

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Jan I. Goldsmith
CITY ATTORNEY

October 6, 2011

REPORT TO MAYOR AND CITY COUNCIL

LEGAL STRUCTURE OF CONVENTION CENTER FACILITIES DISTRICT

INTRODUCTION

On September 21, 2011, the Budget and Finance Committee considered the proposed Procedural Ordinance for the Convention Center Facilities District (CCFD Ordinance). During the discussion, questions were posed to the City Attorney's office regarding the legal structure of the Convention Center Facilities District (CCFD) and whether the funds of the CCFD would be "state funds" or "local funds." This report addresses those questions.

QUESTIONS PRESENTED

1. Why is staff recommending forming the CCFD as a special tax district modeled on the Mello Roos Community Facilities Act of 1982 (Mello Roos Act) and not as an assessment district similar to the Tourism Marketing District (TMD)?
2. Would the funds of the CCFD be considered "state funds" or "local funds?"

SHORT ANSWERS

1. City staff recommends the formation of a special tax district rather than an assessment district for two principal reasons. First, special taxes, provided they are approved by a two-thirds vote of the taxpayers, need only be reasonable while assessments must confer a "specific benefit" on all businesses to be assessed (and not provide such benefit to unassessed businesses). Second, bonds issued by a special tax district and secured by a lien on real property will be more marketable than bonds issued by a business assessment district.
2. Because the funds of the CCFD may only be used to finance the renovation and expansion of the San Diego Convention Center, such funds would likely be considered "local funds," however, without knowing the context in which such a determination might be made, it is not possible to answer this question definitively.

ANALYSIS

I. Special Tax Need Only Be Reasonable

Mello-Roos districts and the proposed CCFD, which is based on the Mello-Roos Act, impose a special tax and not an assessment. A special tax must be approved by a two-thirds vote of the taxpayers and there is no requirement that a special tax be apportioned on the basis of benefit to the property. Cal. Gov. Code §53323.3. Rather, there must be a reasonable basis for the levy, as determined by the legislative body, in this case, the City Council. *Id.*

Assessment districts, such as the TMD, impose assessments, which must provide a “specific benefit” or privilege conveyed directly to the payor of the assessment that is not provided to those not charged. Cal. Const. art. XIII C §(e)(1). Proposition 26 was added to the California Constitution by voter approval on November 2, 2010 and as yet there are no reported cases that have interpreted the provision. However, the “specific benefit” language in Proposition 26 is similar to the “special benefit” language in Proposition 218, which governs property-based assessments. The California Supreme Court has strictly construed “special benefit” in Proposition 218. An assessment is illegal if a property is being assessed for any portion of the general benefit received by all properties or if certain properties not subject to the assessment would receive an element of special benefit. *See generally, Silicon Valley Taxpayers’ Association v. Santa Clara County Open Space Authority*, 44 Cal.4th 431 (2008). If the same analysis were applied to “specific benefit” under Proposition 26 it may be difficult to argue that hotels receive a specific benefit from the expansion of the Convention Center that is not enjoyed by any other businesses, and that all businesses receiving a specific benefit are being assessed.

II. Marketability of Special Tax Bonds

The Mello-Roos Act provides for a lien to be recorded against all real property within a district that is subject to the special tax and allows for foreclosure on delinquent properties in the event of non-payment. Cal. Gov. Code §53325.1. Further, local agencies that issue Mellos-Roos bonds typically include a covenant in the bond documents requiring the district to foreclosure on properties with delinquent special taxes under specified circumstances. These two features, the lien on property and the covenant to foreclose, are essential to the marketability of the Convention Center bonds and will be included in any CCFD bond issuance.

By contrast, the TMD ordinance does not specify a method for collecting delinquent assessments. S.D.M.C. § 61.2518. Rather, penalties and the collection of delinquent assessments are established in the City Council’s resolution of formation, which sets forth a hearing procedure to be undertaken by the City Treasurer. Resolution No. R-303226. This unfamiliar and relatively weak process provides less security for bondholders and would therefore impair the marketability of any bonds secured by such assessments.

III. Local Funds or State Funds

The Committee asked whether the funds of the CCFD would be considered “local funds” or “state funds.” In order to fully address this question this office requires additional facts and context, however, we offer the following observations as a preliminary response. The purpose of

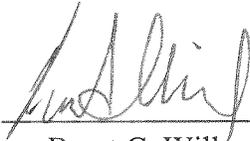
the Mello-Roos Act is expressly for local governments to create special tax districts to finance local public capital facilities. Cal. Gov. Code § 53311.5. Moreover, while the CCFD ordinance incorporates many of the provisions of the Mello-Roos Act, it is a separate and distinct municipal law unique to the City and expressly states that the creation of special tax districts is entirely within the City's municipal affairs.

It is also worth reiterating that the funds of the CCFD are special taxes. By statute, all taxes are either general taxes (taxes imposed for general governmental purposes) or special taxes (taxes imposed for specific purposes). Cal. Gov. Code §53721. Special taxes may only be used to fund the purpose for which the tax was imposed. A Mello-Roos district can finance only certain types of public projects and services. Cal. Gov. Code §53313. The CCFD ordinance is even more restrictive and the proceeds of any special tax under the CCFD may only be used for the renovation and expansion of the San Diego Convention Center. Due to these restrictions, it is unlikely that the State would be able to take CCFD funds for state purposes. This does not mean that the State cannot impose requirements regarding the expenditure of CCFD funds on matters of statewide concern.

CONCLUSION

Staff is recommending the formation of the CCFD as a special tax district rather than an assessment district because a special tax district is less vulnerable to challenge and provides better security for district bondholders. The funds of the CCFD would likely be considered to be "local funds" but without a specific context, it is not possible to answer this question definitely.

JAN I. GOLDSMITH, City Attorney

By 

Brant C. Will
Deputy City Attorney