Blogs
March 16, 2021

Another court of appeal has held that local special taxes adopted by a citizen-sponsored initiative do not require two-thirds voter approval. *Howard Jarvis Taxpayers Association v. City and County of San Francisco,* No. A157983 (1st Dist., Jan. 27, 2021, as modified Feb. 22, 2021).

In June 2018, 51 percent of San Francisco voters passed the "Universal Childcare for San Francisco Families Initiative." This initiative proposed a tax on certain commercial rents to fund early childcare and education. The Howard Jarvis Taxpayers Association brought suit challenging the initiative, claiming that Proposition 13 (1978), Proposition 218 (1996) and the San Francisco City Charter required two-thirds approval for all special taxes, including those adopted via a citizen-sponsored initiative. The case was considered by Division Five of the First District, which rejected the Association's challenge. The Division Five justices agreed with a decision issued by Division Four of the First District regarding a similar challenge the Association had brought against a special tax enacted by the San Francisco voters in the November 2018 election, *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C*. Division Five agreed with the *All Persons Interested* decision that California Supreme Court precedent mandated a conclusion that the provisions of Propositions 13 and 218 imposing requirements on cities, counties, special districts and other local governmental entities were to be interpreted as applying only to councils, boards and other representative bodies, not the electorate. As determined in those prior cases, there is nothing in either Proposition 13 or Proposition 218 that implicitly overruled the power of initiative to enact laws by simple majority vote. Moreover, while voters are bound by the substantive limitations applicable to legislative actions taken by boards and councils, they are not bound by procedural requirements such as a two-thirds vote requirement. Division Five also addressed two new issues. First, it considered the fact that a member of the Board of Supervisors had been a proponent of the initiative. The Association argued that the supervisor's involvement was tantamount to the Board itself proposing a tax to the voters, which would have required a two-thirds majority vote. The opinion noted that "we fail to see how the sponsorship and involvement of the single official here gives rise to the inference that the City intentionally circumvented Propositions 13 and 218 or effectively controlled the initiative." Second, in a lengthy footnote, the court issued a warning to all litigators by discussing the failure of the Association's attorneys to bring the *All Persons Interested* case to its attention. The court "admonish[ed] counsel to candidly acknowledge such

authority in the future." It quoted a treatise noting that "Your failure to confront unfavorable relevant holdings will be regarded as an attempt to deceive and mislead the court." It cited Rule 3.3(a)(2) of the Rules of Professional Conduct stating that "A lawyer shall not:. . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." The court upheld the summary judgment the trial court had granted for San Francisco.

Topics

Initiatives and Referenda
Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

View the blog