

MEMORANDUM OF LAW

DATE: May 10, 1989

TO: Patricia Frazier, Financial Management  
Director,  
via John Lockwood, City Manager

FROM: City Attorney

SUBJECT: Increase in Property Transfer Tax Rates

In a memorandum dated April 26, 1989, you requested legal clarification on two issues concerning a proposed increase in property transfer taxes. First, is there a vote requirement for increasing the tax rate on real property transfer taxes and, second, can the taxes be imposed on commercial and industrial property only as opposed to being imposed all property.

The issue of real property transfer taxes, also known as documentary transfer taxes pursuant to Revenue and Taxation Code section 11901, was addressed in Opinion No. 74-14, dated October 24, 1974, by then Deputy City Attorney Ted Bromfield. A copy of that Opinion is attached for your review.

A review and update of the law contained in the 1974 Opinion reveals that the Opinion is still timely. None of the applicable statutes has been amended or repealed. Accordingly, pursuant to Revenue and Taxation Code section 11911(c), an increase in the existing tax rate would preclude the City from receiving as an offset from the County the \$.275 for each \$500.00 or fractional part thereof it currently receives from property transfer taxes.

Additionally, since the passage of Proposition XIII A in 1978, the imposition of new transaction taxes has been specifically excluded by Article XIII A, Section 4 which reads in part:

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 (emphasis added).

The question of whether such property transfer taxes may be levied only on nonresidential users is moot in view of the fact that increases in such tax rates are not only strongly discouraged by Revenue and Taxation Code section 11911(c), but are in fact forbidden by Proposition XIII.

JOHN W. WITT, City Attorney

By  
Sharon A. Marshall  
Deputy City Attorney

SAM:mrh:160.8(x043.2)

Attachment

ML-89-46