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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF ALHAMBRA, et al.,

Plaintiffs/Petitioners Below

v.

COUNTY OF LOS ANGELES, et al.,

Defendants/Respondents Below

RESPONSE TO AMICUS BRIEF OF THE LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF THE CITY OF ALHAMBRA, ET AL.

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INTRODUCTION

The League of California Cities ("League") offers two familiar arguments to support the petitioner/plaintiff cities ("Cities"). The first argument — that it would be inequitable and against legislative intent for Cities to bear their share of tax administration costs — is based on false premises. The second — that County Auditors' Guidelines should not "control" — is simply irrelevant.

ARGUMENT

Rather than try to defend the Cities' case straightforwardly, the League offers one subtle edit to the Cities' position. It assumes that, by the time section 97.75 was enacted, the Legislature already had forbade recovery of all PTAF associated with the subject property tax revenues; hence, when it turns to section 97.75, the League argues that there is nothing in section 97.75 reflecting an intent by the Legislature to allow recovery of that which supposedly already has been forbidden. (See, e.g., AMB at p. 6.) The League's analysis remains bottomed upon the same fallacious positions urged in the Cities' briefing.

A. Like the Cities, the League Tries to Shift the Burden of Proof by Misstating the Issue Presented and the Evolution of the Statutory Scheme for Property Tax Administration Recoupment.

1. The Issue Actually Presented

In this mandamus proceeding the Cities have the burden of establishing their plea that section 97.75 forbade the County, for fiscal years 2006-07 forward, from recouping the underlying administrative costs for revenues allocated to Cities under the Triple Flip and VLF Swap.[1]

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[1] See, e.g., 1 JA 38 [1st Am. Cmplt., ¶¶ 68-69] ["RESPONDENTS, and each of them, are under a clear, present duty pursuant to Revenue & Taxation Code Section 97.75 to charge PETITIONERS no more than

The League attempts to redefine the issue to shift the burden of proof to the County. Like the Cities, the League pretends that the County relies on section 97.75 for its recoupment authority. It then goes on to repeatedly intone that nothing in section 97.75 reflects a legislative intent to authorize recovery of anything but the cost of the *incremental* services required to account for the Cities' new tax shares under the Flip and the Swap.[2]

The League's attacks fail for at least three reasons. First, the County has no burden at all; rather, the burden of proving failure to comply with a clear and present duty remains unshakably with the Cities. The Cities must prove that section 97.75 somehow forbade recovery; it is not the County's burden to prove that section 97.75 expressly authorized it. Consequently, if

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their proportionate share of the actual incremental costs to administer the Triple Flip and VLF Swap as distinguished from the costs to operate the property tax system that existed prior to the legislation of the[sic] these two fiscal devices and that would exist in the absence of those two devices. [] RESPONDENTS, and each of them, have failed to perform that duty. . . ."].)

[2] E.g., AMB at 6 ("there is nothing in Sections 97.68 [Flip], 97.70 [Swap], or 97.75 to suggest any intent by the Legislature to" authorize this outcome); 9 ("If the Legislature had wanted to allow the counties to start including the Triple Flip and VLF Swap funds in the PTAF, it would have simply said that [in section 97.75], with a clear reference to section 95.3. It did not."); 10 ("there is no indication [in section 97.75] that the Legislature intended to shift those costs on account of the Triple Flip and VLF Swap"); 11 ("The County contends that the purpose of Section 97.75 was. . ."); 11 ("if the Legislature wanted the cities to pay the costs of assessing, collecting and allocating the property taxes that are ultimately diverted from ERAF to the cities under the Triple Flip and the VLF Swap, it only needed to state that"); 12 ("There is no evidence that [the Legislature] intended to use these provisions to shift to cities a cost that had until then been borne by the counties"); 15 ("there is no indication [in section 97.75] that it [the Legislature] intended this cost to be shifted to cities").

there is no relevant evidence of legislative intent concerning section 97.75 on this issue, then the Cities, not the County, have had a failure of proof.

