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THE LEGAL UPDATE

TO: Superintendents, All Member Districts (K-12)
FROM: Robert J. Henry, General Counsel
DATE: June 24, 1993
SUBJECT: Special Assessment Districts
Memo No. 15-93

A. Introduction

Within the past six months, two significant court decisions have cleared the way for school districts to create special assessment districts under the authority of the Landscaping and Lighting Act of 1972, Streets and Highways Code Sections 22500 et seq. (the Act).

In the first decision, the California Supreme Court found special assessments could be used for the maintenance of existing improvements for the sort of projects such as playgrounds and parks that have been traditionally funded by assessment districts even if those improvements were not originally constructed under the Act. In addition, the Court again found special assessments levied under authority of the Act are not special taxes. (Knox v. City of Orland (1992) 4 Cal. 4th 132)

In the second decision, the Court of Appeal in Howard Jarvis Taxpayers Assn. v. Whittier Union High School (1993) 93 DAR 5719 found school districts are "special districts" under the Act and, therefore, are empowered with the authority to create special assessment districts.

This memorandum will outline the procedures a district must follow in order to create a special assessment district under the Act.

B. General Information

Before outlining the procedures necessary to create a special assessment district, it may be beneficial to briefly touch upon the features of a special assessment district.

The Act allows local public agencies, including school districts, to raise funding for the purpose of installing, maintaining and servicing various defined improvements. Improvements include landscaping, lighting, park and recreational facilities and public restrooms. The Act also provides for the funding of incidental expenses including costs associated with engineering and legal fees, assessment preparation, cost of reports and plans, required notices and county charges for tax preparation and collection. If bonds are to be issued, costs associated with such issuance are also classified as incidental expenses and may be included in the assessment.

The Knox and Jarvis cases have construed broadly the term "maintenance of improvements." For example, special assessment revenue may be utilized in order to maintain a playground or park even if the facility was not originally funded by a special assessment. Therefore, the Whittier and Bonita School Districts were found to be able to fund their maintenance costs for the playgrounds, pools, tracks, courts, auditoriums, meeting rooms etc., based on the court's finding of extensive use by the public of such facilities under the Civic Center Act. As you are aware, pursuant to Education Code Section 40041, each and every public school facility and ground within the state includes a civic center where citizens and groups may gather for, among other purposes, recreation, education, political and artistic activities.

Revenue for the maintenance of an existing facility or the installation of new improvements as part of the Civic Center could be derived from an assessment on all lands benefitting from the improvement. Thus, in Knox, the City of Orland commissioned a study which determined that all residential properties within the district, in this case the City boundaries, benefitted in equal proportion from the park and recreation facilities to be maintained by the assessment. Therefore, each dwelling unit in the City of Orland was assessed a proportionate and equal amount for park maintenance.

C. Special Assessment District Formation

Formation of a special assessment district under the Act is accomplished without reference to the voters. However, those property owners who will be assessed are provided the opportunity to protest any and all aspects of district formation.

1. Resolution Initiating Proceedings

The first step in the formation of a special assessment district is for the board to consider and pass a resolution which includes the following provisions:

(a) proposes formation of the district under authority of the Act,

(b) describes the improvements (Note: this term includes maintenance of existing facilities),

(c) describes the proposed assessment district (which may include all territory within the school district),

(d) names the proposed district, and

(e) orders the engineer (the term may encompass any individual designated by the board for the purpose including the city engineer, an employee of the district or an outside consultant) to prepare and file a report.

2. The Engineer's Report

The engineer's report is the key document in the process. The report must include plans and specifications for improvements, estimate costs, include diagrams of the district, make an assessment of estimated costs and, if bonds are to be issued, estimate the principal amount. The report must indicate sources of funding, state the amount to be assessed district wide, determine which properties benefit from the facilities and in what proportion the benefit is conveyed and assess the net amount to be levied upon all assessable lots or parcels within the district.

Potentially, the amount of assessment may not be equal. If it is found some parcels do not derive the same benefits from maintaining the district's improvements, then assessment will vary. It is also possible the district could be divided into benefit zones which reflect the varied benefits conveyed by the improvement.

Once the report has been completed, the engineer shall submit the report to the Clerk of the Board. The board may accept the report as is or modify it in any fashion.

3. Resolution of Intent

Upon approval, the board must adopt a resolution of intent. This resolution must:

a) declare the intent to form the district and levy assessments,

- b) describe the improvements,
- c) describe and name the district,
- d) make reference to the engineer's report,
- e) refer to the proposed assessment,
- f) fix and give notice of the time/place for a hearing on the subject.

4. Notice and Public Hearings

Under the law, two public meetings are required before formation of the district may be perfected. Government Code Section 54954.6 requires a hearing, prior to adoption of any new or increased tax or assessment, to allow public testimony regarding such assessment. In addition to this hearing, the Act requires a "Protest Hearing" which is referenced in the resolution of intent. For the first hearing, notice must be mailed and published at least 45 days before the second hearing occurs. Publication of notice shall be at least one-eighth of a page in a newspaper of general circulation three times for three successive weeks. Notice must be mailed to those individuals who have previously requested notice on such matters. The notice must describe the project, the assessment levy per parcel, give the time and place for both hearings and note that a majority protest at the Protest Hearing will terminate all proceedings.

Under the Act, notice of the Protest Hearing on formation, which notice must include a copy of the resolution of intent, must be published, posted and mailed. Notice must be so provided not less than 45 days before the Protest Hearing by mailing information to all property owners in the proposed district subject to the assessment. Notice must include the amount per parcel to be levied, describe the improvements, note that a majority protest will terminate the proceedings and inform property owners of the right to submit a written protest of the proposal by including the address to which such protest should be sent. Confusion as to conflicting provisions concerning notice requirements may be settled if SB 376 (Bergeson) is enacted, however, two meetings will still be required prior to district formation.

At the hearings, all interested parties are heard and the Board may modify the project in any manner it desires after hearing from the public. The Board must determine whether a majority protest exists and must terminate proceedings if such condition exists. A majority protest will be found if property owners owning more than 50% of the area of assessable property file a protest.

5. Resolution of Formation

If a majority protest is not filed, the board may adopt a resolution ordering formation of the special assessment district. Such a resolution will confirm the territory included in the district and the amount of per parcel assessment. Adoption of this final resolution constitutes the levy and a certified copy of the resolution is henceforth filed with the County Auditor who will undertake collection of the assessment.

Court challenges to district formation must be filed within 30 days of the adopting of the Resolution of Formation. Under the Act, as interpreted by the Knox decision, a court must liberally construe actions taken by a district in order to effectuate the purposes of the Act.

D. Subsequent Assessments

For ensuing fiscal years, a district must file a new engineer's report, hold hearings and enact resolutions in order to continue or to increase the levy. The procedures and requirements are somewhat less complex for ensuing years, but, there is no provision concerning majority protest.

Should you have any questions concerning this matter, please feel free to contact our office.

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