levy to the County Tax Collector.

As evidenced by the cases discussed below, the definition of “indebtedness” broadened after 1979, and for that reason, we no longer believe that our earlier analysis, or that of the Legislative Counsel of California, is accurate.

In *Patton v. City of Alameda*, 40 Cal. 3d 41 (1985), a taxpayer alleged that a tax imposed under a City of Alameda charter provision to support city library operations exceeded the one percent ad valorem tax limit established by Proposition 13. The taxpayer argued that the tax was not an “indebtedness” and could not be imposed in addition to the 1 percent ad valorem tax authorized by Proposition 13. The court disagreed because “[t]he city’s voters had, in 1937, undertook a duty to pay a specified tax for the support of the library long before article XIII A was enacted.” *Id.* at 1138. This obligation constituted an indebtedness that would exempt the library tax from the limits set forth in Proposition 13.

Similarly, in *Carman v. Alvord*, 31 Cal. 3d 318 (1982), a taxpayer challenged the city’s levy of an ad valorem tax in excess of the one percent limitation set forth in Proposition 13. In 1948, local electors approved a ballot measure that would allow the city to join the State Employees’ Retirement System (now the Public Employees’ Retirement System or PERS). The voters authorized the city council to “levy and collect annually, as contemplated in [the statewide statute], a special tax sufficient to raise the amount estimated by [the City] Council to be required to meet the obligations of said City to said retirement system.” *Id.* at 322. The city exercised the authority, contracted with PERS, and began collecting annual taxes to fund its contributions. A taxpayer sued the city after Proposition 13 became effective. The taxpayer alleged that the 1978-1979 payment that the city owed to PERS was not a prior “indebtedness approved by the voters” because “the charge arises each year, is “annually executory,” and may be terminated by the city at will.” *Id.* at 324-25. The court disagreed, holding that the voters created an indebtedness by approving a pension system and a tax levy to support it.

Finally, in *City of Fresno v. Superior Court*, 155 Cal. App. 3d 678 (1984)⁷, the City brought an action to determine whether a city charter provision approved by the voters in 1957 was constitutional. The city charter provision authorized the city to levy a property tax for purposes of funding its retirement system. Noting that “indebtedness” should be broadly interpreted, the appellate court concluded that the tax levy constituted prior voter-approved indebtedness and was exempt from Proposition 13:

We see no legal or constitutional barrier to upholding the tax to the extent that it will be expended for a legal purpose, that is, for the voter-approved retirement benefits at the 1957 level. The cost of maintaining retirement benefits at their 1957 level was approved by the voters and is part of the cost of the retirement systems in general. The tax proceeds will only be used to pay that portion of the retirement systems costs which were approved by the voters prior to 1978, and are therefore constitutionally subject to being funded by an additional tax.

Id. at 1147.

Further, “specific approval by the voters of each tax or specific pension system by name is not required, but rather approval of the indebtedness to fund the benefits is all that is needed.” *City of Fresno v. Superior Court*, 155 Cal. App. 3d at 1143, citing *Valentine v. City of Oakland*, 148 Cal. App. 3d 139, 148-51 (1983).

Patton, Carman and *City of Fresno* emphasize that the one percent maximum property tax limit does not apply if the voters approve an indebtedness prior to the effective date of Proposition 13. That occurred here. City voters authorized the City Council to levy the public transportation tax in 1966 so that the City could “acquire, develop, operate or maintain” the San Diego Transit System, or assist a non-profit in this regard. The City subsequently levied the tax and used its proceeds in the manner authorized by the voters. Since the voters created an indebtedness before Proposition 13 went into effect, the public transportation tax is exempt from the one percent limitation set forth in Proposition 13.

II. May the City Council Levy the Public Transportation Tax After a 31-Year Hiatus?

In a recent opinion analyzing a delay in levying a tax approved by the voters prior to 1978, the Attorney General concluded that the collection of the tax is not subject to the one percent property tax limitation of the Constitution where voters of a charter city approved a city

⁷ Modified and reprinted at 156 Cal. App. 3d 1137 (1984).

employee pension plan prior to July 1, 1978 and delayed collection of the tax until after July 1, 1978. 88 Op. Cal. Att’y Gen. 1 (2005). The opinion states, in part:

We are informed that when the voters of the charter city in question approved the city employee pension plan prior to July 1, 1978, they authorized the city council to levy a tax override⁸ sufficient to meet all obligations of the city for the retirement system in which the city participated. Under the Legislature’s implementing definitions, the fact that the tax override was not levied until after July 1, 1978, did not “extend” or “increase” the tax levy previously approved. The “level previously approved” by the voters [citation] was the rate in excess of one percent needed “to continue providing all retired, current, and future city employees with the retirement benefits to which city employees were entitled” at the time of the voter approval. [citation] Accordingly, the voter approval requirement of article XIII C of the Constitution was satisfied when the voters of the charter city authorized the tax override prior to July 1, 1978.

88 Op. Cal. Att’y Gen. 1, 5 (2005).

For purposes of Proposition 13, the voters are only required to approve the underlying “indebtedness” for which the tax override will be imposed prior to July 1, 1978. The voters are not required to approve the levy of the tax override itself. 88 Op. Cal. Att’y Gen. 1, 3 (2005).

The City has not levied the public transportation tax since at least 1979. In theory, this hiatus should not affect the City’s ability to levy the public transportation tax should appropriate circumstances exist. As a practical matter, any attempt to levy the tax may result in litigation and the City’s success in the litigation cannot be determined at this time. We did not find any relevant court cases addressing the levy of a special tax more than thirty years after it was last imposed.

