

Colantuono & Levin, PC  
300 S. Grand Avenue, Suite 2700  
Los Angeles, CA 90071-3137  
Main: (213) 542-5700  
FAX: (213) 542-5710  
WWW.CLLAW.US

Michael G. Colantuono  
MColantuono@CLLAW.US  
(530) 432-7359

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California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: *City of Alhambra, et al., v. County of Los Angeles, et al.* (Case No. S185457)

To the Honorable Chief Justice and Associate Justices of the Supreme Court of California:

This Supplemental Letter Brief is submitted pursuant to the California Rules of Court, rule 8.520(d), to inform the Court of a decision from the First District Court of Appeal: *City of Scotts Valley v. County of Santa Cruz*, 2011 Daily Journal D.A.R. 15684, 2011 WL 5062506, 11 California Daily Opinion Service 13, 187 (1<sup>st</sup> District Court of Appeal, filed Oct. 26, 2011).<sup>1</sup> The *Scotts Valley* opinion is authority for two points relevant to *City of Alhambra, et al., v. County of Los Angeles, et al.* (Case No. S185457), which is currently awaiting oral argument before the Court.

## I. INTRODUCTION AND BACKGROUND ON SCOTTS VALLEY

The City of Scotts Valley qualifies as a “no/low property tax city” for purposes of the Tax Equity Allocation statutes in that no or a very low property tax was levied by that City upon the effectiveness of Proposition 13 in 1978. (Rev. & Tax Code § 98, “TEA.”) Beginning in 1996, Santa Cruz County informed the City that due to changes to the County’s property tax allocation methods and the creation of the Scotts Valley Redevelopment Agency, the City would no longer be eligible for supplemental property tax revenues distributed under TEA (“TEA funds”). In 2006, the City’s finance director determined that the County Auditor-Controller’s methods for calculating the City’s entitlement to TEA funds were incorrect.

In 2007, the City initiated the lawsuit alleging that the Auditor-Controller was not properly applying the TEA statute and had failed to allocate to the City all the property tax

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<sup>1</sup> This opinion will be final under Rule 8.264(b)(1) of the California Rules of Court on November 25, 2011. As of the date of this letter brief, no petition for rehearing or review has been filed in the case.

revenues to which it was entitled. Even though the City was qualified under section 98 entitled to receive approximately 7 percent of the property tax revenues paid by its residents, the City alleged it was receiving only between 3.5 and 4.5 percent of those revenues.

The trial court ruled the County had misapplied the relevant statutes and the City had not received all the property tax revenues to which it was entitled under the TEA statute. On the County's appeal, the First District concluded that the trial court correctly interpreted the property tax statutes, except sections 97.1 and 97.3, granted writ relief and remanded the matter to the trial court to recalculate the amounts the City should recoup from the County and to direct the County to calculate future TEA distributions in accordance with the opinion.

The *Scotts Valley* opinion is relevant to the pending *Alhambra* case in two ways: (1) it is another example of the necessity of judicial review of property tax allocation decisions by counties lest they decide in their own interests at the expense of other local governments which share in property tax proceeds; and (2) the County Auditors' Property Tax Shift Uniform Guidelines upon which Los Angeles County relies in this case have limited value for interpreting the meaning of the Revenue and Taxation Code.

## **II. COUNTIES CANNOT BE ALLOWED TO INTERPRET STATUTES TO ENRICH THEMSELVES AT THE EXPENSE OF OTHER GOVERNMENT ENTITIES**

Central to the Court of Appeal's analysis in *Scotts Valley* is the notion that the County interpreted the TEA statute and related provisions of the Tax Code in order to rectify what it perceived as an ineffective distribution scheme adopted by the Legislature. (*Scotts Valley, supra*, 2011 WL 5062506 at pp. \*29-\*31.) The First District noted the County's concern that the Legislature had failed to adequately account for redevelopment agencies in calculating TEA distributions, but concluded that the County had ignored the plain meaning of the statutes in a misguided effort to correct what it perceived as a legislative failure: "[I]t is not our role to rectify any such shortcoming in the real property tax allocation statutes. Rather, the counties must return to the Legislature to seek further modification of the relevant statutes." (*Id.* at p. 30.)

What is not the courts' role is not a County's, either, or course. Just as *Scotts Valley* was entitled to judicial review to protect itself from Santa Cruz County's self-serving application of the Revenue & Taxation code, the petitioner cities in the case at bar are entitled to judicial review to protect themselves from similar conduct by the County of Los Angeles.

### III. THE COUNTY AUDITORS' GUIDELINES ARE IRRELEVANT TO INTERPRETATION OF THE REVENUE AND TAXATION CODE

Just as does Los Angeles County in the case at bar, Santa Cruz County argued in *Scotts Valley* that its analysis was supported by several "interpretive materials," including the "1993-94 Property Tax Shift Uniform Guidelines for California Counties" prepared by the County Accounting Standards and Procedures Committee of the California Auditor-Controller's Association ("the Guidelines").

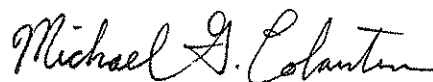
The Court of Appeal rejected the interpretive value of the Guidelines, stating they "do not carry the interpretive weight that adheres to formal regulations adopted by an agency charged with implementing a statutory scheme." (*Scotts Valley, supra*, at p. 27.) Furthermore, the Court noted that even formal agency interpretations are "not determinative and cannot override the plain language of the statutes ... ." (*Id.* at p. 28.)

The Answer Brief in the case at bar makes this point as well, and *Scotts Valley* provides additional authority for Respondents' argument the Guidelines are not authority for interpretation of the Tax Code. As in *Scotts Valley*, they may reflect the practice of the Counties, but they cannot override other interpretive materials or principles of statutory construction and cannot be given judicial deference in the absence of compliance with the Office of Administrative Law process required by the Legislature for such deference to apply.

### IV. CONCLUSION

The *Scotts Valley* opinion represents yet another example of the necessity of judicial review to prevent counties from misinterpreting the Tax Code for their own benefit, and justifying that practice with Guidelines that they themselves developed without compliance with the notice and comment rule-making required for authoritative regulations. Accordingly, the petitioner cities respectfully request this Court consider the *Scotts Valley* decision as additional support for their arguments in this case.

Respectfully,



Michael G. Colantuono

MGC:MRC



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