Second, like the Cities, the League misstates the County's position. Again, the County does ***not*** count on section 97.75. Rather, the County's consistent position is that: (i) if read broadly (as addressing overall PTAF services associated with the tax revenues), section 97.75 would expressly authorize eventual recovery; and (ii) if read narrowly (as addressing only incremental new services to account for the Triple Flip and VLF Swap), then section 97.75 would be irrelevant, and authority for overall PTAF services would be governed by section 95.3, which unmistakably allows for recovery. In short, so long as one reads section 97.75 consistently throughout, the County wins either way. (See OB at pp. 2-3, 18-19, 23-25; RB at pp. 2-7.)

Third, reading the statutory scheme as a whole, there are two decades of legislative intent saying the same thing: spreading the tax administration cost among the beneficiaries is fair and supports a significant and compelling state financial interest. For that reason, in 1990 the Legislature authorized counties to recoup from each local agency receiving property tax revenues, the full, pro rata share of PTAF associated with such revenues. The only exception to that recoupment rule is for property taxes received by schools and ERAFs (a fund for schools); an exception born of fiscal necessity for the State that has no application here. (See OB at pp. 7-11; RB at pp. 8-12.) Put differently, there was no need for the Legislature, in enacting section 97.75, to express that the County may collect PTAF from Cities, as that intent already was abundantly documented.

It is to this point that we now turn.

2. The Legislature's Longstanding Pro-Recoupment Intent

The League goes to great rhetorical lengths to suggest that the fund of property tax dollars allocated under the Triple Flip and VLF Swap is one for which the Legislature has determined the County should bear all administrative costs, no matter who is allocated those dollars. Sometimes, the League does this directly, by declaring that the Legislature has determined these particular tax dollars are immune from PTAF recoupment.[3] Other times, the League does this indirectly, by suggesting that these particular tax dollars are allocated ***from*** county ERAFs (Educational Revenue Augmentation Funds), which enjoy an express immunity from PTAF recoupment under section 95.3(b)(1) of the Revenue Code.[4] Four points are in order here:

First, the legislative history is spelled out in detail in the County's opening and reply briefs. It is nothing like what the League (and the Cities) would have it be:

- As originally enacted in 1990 — before the Legislature even had created ERAFs — the recoupment rule was absolute: ***Every*** local agency or jurisdiction receiving property tax revenues, including schools, was responsible for its pro rata share of PTAF.
- Within years, and in the face of a recession, the State took a series of steps designed to shift much of its educational funding obligation to local government. The first intrusion, enacted in 1991, was

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[3] See, e.g., AMB at p. 9 ("Consequently, the Legislature must have considered Section 95.3 to inapplicable to the Triple Flip and VLF Swap funds, and that is why it needed to enact Section 97.75.")

[4] See, e.g., AMB at p. 8 ("because PTAF is not charged for property taxes 'determined with respect to . . . ERAF' (§ 95.3(b)(1)), and because the funds transferred to cities under the Triple Flip and VLF Swap would otherwise have flowed to ERAF, these costs should not be included in the PTAF calculation.")

relatively modest. With the recession in its infancy, the Legislature simply exempted schools from the PTAF recoupment rule established the year before, thereby (i) saddling counties with the PTAF associated with property tax revenues allocated to schools, and (ii) freeing an equal amount of State General Fund revenue.

- In 1992, with budget problems worsening, the Legislature went much further, creating a so-called Educational Revenue Augmentation Fund (ERAF) and requiring local governments and agencies to shift part of their property tax shares to offset the State's funding obligation for education. Attempting to minimize the harm to property tax administration, however, the Legislature provided that counties still could recoup from schools the PTAF associated with revenues ***allocated to the ERAF***.
- In 1993, with the crisis deepening further, the Legislature did away with PTAF recoupment for revenues allocated to ERAFs (as well as schools). And, in 1994, the Legislature moved the recoupment rule to section 95.3, where it still resides.