CONCLUSION

In approving Charter section 77b, the voters authorized the City Council to levy a tax that would be used to acquire, develop, operate or maintain the City’s public transportation system, or to assist a non-profit corporation in this regard. The public transportation tax, if levied, would increase the ad valorem tax beyond the limits proscribed by Proposition 13. Nevertheless, this

⁸ A tax in excess of the one-percent cap, imposed to pay voter-improved indebtedness, is frequently referred to as a “tax override” or “excess tax.” 88 Ops. Cal. Att’y Gen. 1, 2 (2005) (referencing *Howard Jarvis Taxpayers Assn. v. County of Orange*, 110 Cal. App. 4th 1375, 1379-83, 1386-88 (2003); *Valentine v. City of Oakland*, 148 Cal. App. 3d 139, 142, 145 (1983)).

increase is exempt from the tax limits set forth in Proposition 13 because the voters approved the underlying "indebtedness." Thus, under existing law, a court could deem a tax levy under Charter section 77b valid.

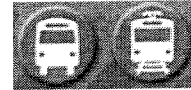
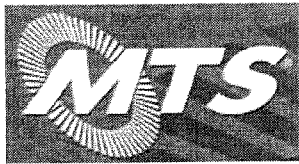
Note, however, that the public transportation tax may only be levied for the purpose approved by the voters in 1966. That is, "to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system." The City transferred its public transportation system to MTDB in 1985, and no longer owns a public transportation system. Thus, the City must use these tax proceeds to assist a nonprofit corporation in its effort to acquire, develop, operate or maintain a public transportation system. As previously discussed, imposing the tax after such a lengthy lapse in time is risky and problematic. Before any tax is levied pursuant to San Diego Charter section 77b, this Office stands ready to provide additional legal guidance on proposed uses of the public transportation tax.

JAN I. GOLDSMITH, City Attorney

By 

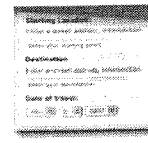
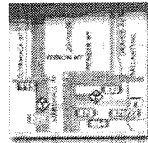
Mara W. Elliott
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Attachments
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Maps & Timetables Fares How to Ride Travel Planner



Metropolitan Transit System

TRIP PLANNER >

MTS Historical Timeline

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SEARCH



1880's

1886

July 3 -- San Diego Street Car Company, founded by (Hamilton Story and Elisa Babcock) begins service. An open air street car, drawn by two mules or horses, makes its way up Fifth Avenue at D Street (now Broadway) with a top speed of 5 miles per hour. The San Diego Street Car Company eventually has five lines in downtown running between H Street (now Market), F Street, D Street (now Broadway), First and Fifth Streets. The "system" is composed of six cars, 20 horses and costs five cents to ride.



San Diego & Old Town Street Railway Company and Electric Rapid Transit Company plan overhead wires to power new line.

San Diego experiences terrific growth in the mid to late 1880's. In 1880 the county's population is 8,600. By 1887 it has grown to over 40,000 creating a demand for public transportation.

1887

June 14 -- San Diego Land and Town Company begins suburban steam line, the National City and Otay Railway (NC&O) to shuttle buyers to new housing subdivisions. 550 passengers ride on the first day.

National City: Building a Community and Preserving Its Transit Heritage (1,2) provides a brief history of this city's public transit heritage.



November 9 -- The first electric motor makes test run on new tracks up Broadway to Kettner and on to Old Town

November 19 -- Electric street car service inaugurated in San Diego; next day San Diego Union newspaper reports

"...the electric motor commenced running through to Old Town and the residents along the line are no longer bothered with coal smoke and shrill tooting of the steam engine."

Two days later, another news story said,

"It starts, stops and moves promptly and smoothly. The passenger as he marvels at the mysterious power that propels him, marvels at its transmission in such strength through the medium of an overhead wire."

December 1 -- City told that the "Old Town Line is being dismantled and moved" but a new electric street car line will be built to serve the new University Heights neighborhood (now

Normal Street) and that the lines on Fourth and Fifth Streets in downtown San Diego will be electrified.

1888

The Electric Rapid Transit Company puts an electric street car into regular operation in San Diego

1889

The Electric Rapid Transit Company collapses; steam and horse powered lines take over.

1890's**1890**

June -- San Diego Cable Car Company starts operation. These "Palaces on Wheels" are trimmed with rare woods and stained-glass windows. The metalwork was plated with nickel. The cars travel at eight to ten miles per hour.

The population decreases to 16,000, causing some of the transportation companies to fail.

1891

November --John D. Spreckels incorporates the San Diego Electric Railway Company.

1892

January -- J. D. Spreckels purchases the San Diego Street Car Company for \$115,000. Over the next few years, he also purchases the Park Belt Line, the San Diego Cable Company, Citizens Traction Company and the O.B. Railroad

Spreckels decides to make a complete conversion to electrically powered vehicles. This involves retrackng, double-tracking, installing overhead wiring, building a power plant, purchasing new cars, and rehabilitating old cars. He is quoted as saying, "I made those larger investments to protect the investments I had already made. It was just plain business sense. The city would not grow without an adequate street car facility. If San Diego did not grow, then my big investments would not pay."

The name and the system is changed to San Diego Electric Railway Company (SDER).

September -- There were 12 miles of electric railway open with two double decker and six single decker vehicles.

1900's**1900**

In the first part of the new century there is impressive growth in the streetcar system. Two new operating divisions on Imperial Avenue in Downtown (1911) and Adams Avenue in Normal Heights (1915) open to accommodate this growth.

1905

Spreckels builds a new power generating plant to operating the expanding streetcar network.

