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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	
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of	:	No. 79-809
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	:	OCTOBER 31, 1979
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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THE HONORABLE JIM COSTA, ASSEMBLYMAN, 30TH DISTRICT, has requested an opinion on the following question:

What effect, if any, does article XIII A of the California Constitution have upon the ability of a county board of supervisors to levy a tax under the provisions of Military and Veterans Code section 1262?

CONCLUSION

Article XIII A of the California Constitution, as implemented by Revenue and Taxation Code section 2237, generally prohibits a county board of supervisors from levying a tax under the provisions of Military and Veterans Code section 1262.

ANALYSIS

Pursuant to the provisions of Military and

Veterans Code section 1262, 1/ the board of supervisors of a county may "provide and maintain buildings, memorial halls, meeting places, memorial parks, or recreation centers for the use or benefit of one or more veterans' associations." (See Wall v. State of California (1946) 73 Cal.App.2d 838, 840-841; 19 Ops.Cal.Atty.Gen. 242, 242-243 (1952)).

To fund the acquisition and maintenance of such facilities, the board of supervisors may transfer moneys from the general fund of the county (§ 1262 subd. (f)), incur a bonded indebtedness (§ 1262, subd. (g)), and/or levy a tax over and above the general tax rate of the county. (§ 1262, subd. (e).) Subdivision (e) of section 1262 specifically provides:

"In addition to all other taxes, levy in any year a special tax not to exceed two and one-half mills (\$0.0025) on each dollar of assessed valuation on all the taxable property in the county, if all the taxable property in the county has an aggregate value of less than fifty million dollars (\$50,000,000), or not to exceed one and one-half mills (\$0.0015) on each dollar of assessed valuation on all the taxable property in the county if all the taxable property in the county has an aggregate value equal to or more than fifty million dollars (\$50,000,000), and the fund so created to be expended for the purposes hereof."

The question presented for analysis is whether the levy of a tax under subdivision (e) of section 1262 has been affected by the recent addition of article XIII A to the California Constitution. We conclude that the new constitutional amendment, as implemented by the Legislature, has generally eliminated the authority of a board of supervisors to levy the tax.

Subdivision (a) of section 1 of the new article provides:

1. All unidentified statutory references hereinafter are to the Military and Veterans Code.

"The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties."

The Legislature has implemented the mandate of article XIII A by limiting the ability of all local governments to levy an ad valorem (according to value) tax on real property. In general terms, a local entity may only receive an allocation based upon a specific statutory formula of the total county tax levy, which itself is limited to one percent of the full cash value under the constitutional provision. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 246-247.) Revenue and Taxation Code section 2237 specifically provides:

"(a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (b) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.

"(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars (\$4) per one hundred dollars (\$100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code."

The board of supervisors of a county, therefore, is now prohibited from increasing the basic county tax rate over and above the one percent constitutional and statutory limitation. The tax authorized under section 1262, subdivision (e), is clearly an ad valorem tax on real property since it is levied "on each dollar of assessed valuation on all the taxable property in the county." Accordingly, section 1262 may no longer be viewed as permitting an increase above the basic county tax rate, now restricted by the one percent constitutional and statutory limitation. (See 62 Ops.Cal.Atty.Gen. 209, 211 (1979).)

An exception to the one percent limitation, however, does exist under the new constitutional provision for repayment of certain voter approved indebtedness. Subdivision (b) of section 1 of article XIII A provides:

"The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective." 2/

Hence, if prior to July 1, 1978, the voters of a county have approved an indebtedness for the acquisition and maintenance of veterans' facilities as authorized under subdivision (g) of section 1262 ("Incur, in the manner provided by law, a bonded indebtedness on behalf of the county for any of the purposes hereof"), such indebtedness may be funded by a specific ad valorem tax on real property that exceeds the one percent limitation. In implementing this provision of article XIII A, the Legislature has authorized such an additional tax levy. (Rev. & Tax. Code § 2237, subd. (a).)

We also note that under section 4 of article XIII A, certain "special taxes" may be imposed if first duly approved by the electorate:

"Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad

2. On July 1, 1978, section 1 of the new article became effective. (See 62 Ops.Cal.Atty.Gen. 209, 211 (1979).)

valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Emphasis added.)

Since, however, the "special taxes" of section 1262, subdivision (e), constitute ad valorem taxes on real property, they are excluded from the operation of this section of article XIII A under its express terms.

The conclusion to the question presented, therefore, is that article XIII A of the California Constitution, as implemented by Revenue and Taxation Code section 2237, generally prohibits a county board of supervisors from levying a tax under the provisions of section 1262.