(OB at pp. 7-9; RB at pp. 10-12; see also Pet. for Review at pp. 3-7.) Thus, any suggestion that these (or any other) property tax dollars always have been immune from PTAF recoupment is demonstrably false.

Second, any suggestion that the property tax revenues in question come from the ERAF is false as well. As the Triple Flip and VLF Swap both plainly state, these property tax revenues are diversions allocated to cities (and, yes, counties) and never become allocated into an ERAF.[5] (See OB at p. 27; RB at p. 10.)

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[5] Section 97.68 ("The total amount of ad valorem property tax revenue ***otherwise required to be allocated to a county's Educational Revenue Augmentation Fund*** shall be reduced by the countywide adjustment amount." [emphasis added]); Section 97.70 ("The auditor shall reduce the

Third, the League's entire effort to imbue these particular dollars with some sort of inviolate legislative immunity ignores the process by which property tax revenues and PTAF both are allocated. That process has been described at length in prior briefing. (OB at pp. 12-16; RB at pp. 14-15.) Here it is sufficient to note the following:

- Before PTAF can be allocated, it is necessary first to finalize apportionment of property tax revenues to each local entity or fund entitled to receive them, as that apportionment provides the numerator of a fraction that produces the "administrative cost apportionment factor" — an entity's share of PTAF. (The denominator being total countywide revenues available for allocation.)
- Consequently, the PTAF apportionment factor for schools and ERAFs is based on the actual property tax revenues those entities are entitled to receive under section 95.3 (a), and not hypothetical dollars that ERAFs or schools would have received but for operation of the Triple Flip and VLF Swap. (See section 95.3(b)(1) ["Each proportionate share of property tax administrative costs ***determined pursuant to subdivision (a)***, except for those proportionate shares determined with respect to a school entity or ERAF, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency. . . ."] [emphasis added].)

In short, harping on the exemption for ERAFs overlooks how the exemption actually is implemented.

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total amount of ad valorem property tax revenue that is ***otherwise required to be allocated to a county's Educational Revenue Augmentation Fund*** by the countywide vehicle license fee adjustment amount." [emphasis added]).

Fourth, like the Cities, the League purposely disregards the reason for providing recoupment immunity for schools and ERAFs. As even the Cities have conceded, the purpose for the exemption was to allow the State to meet its constitutional obligation to fund education with an expenditure of as few State dollars as possible.[6] (By definition, every dollar in recoupment the State allows from schools or ERAFs is a dollar the State would have to make up from its own General Fund.) It makes no sense to imply an extension of immunity to cities when doing so confers no benefit on the State and where the statute declares a different intent for every non-school recipient of property tax revenues:

> It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIIIA of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this section is intended to fairly apportion the burden of collecting property tax revenues . . . .

(Section 95.3(e); see also *Arbuckle-College City Fire Protection Dist. v. City of Colusa* (2003) 105 Cal.App.4th 1155, 1167.)

B. Like the Cities, the League Ignores the Irrefutable Logic that, No Matter How the Court Interprets Section 97.75, Counties Are Entitled to Prevail So Long as the Court Interprets it Consistently Throughout.

Once one appreciates the actual facts established above, the overriding flaw in the League's (and Cities') analysis comes into sharp

[6] See AB at pp. 5-6 (conceding this purpose), 10 ("for the State's own benefit") and 22 (conceding point again).

focus. It is the flaw the County has identified at every stage of the proceedings: Whether this Court interprets section 97.75 broadly (as the trial court did) or narrowly (as the Court of Appeal did), so long as the Court interprets section 97.75 consistently throughout, the County is entitled to a defense judgment either way. (See OB at pp. 2-3, 18-19, 23-25; RB at pp. 2-7.)