1906

Third Avenue Streetcar Line begins operation from Market Street up Third to Fir Street to the luxurious Hotel Florence.

SDER operates 798,152 car miles in this year.

1907

Third Avenue Streetcar Line extended to Washington Street and future Mission Hills community, and is briefly renamed Mission Hills Line. The streetcar line was the genesis of the new Mission Hills suburb.

Mission Hills Route 3: Building a Community Around a Street Car Line (page 1,2) provides a brief history of how transit contributed to one of San Diego's most vital neighborhoods.

One-way fare between San Diego and National City is \$0.10 on the National City and Otay Railway (NC&O) Route.

1910

Spreckels forces a ballot initiative to amend his charter with the City of San Diego to give him more than 25 years on his leases to operate streetcar service. With this greater security he is able to acquire major loans for service expansion and infrastructure.

1911

Spreckels builds second power generating plant at Kettner and E Street when the plant built in 1905 no longer can handle the capacity.

1915

Panama-California Exposition in Balboa Park spurs next phase of transportation growth. A new electric car service is constructed up 12th Street to the Park's entrance with 101 new cars from St. Louis Car Company.



SDER operates 3,521,571 car miles in this year.

San Diego's original Victorian style train depot is demolished and replaced with a new Mission Style Santa Fe Depot building. It operates through the 20th Century into the 21st Century, serving as a station for Amtrak, Coaster and San Diego Trolley trains.

1916-1918

The "Great Flood" of 1916 washes out several rail lines.

Despite the rapid growth of the rail system it faces many challenges. Private auto ownership starts to increase and with it, auto drivers become jitney drivers, cruising streetcar lines for passengers.

WWI increases the cost of railway construction materials by 50 to 150 percent.

1920's

1920

Spreckels announces plans to discontinue service on several rail lines to offset expenses, leading to approval of "zone fares".

Nickel Zone fares introduced. There are two zones, "inner" and "outer."

Spreckels purchases new streetcars that requires only one driver/conductor instead of two. Older cars were retrofitted to reduce labor costs.

Spreckels sells his power generating plants to Consolidated Gas and Electric Company. From this point, power for streetcars will be purchased from the utility company.

1922

The first motor bus goes into service operating between National City and Chula Vista. "Number One" has hard rubber tires, two-wheel mechanical brakes, a four-cylinder engine and a plywood body. There are three buses, one manufactured by Flagel and two by the Reo company.



1923

Bus Drivers make between \$0.27 AND \$0.33 per hour.

Spreckels begins the last major rail line expansion to Mission Beach (Belmont Park), Pacific Beach, and La Jolla. \$2,500,000 is spent on rails, Spanish Mission terminals and substations, and Egyptian Revival stations. \$800,000 is spent to purchase 50 new cars. Construction is completed in 1925.

1930's

1930

Buses begin to replace street cars from Ocean Beach to La Jolla.

222 new buses are added to the fleet.

Bus drivers make approximately \$4.83 a day.

The Great Depression of the 1930's affects ridership, just as it does the economy. Ridership and revenue goes down but the SDER is able to weather the economic downturn.

1935

California Pacific International Exposition opens in Balboa Park without the need for expanded transit service, as had been necessary with the Panama Pacific Exposition two decades earlier.

1940's

1940

WWII turns San Diego into a "boom town" again. Defense related industries revitalize the city, as do an influx of military personnel.



Ridership on public transit increases 600 percent during the war years. Any piece of equipment that rolls on rails or runs on tires is pressed into service to handle the enormous demand.

Used transit vehicles are purchased from around the nation. More electrical power is needed and substations are built, one in the basement of the Spreckels Theater Building on Broadway.

Some bus routes are operated haphazardly, frequently with no set schedule - just run as fast and as frequently as they can.

For the first time, women are hired to drive transit vehicles. This practice is discontinued when the war ends.

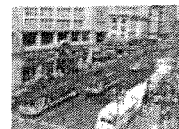
The 2.5 million dollar rail line built in the 1920's to the beaches is ripped out along with the elaborate stations and terminals and replaced with a bus line.

1942

Street Car and Bus Lines carry 94 million people, ridership increases lead to more than 146 million trips in 1944.

1946

San Diego and Electric Railway begins to phase out street car lines and replace them with bus routes.



1947

Only three street car lines remain in operation.

1948

Jesse L. Haugh purchases the San Diego Electric Railway Company from the Spreckels interests. San Diego Electric Railway Company's name is changed to San Diego Transit System. A new emblem and motto, "Safety, Courtesy, Service" are introduced by the San Diego Transit System.

1949

April 23: New General Motors buses parade down Broadway to mark the retirement of street cars, making San Diego the first major California city to convert to an all bus transit system.



April 24: At 5:35 a.m. the most senior operator at San Diego Transit, N.A. Holmquist, drives car # 446 into the Adams Avenue car barn, ending rail transit in San Diego. Operator Holmquist and car 446 retire at the same time. It will be just over three decades, until July 1981, before rail transit will roll through San Diego again.

1950's

1950

During the 1950's Jesse Haugh makes a concerted effort to update the transit system and improve service.

April -- Haugh replaced 58 percent of the bus fleet with the most modern motor coaches available at the time. Accidents are reduced by 33 percent.

1953

Haugh invests \$1.5 million to improve the San Diego-Coronado Ferry and bus service.

1955

Ridership is the same as it was in 1940's (before the boom of WWII) even though the population has doubled.

Nationwide, transit has lost an average of 47 percent of its ridership.

Drivers make \$2.10 an hour.

Haugh establishes a charter department to increase revenues and purchases over-the-road charter coaches with washrooms, tables and refreshment centers.

