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COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

February 2, 1990

TO: Leon L. Williams, Chairman
Board of Supervisors

FROM: County Counsel

RE: Proposed Statewide Initiative ("Taxpayers' Fair Share Act")

You have asked this office to review a proposed statewide initiative entitled the "Taxpayers' Fair Share Act" ("initiative"), a copy of which is attached, and provide you with our comments. We understand that the proposed initiative was drafted by Mr. Bruce Henderson, a member of the City Council of the City of San Diego.

THE INITIATIVE

The initiative would add an Article XIIIC to the California Constitution. The initiative would require the State Controller to distribute "state income tax collections" as follows:

1. Each city and each county would share "in an amount not less than ten percent (10%) of the state income tax collections for the prior calendar year" (sec. 1.1). Apportionment of this 10% would be based on the population of each city and each county (unincorporated area only) to the total population of the State of California, to be estimated each year (sec 1.2).

2. In addition, each county would share "in an amount not less than two percent (2%) of the state income tax collections for the prior year" (sec. 2.1). Apportionment of this 2% would be based on the population of each county to the total population of the State of California, to be estimated each year (sec. 2.2).

The initiative would require that the distributions commence no later than June 15 of each year "commencing the second calendar year following enactment. . ." of the initiative (sec. 1.1). The distributions to each city and each county would be phased-in" so that in year four the full distribution would be received by each city and county (sec. 5).

The use of the funds received by each city and each county would be limited as follows:

1. Fifty percent (50%) for "public infrastructure" (sec 4.1); and

2. Fifty percent (50%) for "public safety services" (sec. 4.2); provided, however,

3. The voters of a city or a county could authorize the use of such funds for "local expenditure programs" for a term not to exceed five years as adopted by a majority vote (sec. 4.3). Upon expiration of the five years, the funds may be used only as specifically permitted by the initiative unless further authorization is granted by the voters.

The initiative provides that "[i]f. . .the state reduces the percentage of the cumulative total of state revenues from any source whatsoever paid. . .by the state. . .commencing July 1, 1989, to cities or counties, then the percent of state income tax collections payable. . .shall be increased commensurately to fully compensate for such reduction of the cumulative total. . .until such reduction in the cumulative total is fully restored. . . ." (sec. 3). The initiative would prohibit any "direct or indirect control" by the state over the expenditure of the state income tax collections (sec.7).

The initiative would exclude the state income tax collections received by a city or a county from calculation of any state expenditure limitation, including the Gann limitations (sec. 6). However, the distributions "may be subject to any such limitations or any other limitations to the extent adopted. . ." by a majority vote of the city or county in which the limitation is imposed (sec. 6).

The initiative authorizes but does not require binding arbitration where it is alleged that the state haws violated the provisions of the initiative (sec. 9). The arbitration panel must be at least three arbiters unless otherwise agreed to by the parties. An arbitration could be commenced by any city, any county or "by any not-for-profit organization organized and operating primarily to protect the concerns of state or local taxpayers" (sec. 9).

COMMENTS

We offer the following comments:

1. Under existing law, state income tax revenues are deposited into the General Fund of the State of California (see: 26 Ops.Cal.Atty.Gen. 168 [1955]). The California Constitution provides that funds in the General Fund may be appropriated only upon a 2/3 vote of the Legislature plus approval by the Governor (Cal.Const. Art. 4, sec. 12). The proposed initiative directs that the State Controller "shall apportion and distribute" the state income tax collections which are by statute deposited into the General Fund. While there is the doctrine of "continuing appropriations" which recognizes that money in a specific fund is continuously appropriated for a specific purpose without violating the 2/3 vote requirement (see Daugherty v. Riley (1934) 1 Cal.2d 298), it is unclear how a court might construe the initiative. The initiative does not expressly create a special fund for these revenues to avoid the potential application of the 2/3 vote requirement. The question also arises whether this initiative adequately defines how a State executive officer, i.e., the State Controller, shall exercise the authority to "appropriate" state general funds since the amount to be apportioned and distributed is phrased in terms of "not less than".

2. The language of the initiative may create some difficult issues of interpretation. The meaning of section 3 is an example. Also section 7 may present a problem to any city or county other than a charter city (and possibly a charter county) since general law cities and counties may expend money only as authorized by the legislature.

3. The arbitration provision which gives standing to not-for-profit groups to seek arbitration against the state should be carefully considered. The purpose of the arbitration section is not clear. Given the complexities of the issues surrounding the financing of government the use of arbitrators to determine these disputes raises some interesting philosophical and policy questions.

4. The initiative does not address the under-equity problems of this County as against other counties.

5. According to our figures, if the ten percent (10%) distribution was now in effect the San Diego cities and County would get 8.44%, with the County receiving 1.37% of the 10% distribution. If the two percent (2%) was now distributed the County would get 8.44%. Our analysis suggest that this proposed distribution does not provide counties with enough of the guaranteed revenues. If the initiative had been fully

operational in 1989, the 10/2 percent division of income tax revenues would have resulted in the County of San Diego receiving only 0.3 percent of the total income tax collected within the state, while the cities in San Diego County would have received 0.7 percent of the total income tax collected in the state. The urgent need of the counties, relative to the needs of the cities, is ignored by this proposed division of revenues, as is the far greater ability of the cities to generate new revenue through their ability to impose various taxes.

6. While the state income tax funds are excluded from the Gann limitation, the local voters could make the Gann limitation or other limitation applicable to such funds so that the availability of the funds could be restricted.

7. The term "local expenditure program" is not defined and, therefore, it appears the voters could authorize any use of the funds.

8. Any election involving the County share (including that based on the population of the unincorporated area of the County) would be submitted to all the voters within the geographical boundaries of the County of San Diego; while any election involving a city share would be submitted to only the voters of the city.

If you have any questions please call.

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County Counsel

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