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Board of Supervisors
221 S. Roop St.
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RE: Summary of California Law Related To Local Taxing Authority

Mr. Chairman,

Please accept this brief summary of the law related to the local authority to impose taxes. I hope this helps in your decisions. As always, if you have questions, feel free to ask.

TAXING AUTHORITY AND RESTRICTIONS

Article XI, section 7 of the California Constitution confers upon counties the power “to make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with the general laws.” Unless preempted by state law, “the police power of a county . . . is as broad as the police power exercisable by the Legislature itself.” *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 1006 (2007). “However, the California Constitution specifies that the police power bestowed upon a county may be exercised ‘within its limits,’ i.e., only in the unincorporated area of the county.” *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 275 (1993).

The existence of the board of supervisors and its respective powers and duties all arise within the state constitution and descend from the statutory enactments of the Legislature enabled by the Constitution. Cal. Const. art. XI, § 1; Cal. Gov’t Code §§ 23003, 23005; *Byers v. Board of Supervisors*, 262 Cal. App. 2d 148, 157 (1968); *Hammond Lumber Co. v. Bd. of Supervisors*, 85 Cal. App. 2d 568, 570 (1948) (“the power of a board of supervisors to act under the authority delegated to it by the Legislature must be measured by the applicable statutes”); 70 Ops. Cal. Atty. Gen. 227, 228 (1987). Further, “[t]he board of supervisors has no inherent powers; the counties are legal subdivisions of the state, and the county board of supervisors can exercise only those powers expressly granted it by the Constitution or statutes and those necessarily implied therefrom.” Cal. Const., art. XI, § 1; Cal. Gov’t Code § 2507; *People v. Langdon*, 54 Cal. App. 3d 384, 388-389 (1976); *Byers v. Bd. of Supervisors*, 262 Cal. App. 2d 148 (1968); *Hicks v. Bd. of Supervisors*, 69 Cal. App. 3d 228, 242 (1977). Thus, the board may not adopt a resolution or ordinance that contravenes or exceeds any statutory grant of power to the board.

Local governments may impose taxes authorized by the Legislature. Cal. Const. art. XIII, § 24. The Legislature has authorized counties to levy, increase, or extend a transaction and use tax at the rate of 0.125 percent, or multiple thereof. The tax may be levied on the entire county or only on the unincorporated area of a county. The tax may also be imposed as either a general tax or a special tax.

Cal. Rev. & Tax. Code §§ 7285 (general tax), 7285.5 (special tax); *see also* Cal. Gov't Code § 50075 ("It is the intent of the legislature to provide all . . . counties with the authority to impose special taxes, pursuant to Article XIII A of the California Constitution."). General taxes are taxes imposed for general governmental purposes; special taxes are taxes imposed for specific purposes. Cal. Const. art. XIII C, § 1 (a) & (d); Cal. Gov't Code § 53721.

An ordinance proposing a transaction and use tax imposed as a general tax must be approved by a two-thirds vote of all members of the board of supervisors of a county and approved by a majority vote of the qualified electors of the entire county if levied on the entire county or the unincorporated area of the county if levied only on the unincorporated area, voting in the election. Cal. Rev. & Tax. Code § 7285; Cal. Const. art. XIII C, § 2(b); Cal. Gov't Code § 53723. An ordinance proposing a transaction and use tax imposed as a special tax must be approved by a two-thirds vote of all members of the board of supervisors of a county and approved by a two-thirds vote of the qualified electors of the entire county if levied on the entire county or the unincorporated area of the county if levied only on the unincorporated area, voting in the election. Cal. Rev. & Tax. Code § 7285.5 (a)(1); Cal. Const. art. XIII C, § 2(d); Cal. Gov't Code § 53722. Moreover, any ordinance proposing a transaction and use tax as special tax must include an expenditure plan describing the specific projects for which the tax revenues may be expended and certain accountability measures. Cal. Rev. and Tax. Code § 7285.5 (a)(3); Cal. Gov't Code § 50075.1. The chief fiscal officer of a county imposing such a tax must also prepare an annual report on the amount of funds collected and expended and the status of any project required or authorized to be funded. Cal. Gov't Code § 50075.3.

If approved as a general tax, the revenues derived from a transaction and use tax imposed by a county "shall only be used for the general purposes within the area for which the tax was approved by the qualified voters." Cal. Rev. & Tax. Code § 7285. Thus, if submitted to and approved by the qualified voters within an entire county, the tax revenues may be used for any general purpose of the county in the entire county; and if submitted to and approved by the qualified voters only within the unincorporated area of a county, the tax revenues may be used for any general purpose of the county only in the unincorporated areas of the county. *Id.* Similar provisions govern a transaction and use tax imposed by a county as special tax, namely "[t]he revenues derived from the imposition of the tax . . . shall only be used for the specific purposes within the area for which the tax was approved by the qualified voters." *Id.* at § 7285.5(c).

Respectfully,



Robert Burns