1957

In a joint transit/business partnership, Haugh begins the Marston Fashion Bus. Marston's is the city's premier department store from the late 1800's through the 1960's. The Fashion Bus has dressing rooms, and its own foldout runway ramp.

Haugh is named president of the American Transit Association.

1959

San Diego Transit celebrates its ten year anniversary under the Haugh ownership. During the past ten years it has operated 107,504,296 revenue miles, carried 155,100,249 passengers, consumed 8,271,943 gallons of diesel fuel and had won six national safety awards.

1960's

1966

A specially formed Transit Task Force recommend that the City of San Diego acquire the transit system.

June--voters approve the City's purchase of San Diego Transit System along with a property tax assessment of \$0.10 per \$100 assessed evaluation to fund its future operations.

1967

San Diego Transit becomes a non-profit corporation with the City of San Diego. Under the City it carries 18.4 million passengers on 23 routes with 150 buses. The base fare is \$0.30 plus \$0.10 per zone.

1969

Ridership dips to 18.9 million from 21.5 million in 1968.

1970's

1970

At the start of this decade new, Federal subsidies allow San Diego Transit to reduce the \$0.35 base fare (plus an additional \$0.10 per zone up to 8 zones) to a flat \$0.25 fare.

1976

SB 101 becomes law, MTDB Formed.

1977

San Diego Transit carries over 30 million passengers on 44 routes with a fleet of 350 buses and a flat-rate fare of \$0.35.

1979

MTDB's Board Member Maureen O'Connor negotiates purchase of SD&AE Railway For \$18.1 million.

Annual ridership in this decade improves from 18 million to 35 million.

1980's

1980

San Diego Trolley, Inc. (SDTI) formed.

1981

July 19 -- San Diego Trolley inaugural run takes place on 15.9 "South Line" between U.S. International Border and Downtown San Diego.

July 26 -- San Diego Trolley begins revenue service; operating day begins at 5:02 a.m. and ends at 9:01 p.m.; 14 light rail vehicles (LRV's) in fleet operate twenty-minute service on a primarily single track system on a 15.9 mile "South Line" with four passing tracks and carry approximately 10,000 passengers a day.

Regional Monthly Ready Pass introduced.

MTDB negotiates first Sale/Leaseback transaction netting \$1.7 million.

1982

Ten light rail vehicles added to fleet.

1983

Trolley begins 15 minute service on "South Line"; average daily ridership is over 14,000.

1984

June 1 -- MTDB breaks ground on 4 mile Trolley extension east from 12th & Imperial station to Euclid Avenue which is to become first leg of future East Line later renamed Orange Line.

July -- San Diego Trolley begins new Distance-Based Zone Fare Structure with fares ranging from .50 to \$1.00.

RailTex named operator of San Diego & Imperial Valley freight railroad service.

1985

The City of San Diego transfers its ownership of San Diego Transit Corporation to MTDB.

MTDB Board membership expands from seven to 15 members.

MTDB negotiates a \$1.3 million Sale/Leaseback transaction.

1986

Metropolitan Transit System (MTS) logo adopted.

Introduction of the One, Two and Three-Day Passes.

Trolley takes delivery of five new LRVs

March 23 -- San Diego Trolley begins 30 minute service on the 4.5 mile segment of the new East Line (later renamed Orange Line) to Euclid Avenue.

San Diego Trolley Line begins service to new Bayfront/E Street Station in Chula Vista.

May -- The Transit Store opens at 5th & Broadway in Downtown San Diego. The new sales and customer service facility is a joint operation of San Diego Transit and the MTDB.

July -- 5,000+ San Diegans attend the "Century of Service" Pops concert in the Gaslamp Quarter celebrating San Diego Transit's 100 years of public transit service.

October -- New Bayfront/E Street Station opens on San Diego Trolley's South Line. San Diego State University (SDSU) Transit Center opens

November 17 -- MTDB holds groundbreaking for next 11.7 mile East (Orange) Line segment.

1987

November -- San Diego Voters approve a 20 year local sales tax increase called TransNet. The bill authorized a 1/2 cent addition to the local sales tax that would be split as follows: 1/3 for highways, 1/3 for local roads, and 1/3 for public transit projects.

Construction begins on James R. Mills Building at 12th & Imperial Transit Center.

1988

New LRVs: Trolley begins taking delivery of 20 new generation vehicles. National City 8th Street station parking lot expanded. Express bus service begins operating on the new Interstate High-Occupancy-Vehicle (HOV) lanes.

1989

January --MTDB, San Diego Trolley, and several County of San Diego departments move to new 10 story office tower constructed over 12th & Imperial Transit Center

MTDB assumes Taxi regulatory responsibility for City of San Diego.

SDTC Kearny Mesa Division (KMD) bus division opens.

May 12 -- Second East (Orange) Line segment to Spring Street in City of La Mesa opens.

June 23 -- Third East (Orange) Line segment opens between Spring Street and El Cajon. Average daily Trolley ridership ranges to more than 48,000.

Bus and Trolley ridership in this decade grow from 35 million in 1980 to 54 million in 1989.

1990's**1990**

San Diego Trolley begins service on new East Line (later named Orange Line) extension to Bayside Corridor serving new Convention Center and hotels.

MTDB negotiates 1.6 million offshore Sale/Leaseback transaction.

Classroom Day Tripper Program offering deep discounts for youth and school group field trips begins.

San Diego Trolley sets new, single day ridership record of 71,790.

1991

Governor Pete Wilson inaugurates start of San Diego Trolley's 7.5-minute peak hour service on South Line.

America Plaza Transfer Station and 32 story high rise open at Broadway and Kettner.