This analysis would ***not*** render the second sentence of section 97.75 surplusage, as the League pronounces. (AMB at p. 9.) Again, as established in prior briefing, without section 97.75, all costs associated with the additional tax shares allocated to cities and counties under the Triple Flip and VLF Swap would be spread out among all property tax recipients (other than schools and ERAFs). Yet, only cities and counties receive additional tax shares under the Triple Flip and VLF Swap. Thus, whether one interprets it broadly or narrowly, section 97.75 appropriately ensures that only the parties receiving the additional revenues under the Flip and Swap bear the costs associated with such revenues. (OB at pp. 32-33; RB at p. 7.)

The League's only response to this is to volley that neither cities nor counties "benefit" from the Flip and Swap because those two statutes simply replace different ***revenue streams*** (sales taxes and VLF fees) taken away by the State. (AMB at p. 11.) Respectfully, this argument changes the subject. Even if the Triple Flip and VLF Swap did not give back far more ***revenues*** than they have taken (and they do), the ***costs*** associated with allocating these particular revenues are costs that benefit cities and counties alone. Thus, section 97.75 absolutely does serve the laudable goal of ensuring that appropriate costs are allocated only to the recipients of Flip and Swap revenues.

C. The League's Attack on the Uniform Guidelines Is Misplaced.

With that, we touch briefly on the issue of the Uniform Guidelines, which the County followed in implementing the Triple Flip, the VLF Swap, and section 97.75. Here, county auditors took the most cautious of two possible paths and declined to charge any PTAF against Cities' first two years of Triple Flip and VLF Swap allocations. Whether right or wrong, they are entitled to some measure of deference.

County auditors are charged with implementing the bewildering statutory maze the Legislature has fashioned to allocate property taxes. They are expected to write checks — to someone — once the property tax revenues arrive. Although contemporaneous administrative guidelines developed by the public officials and agencies charged with implementing a statute are never binding on a court, they should be considered as an aid in interpreting the statute. (*Andal v. Miller* (1994) 28 Cal.App.4th 358, 365, fn. 3.) And, other Guidelines of the County Auditors have been referenced and relied upon by courts. (*Santa Barbara County Taxpayers Ass'n v. Bd. Of Supervisors* (1989) 209 Cal.App.3d 940, 944-945.)

In short, the fact that the Guidelines were not made part of the California Code of Regulations, under the procedures available to the Controller or Department of Finance does not mean that they "have no legal status." (AMB at p. 12.) Nor, because county auditors cannot compel the Department of Finance or State Controller to act on matters that do not directly concern their responsibilities, does it mean administrative interpretations by county auditors are "underground regulations." (*Id.*) Instead, it means only that the Guidelines are not controlling (a point the County always has conceded).

Finally, as for the League's insistence on expressing "its indignation" that, whatever anyone may have said, it had nothing to do with county auditors' production of the Guidelines (AMB at p. 15, fn. 5),

because this extra-record issue is immaterial, the County will refrain from expressing its own indignation.

CONCLUSION

Section 97.75 does not forbid the County's recoupment practices, no matter how the statute is finally interpreted. Instead, it either expressly authorizes recoupment or is irrelevant.

More than 20 years ago, the Legislature expressed that the only just rule was that every recipient of property taxes should, as a matter of fairness and public policy, bear its own pro rata share of PTAF. Since that time, the Legislature has carved out but a single exception (for schools and ERAFs) that has no application here. There is not a shred of evidence, be it in section 97.75 or elsewhere, to even hint that the Legislature intended to depart from its longstanding intent.

The Court of Appeal's decision should be reversed.

DATED: March 24, 2011

Respectfully submitted,

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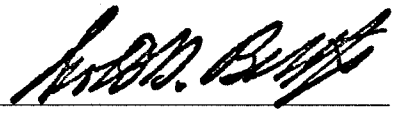
By: 

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that the enclosed brief was produced using 13-point type, including footnotes, and contains 2,852 words. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: March 24, 2011

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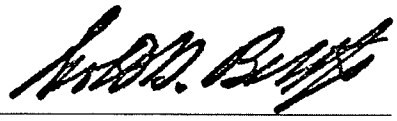
By: 

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