APTA announces San Diego Trolley will receive the 1991 Public Transportation System Outstanding Achievement Award for Systems Utilizing 50 Peak Hour Vehicles of Less.

San Diego Trolley carries its "90 Millionth Rider".

1992

Adopt-A-Bus Stop Program begins.

MTDB and NCTD jointly purchase Atchison, Topeka & Santa Fe (AT&SF) Railway right-of-way in SD County.

South (Blue) Line extension to County Center/Little Italy Station opens.

1993

South Bay Bus Maintenance Facility acquired.

1995

Coast Express Rail Service (Coaster), Commuter Rail Line Operated by North San Diego Transit Development Board (NCTD) begins service between Oceanside and Santa Fe Depot.

San Diego Transit compressed natural gas (CNG) buses are placed into service.

The Transit Store relocated to 102 Broadway at First Avenue.

97 new CNG buses added to fleet.

Bus Sale/Leaseback transaction for \$540,000 completed.

52 new, higher performing light rail vehicles added to San Diego Trolley's fleet.

MTDB completes LRV Sale/Leaseback transaction for \$10.7 million.

August 26 -- Fourth East (Orange) Line segment opens between El Cajon Transit Center and Santee Town Center.

1996

110th Anniversary of SDTC and 15th Anniversary of SDTI.

Trolley begins service on extension from County Center/Little Italy Station to Old Town Transit Center.

National City 24th Street Trolley station groundbreaking for Adult Education joint development project.

1997

Full MTS Access (ADA) Service implemented.

MTDB renames South Line to Blue Line and East Line to Orange Line along with adding identification numbers for each Trolley Station.

Inland Breeze bus service funded through FasTrak begins on I-

15 HOV lanes.

Blue Line extension from Old Town to Mission San Diego Station opens.

1998

San Diego Trolley has record ridership of 219,000 to National Football League's Super Bowl XXXII and 140,000 and Major League Baseball's World Series.

1999

Ground Breaking of Mission Valley East Light Rail Transit Project.

Congress authorizes \$325 million for MVE and Mid-Coast LRT extensions.

Coronado/San Diego Bay Ferry Commuter service begins.

MTS bus and trolley annual ridership grows from 60 million in 1990 to 84 million in 1999.

2000's

2000

70 new 40' low-floor CNG buses added to fleet.

SDTI Rail Yard Expansion Project completed.

Groundbreaking and construction begin on 5.6 mile Mission Valley East (MVE) Trolley Extension to SDSU and Grossmont.

2001

Trolley Celebrates 20th Anniversary.

MTDB Celebrates 25th Anniversary.

San Diego Transit Celebrates 115th Anniversary.

117 new 40' low-floor CNG buses added to fleet.

Construction begins on San Ysidro Intermodal Transportation Center.

2002

County Transit System moves to MTDB.

2003

Super Bowl XXXVII generates more than 400,000 riders for San Diego Trolley.

MTDB opens park-and-ride lot for 120 vehicles at the Sorrento Valley Coaster Station.

Consolidation begins as MTDB and NCTD assumed by SANDAG.

October -- MTDB becomes MTS.

2004

Expanded San Ysidro Intermodal Transportation Center construction completed and station re-opens.


Automatic Fare Collection (AFC) and Smart Card accepting fareboxes are installed on NCTD Breeze and San Diego Transit buses.

2005

Green Line 5.6 mile extension opens closing the gap in Mission Valley and creating one line connecting Old Town Transit Center and Santee Town Center with the new showcase underground SDSU Station as well three other new stations at Grantville, Alvarado Hospital and 70th Street. This Line closes the gap between the Orange and Blue Line.

2006

MTS Comprehensive Operational Analysis (COA) redesigns bus network for the first time in 23 years.

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CORRECTED

CERTIFICATE OF CITY CLERK

I, PHILLIP ACKER, City Clerk of The City of San Diego, California,
DO HEREBY CERTIFY the results of the canvass of the Special Municipal Election
and Special Municipal Bond Election held on Tuesday, JUNE 7, 1966, to be as
follows, to-wit:

- (a) The whole number of votes cast in the City was 166,510 ;
- (b) The measures and/or propositions voted upon,
and the number of votes given for and against
each measure and/or proposition are as follows,
to-wit:

O-9398 D-6

PROPOSITION D

Adds Section 77b to the Charter of The City of
San Diego.

Grants the City Council power to provide for a
public transportation system and to levy a special
tax not to exceed ten cents (10¢) on each one
hundred dollars (\$100.00) of assessed valuation to
be used for such purposes.

For said proposition the vote was	<u>89,084</u>	57.73%
Against said proposition the vote was	<u>65,237</u>	42.27%
The total vote on said proposition was	<u>154,321</u>	

PROPOSITION E

Amends Section 77 of the Charter of The City of
San Diego.

Permits the use of Capital Outlay Funds to purchase
the initial furnishings, equipment, supplies,
inventory and stock in connection with the
acquisition and construction of a permanent public
improvement.

For said proposition the vote was	<u>88,995</u>	62.61%
Against said proposition the vote was	<u>53,137</u>	37.39%
The total vote on said proposition was	<u>142,132</u>	

00984

ATTACHMENT B

RT S. TEAZE
T. CITY ATTORNEY
IS M. FITZPATRICK
BY DEPUTY
ETH H. LOUNSBERY
BY DEPUTY
ERICK C. CONRAD
KATZ
S. PETERSON
I. KRONBERGER, JR.
ON E. REED
TD FRANKLIN
OMAS HARRIS
AN SUMPTION
HS A. WHITE
PUTES

OFFICE OF
JOHN W. WITT
CITY ATTORNEY
CITY OF SAN DIEGO

CITY ADMINISTRATION BUILDING
SAN DIEGO, CALIFORNIA 92101
(714) 236-6220

November 23, 1970

The Honorable Mayor
and City Council
The City of San Diego
San Diego, California

Gentlemen:

Fiscal 1970-71 Budget of the
San Diego Transit Corporation

BACKGROUND

On October 6, 1970 the Mayor and City Council held a conference on the fiscal 1970-71 budget of the San Diego Transit Corporation. In the course of that meeting Mr. Clinton McKinnon, President of the Corporation, pointed out to you various financial problems which have arisen over the past three years of operation and indicated the possibility that new programs of improvement of the system might be curtailed due to budgetary restrictions.

In the course of the discussion it was noted that the ten cent (\$0.10) tax levied on each one hundred dollars (\$100.00) of property at its assessed value within the City under the provisions of Section 77b of the City Charter presently generates approximately \$1,400,000 each year. This sum is used to subsidize the operations of the transit system, but at this time \$720,000 of that sum must be used to make the rental payments required under the original acquisition.

The question was posed to this office as to the legality of making an additional City contribution from some source of revenue other than the ten cent tax levy authorized by City Charter Section 77b. Although some other sources of revenue were mentioned in passing, we did not construe the question to be whether any particular fund could be used. Thusly, we direct our opinion simply to the issue of whether some other source of revenue could be utilized.

ANALYSIS

As you may recall, the proposed acquisition, operation and financing of the transit system was the subject of substantial litigation. In mid-June 1967 the Superior Court

ATTACHMENT 

rendered a decision favorable to the City's proposed plan. Some months later the Court of Appeals affirmed that decision and the State Supreme Court declined to review the case. We mention this here because, to some degree, the decision of the Court of Appeals touches on our problem.

Section 77b of our City Charter provides as follows:

Section 77b PUBLIC TRANSPORTATION

The Council may levy, in addition to all other taxes provided for in this Charter, a special tax in an amount not to exceed ten cents (\$0.10) on each one hundred dollars (\$100.00) of the assessed valuation of all real and personal property within the City, to be used for discharging any obligations undertaken by the City to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system.

The Council may establish special funds, execute contracts, acquire property by purchase, devise, lease, gift or condemnation, and may sell, lease, convey, exchange, dispose of, or lend property or funds in order to provide, promote or preserve a public transportation system. The enumerated powers in this section are in aid of public transportation and shall not be limited by any other provisions of this Charter.

In the litigation mentioned above, which is cited as Ruane v. City of San Diego (1968) 267 Cal.App.2d 548, the court examined certain provisions of the City Charter and the State Constitution concerning the City's authority to acquire and operate a bus system. It noted that the City's authority to acquire a bus system was not predicated upon the language of Section 77b but upon our general power in regard to municipal affairs, Section 1 of the City Charter and Article XI, Section 19 of the California State Constitution. It properly noted that Section 77b only authorized and empowered the levy of a special tax of not more than ten cents to be used for discharging any obligations undertaken to acquire, develop, operate or maintain a public transportation system. In other words, the passage of

November 23, 1970

Section 77b was not necessary to grant the City the power to engage in public transportation.

Therefore, since Section 77b of the Charter granted no power to the City to operate public transportation, the question now before us is whether it limits the City's right to use any other funds lawfully available to aid in operating public transportation.

Generally speaking, limitations and restrictions upon a charter city's general powers must be expressly stated and not implied. City of Grass Valley v. Walkinshaw (1949) 34 Cal.2d 595. The enumeration of a power without clear language indicating a restriction does not constitute an exclusion or limitation. West Coast Advertising Co. v. San Francisco (1939) 14 Cal.2d 516; City of Grass Valley v. Walkinshaw, supra.

We believe Section 77b does not expressly limit City expenditures for public transportation purposes. Were it to be interpreted in that fashion we would have to read ". . . to be used for discharging any obligations undertaken by City . . ." to say ". . . to be used for discharging all obligations undertaken by City . . ." (emphasis supplied). A review of the ballot argument at the June 1966 election, at which time the addition of Section 77b was placed before the electorate, does not give any indication to us that Section 77b should be so interpreted. Thusly, we opine that it was not intended to limit the contribution of the City solely to the funds derived from the ten cent tax levy and that any other funds lawfully available for this purpose may be validly utilized.

Respectfully submitted,

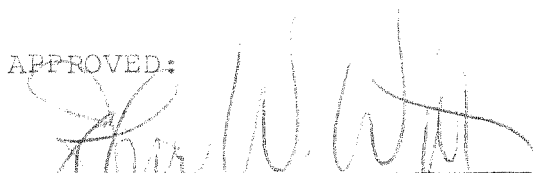
JOHN W. WITT, City Attorney

By 

C. M. Fitzpatrick, Chief Deputy

CMF:vl

APPROVED:



City Attorney

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

CITY ADMINISTRATION BUILDING
SAN DIEGO, CALIFORNIA 92101
(714) 236-6220

JOHN W. WITT
CITY ATTORNEY

January 30, 1979

REPORT TO TRANSPORTATION AND
LAND USE COMMITTEE

REINSTITUTION OF THE TEN CENT SPECIAL TAX FOR PUBLIC
TRANSPORTATION PURPOSES

BACKGROUND

As a result of a communication from Citizens For Better Bus Service regarding recent cutbacks in service by the San Diego Transit Corporation, your committee directed this office to report to you concerning the method and feasibility of a legal challenge to our earlier determination that the "special tax" previously authorized to be levied on each \$100.00 of the assessed valuation of all real and personal property within the City to be used for public transportation could no longer be levied as a result of the passage of Proposition 13 in June, 1978.

ANALYSIS

In June, 1966 approximately 57% of the voters of this City approved the following amendment to the Charter of The City of San Diego:

Section 77b. PUBLIC TRANSPORTATION.

The Council may levy, in addition to all other taxes provided for in this Charter, a special tax in an amount not to exceed ten cents (\$0.10) on each one hundred dollars (\$100.00) of the assessed valuation of all real and personal property within the City, to be used for discharging any obligations undertaken by the City to acquire, develop, operate or maintain a public transportation system or to assist a nonprofit corporation to acquire, develop, operate or maintain a public transportation system. [Emphasis supplied.]

The Council may establish special funds, execute contracts, acquire property by purchase, devise, lease, gift or condemnation, and may sell, lease, convey, exchange, dispose of, or lend property or funds in order to provide, promote or preserve a public transportation system. The enumerated powers in this section are in aid of public transportation and shall not be limited by any other provisions of this Charter.

ATTACHMENT D

As a result of this Charter addition, the City undertook to acquire the then privately-owned and operated San Diego Transit System. The validity of the Charter amendment and the proposed acquisition became the subject of litigation which was decided in favor of the City in 1967 and affirmed by the Fourth District Court of Appeals in 1968. Ruane v. City of San Diego, 267 Cal.App.2d 548 (1968). (Hearing denied by the California Supreme Court.)

One of the issues before both the trial and appellate courts was the validity of the Charter amendment. In the reported decision the appellate court made it clear that this "special tax" applied only to the general property tax levy and was not a special tax of any other type. (Ruane v. City of San Diego, supra at page 553.)

In June, 1978 the California electorate overwhelmingly approved the amendment to the California State Constitution of Article XIII A (Proposition 13, June 6, 1978.)

In pertinent part that amendment provided that, effective on July 1, 1978:

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

As we all know, this basically removed the power to levy property taxes by a city such as ours, with the exception provided for in Section 1(b) set forth above.

Subsequently, this office was requested orally by the City Manager and the City Auditor if the so-called "77b" tax could be continued to be levied as an exception under Section 1(b) of Article XIII A. We responded in the negative and were supported in this conclusion by an analysis by the Legislative Counsel of the State of California dated July 17, 1978, a copy of which is attached as Enclosure (1). Therefore, the City's tax levy for Fiscal 1979 did not include any levy as previously provided for by Section 77b.

Subsequently, the validity of Constitutional Amendment XIII A itself was reviewed by the California State Supreme Court. (Amador Valley Joint Union High School District, et al. v. State Board of Equalization, et al., 22 Cal.3d 208 (1978).)

Among many others, one attack upon the validity of the amendment was that it imposed restrictions upon municipalities to levy taxes based upon the value of real and personal property. It is referred to in the Court's opinion as the "Loss of Home Rule Challenge." As to this challenge the Court (at pages 224, 225 and 226) held that the mere imposition of tax limitations, per se, was not violative of the "home rule" concept of the State Constitution.

Another challenge was based on the theory that the amendment constituted an unlawful impairment of contract under the Federal Constitution. (Art. I, Sec. 10, Subd. (1).) In its discussion of this challenge, the Court observed that the petitioners (those who challenged the validity of the amendment) pointed to Section 1, subdivision (b) as an attempt to avoid this theory of invalidity, but that it failed to recognize any other types of "indebtedness" which had been, or could have been, incurred by local agencies which had not been approved by the voters. In disposing of this contention, the Court concluded that the impairment argument was prematurely raised but that a more specific issue raising this question might still arise.

Thus we now find ourselves with the basic question of whether that theory, or any other, might be appropriately raised at this point.

Frankly, we are unsure that a challenge on this ground is of any special merit. In its historical context, the adoption of Section 77b of the City Charter was intended to allow the City Council, if it was so disposed, to levy the special property tax. Ruane v. City of San Diego, supra. It did not require the levy and although the monies raised from the levy have been used from time to time to support public transportation in San Diego we do not believe there is any legal obligation presently incurred by the City to justify the levy. We recognize that many transit dependent citizens see a viable and efficient public transportation system as an obligation and duty to be provided by the City, but we cannot opine as a matter of law that it is a legal obligation or indebtedness within the context of Section 1(b) of Article XIII A.

If the City Council is of a mind to direct us to raise this question in a court of law, we would suggest that you include the

Report to Transportation and
Land Use Committee

-4-

January 30, 1979

levy in the Fiscal 1980 tax levy, direct the City Auditor to transmit the levy to the County Tax Collector and direct our office to commence such action as is appropriate to require the County Tax Collector to collect the tax.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick
Senior Chief Deputy

CMF:vl:043.1
Enc

Jan - hand copies 10 name 2:37
cc: Larry F...
C... F...

Legislative Counsel of California

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JIMMIE WING
SUZANNE M. WOOD
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
July 17, 1978

Honorable James R. Mills
Senate Chamber

Jarvis-Gann Initiative - #11479

Dear Senator Mills:

FACTS

You have directed our attention to Section 77a of the Charter of the City of San Diego, which provides:

"Section 77a. The Council shall levy annually, in addition to all other taxes provided for in this Charter, not less than two cents (\$0.02) on each one hundred dollars (\$100.00) of the assessed valuation of the real and personal property within the City, to be used exclusively for the maintenance in Balboa Park of zoological exhibits.

"Whenever the Council deems it to be for the best interests of the City, the Council may enter into a contract, upon such terms and conditions as the Council may prescribe, for the maintenance in Balboa Park of zoological exhibits, with any organization formed primarily for the purposes of maintaining zoological gardens and zoological exhibits and conducting general zoological work; and may make available to such organization the proceeds of the special tax levy provided for in this section." (Emphasis added.)

... KUNTS
... WHITAKER
... DEPUTIES
... DECHAMBEAU
... M. LOURIMORE
... F. NOWAK
... K. PURCELL
... L. BASSETT
... J. FOSTER
... H. KUNZI
... C. MACKENZIE, JR.
... M. MACKAY
... O. POWELL, II
... L. SPARLING
... T. STUDEBAKER
... DEPUTIES
... STATE CAPITOL
... SACRAMENTO 95814
... 445-3057
... STATE BUILDING
... SOUTH BROADWAY
... ANGELES 90012
... 420-2550

Honorable James R. Mills - p. 2 - #11479

Section 77b of such charter authorizes, rather than requires, the San Diego City Council to impose a "special tax" not to exceed 10 cents on each \$100 of the assessed valuation of all real and personal property within the city to finance the operation of a public transportation system. This section also authorizes the council to enter contracts for this purpose.

QUESTION

Since the electorate approved the above two provisions of the Charter of the City of San Diego, may the city continue to impose the taxes authorized thereunder after the passage of the Jarvis-Gann Initiative?

OPINION

The City of San Diego may impose neither of the taxes authorized by the above-described charter provisions after the passage of the Jarvis-Gann Initiative and the legislation implementing such initiative, nor may such city impose any other property tax, except an ad valorem property tax in an amount necessary to pay the annual principal and interest on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

ANALYSIS

The Jarvis-Gann Initiative is an initiative constitutional amendment which was approved as Proposition 13 on the ballot for the Direct Primary Election held on Tuesday, June 6, 1978. The measure added a new Article XIII A to the California Constitution to place various limitations on the taxing power of state and local governments. Of particular interest to the present discussion are Sections 1 and 4 of this new article, which provide:

"Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

"(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective."

"Section 4. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

The above provisions became operative on July 1, 1978, and will apply to the 1978-79 fiscal year and fiscal years thereafter (Sec. 5, Art. XIII A, Cal. Const.).

However, for the reasons to be noted below, we do not think the City of San Diego may continue to impose the two taxes here under discussion as property taxes or as "special" taxes. Moreover, even though both charter provisions authorize the city to contract for the state purposes, it is our opinion that cessation of such taxes would in no way impair the obligation of contracts in violation of Section 10 of Article I of the United States Constitution (see also Sec. 9, Art. I, Cal. Const.).

As a general matter, the courts have stated that chartered cities, such as the City of San Diego, are unaffected by general laws relating to tax matters, as the cities control taxes as a part of their control over their municipal affairs (see Sec. 5, Art. XI, Cal. Const.; West Coast Advertising Company v. City and County of San Francisco, 14 Cal. 2d 516, 524; Ainsworth v. Bryant, 34 Cal. 2d 465, 469; but cf. Century Plaza Hotel Company v. City of Los Angeles, 7 Cal. App. 3d 616). However, since the adoption of the Jarvis-Gann Initiative, we doubt that the courts would hold that property taxation is a municipal affair. For that matter, Section 20 of Article XIII of the Constitution specifically provides:

"Sec. 20. The Legislature may provide maximum property tax rates and bonding limits for local governments."

The Legislature has implemented the Jarvis-Gann Initiative by the enactment of Senate Bill No. 154 as Chapter 292 of the Statutes of 1978 and Senate Bill No. 2212 as Chapter 332 of the Statutes of 1978. Section 2237 of the Revenue and Taxation Code now provides, in part, as follows:

"2237. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978. . . .

"(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars (\$4) per one hundred dollars (\$100) of assessed value. . . ."

Thus, the City of San Diego is limited by the above provision to imposing a property tax only in an amount sufficient to pay the principal and interest on its indebtedness approved by the voters prior to July 1, 1978. Moreover, while the voters in such city "approved" the charter amendments giving the city the right to contract with respect to Balboa Park and public transportation, it cannot be said that they also "approved" any subsequent debts incurred under such sections.

In addition both Sections 77a and 77b of the Charter of the City of San Diego provide for a general tax on all real and personal property in the city. We think such a tax is a true property tax (see Anaheim Sugar Company v. County of Orange, 181 Cal. 212, 216), and may not be imposed as a "special tax" under Section 4 of the new Article XIII A of the Constitution, as ad valorem taxes on real property are excepted from the authorization to impose "special taxes."

Finally, we note that the City of San Diego could not continue imposing the taxes here under discussion on the theory that such tax would be necessary to avoid impairment of the obligation of contracts in violation of Section 10 of Article I of the United States Constitution. Although the two charter provisions authorize the city to contract, Section 18 of Article XVI of the California Constitution provides, in part:

Honorable James R. Mills - p. 5 - #11479

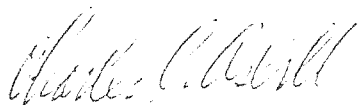
"SEC. 18. No county, city ... or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose"

The above constitutional provision controls over the provisions of San Diego's charter, and, therefore, the city could not have incurred a valid indebtedness without a vote of the people for the 1978-79 or subsequent fiscal years.

On this basis, it is our opinion that the City of San Diego may impose neither of the taxes provided for in Sections 77a and 77b of its charter after the passage of the Jarvis-Gann Initiative and the legislation implementing such initiative, nor may the city impose any other property tax, except an ad valorem property tax in an amount necessary to pay the annual principal and interest on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

Very truly yours,

Bioñ M. Gregory
Legislative Counsel

By 
Charles C. Asbill
Deputy Legislative Counsel

CCA:wls