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Colantuono Opines On Local Government Concerns Re AB 1221

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Earlier this year, Asm. Darrell Steinberg (D-Sacramento) introduced AB 1221, which proposes a swap of a portion of a city's sales tax revenue in exchange for an equivalent amount of property tax revenue from the state. By reducing a city's reliance on sales tax, cities will no longer be incentivized to build big box developments in place of much needed housing. One of the primary opponents of AB 1221 is the League of California Cities. ***TPR*** *is pleased to present this interview with* ***Michael Colantuono, First Vice President of the City Attorneys Department of the League of California Cities****, in which he discusses the League's position on AB 1221.*

Michael, the budget crisis is all but obscuring the need to reform California's disfunctional state-local fiscal relationship. As an officer of the League of California Cities, elaborate on the League's position on Assembly Bill 1221, one of the most proactive, yet limited legislative efforts to date for structurally reforming our broken fiscal system?

AB 1221, as I understand it, is intended to reduce local government's reliance on sales tax while increasing the proportion of property taxes available to us. Stated at that broad level, that's a pretty good idea. Property taxes are a relatively stable revenue source and the logical connection between property taxes and municipal services to property is pretty good. We know pretty well what the distorting consequences of over-reliance on sales taxes can be. One, you have competition for sales-tax generators without respect to the other elements of a balanced community. And two, sales taxes are a very volatile source of revenue, they go up a down with the economy, and until there is some willingness in Sacramento to confront the changing nature of our economy, the base of the sales tax is going to continue to shrink as we grant exemptions to electronic commerce. So, in the big picture, the swap makes sense.

While the swap makes sense for some, about a third of the League's membership are wedded to present allocations of sales tax revenue. Is that third the reason the Leagues cannot reach consensus on AB 1221?

I'm not sure I can speak for the League's Board of Directors. Although I'm an officer of the City Attorneys Department, I'm not on the League's Board. But, I can tell you that it is instantly possible to calculate winners and losers under Steinberg's bill. And, the winners win for now, but that victory could be redone by another Legislature next year. In addition, the losers have no confidence that their loss will be undone. So you identify winners who have no confidence in their victory and you identify losers who have no hope to overturn their loss. Is it any surprise the local government community is not enthusiastically supporting the bill?

It's a little bit like trying to change the boundary between two school districts, where land and students have dollars on their heads and each district can immediately calculate the effect on their budget. If local government of any type had the ability to make choices about how to get revenue and actually have revenue follow that decision, then people could construct their own futures. But, each step of the way from1978 to the present has had the effect of putting more power in Sacramento and less power locally-we have no hope to undo these changes. Therefore, we are not comfortable making these changes unless they are in the context of a constitutional amendment that creates a better separation between our pocketbooks and the state budget.

What formula does the League wish to lock into the constitution to allow us to move forward with reforms?

I don't know that I can speak for the League, although I know that they have been working on a constitutional amendment and have been giving some pretty serious thought to that. But, the proposals from the Constitutional Revision Commission of several years ago to determine the distribution of the1% property tax locally-through a charter process with the local governments within a county or perhaps a subset of a county making those decisions-is a model that I think can work.

Before 1978, when each local government could set its own taxes within the constraints of the political process, a community like Claremont could choose to have a 6% tax rate just for schools. Each community could choose to have a relatively higher slice of their property taxes in education and a relatively lower slice in things like water and fire and police. Nobody gets to make that decision anymore. That decision gets made in Sacramento.

Did the League support the Constitutional Revision Commission's recommendations when they came out?

I don't recall. But I can tell you that the League recognizes pointedly and our members recognize pointedly that California has not had a good experience since 1978 of giving control of the local property tax dollars to Sacramento. And, quite frankly, I don't think Sacramento wants to be responsible for the quality of the streets in Barstow or the number of cops in Los Angeles. They, too, will benefit from the ability to make us responsible for the decisions we make. But today, nobody is responsible for anything because everybody's got a stake in the decision.

Are you saying that a minority of the League's membership, but a significant minority, will prevent the full support of the League of any proposal that does not include constitutional protection, even though we don't know what the constitutional protection will include?

Let me say as a predication, not as a statement on behalf of the League, that it will be very difficult to build local government support for meaningful change in the way we fund local government if the upside is not made permanent. The only way to make the upside permanent is to have the voters approve it as a statute, which only the voters can amend, or put it in the Constitution. Those are the only two mechanisms I know of that can protect any deals from being revisited by the Legislature next year.

So the status quo is likely to continue and structural reform is not likely to happen as a result of legislative action on our state's budgetary crisis?

Structural reform can't happen by ordinary legislation. The VLF [vehicle license fee] is already in the constitution. The voters put it there 10 years ago or 15 years ago. Yet, the budget process has found a way to put us at jeopardy for that money. Why should we believe the Legislature? The history of promises made and then immediately broken, often by a Legislature populated by a completely different set of faces because of term limits, is replete. We can give you a dozen examples of promises the Legislature made about local government finance that have not been kept. And yet, we're supposed to engage in long-term capital financing of streets and services while the rules keep changing every two or three years.

If we can't fix this by legislation, then is the system truly broken?

There are many things that can't be fixed by legislation.

Let's turn to different subject, Michael. In an article you've written for your firm's newsletter, you raise the question of whether the acquisition, preservation and maintenance of open space resources confers special benefit on private property sufficient to support an assessment to fund these programs. You raise this question as a result of two court cases currently on appeal. Could you give us some background on that question and the cases before the Appeals Court?

Historically, local government could use an assessment-a charge that shows up on the property tax bills of property within an area benefited by a program or service-for almost any government service that benefited property in a meaningful way that is different from the way it benefits renters and others who don't own property. We got the inevitable backlash from the Howard Jarvis Taxpayers Association and others on their end of this debate in 1996 in the form of Proposition 218. Prop. 218 narrowed the definition of those special benefits which must be shown before we can use this form of financing.

Not unlike many initiative measures, Prop. 218 is not a paragon of clarity in its drafting and we have relatively little in the way of judicial interpretations, as well. So, a question has arisen: can you acquire open space-like the kinds of open space in the Santa Monica Mountains maintained by the Santa Monica Mountains Conservancy or comparable open space resources through the state-with money raised by assessments charged to property owners in the region? The special benefit stems from less traffic and less dense development, better air quality, recreational opportunities and the aesthetic beauty of green space. So, the question becomes: are those benefits enough to satisfy the special benefit requirement? Is the difference in the benefit to the person who owns the house from the person who might rent it or might visit it enough?

These questions led to two lawsuits. One involves the Mountains Recreation and Conservation Authority-a joint powers authority involving the Santa Monica Mountains Conservancy and some other local governments in Ventura and Los Angeles counties-which successfully passed two assessments to acquire regional open space resources. That trial court case has been decided in favor of the MRCA and is being appealed.

The other case involves the Silicon Valley Taxpayers Association versus the Santa Clara County Open Space Authority. That case in not scheduled to be decided until later this summer. It asks if we may ask property owners, recognizing that we will give them a ballot before we give them a bill, to make this revenue source available.

Stepping back a minute from the specifics of these cases and thinking about the bigger picture, if we are going to live with the many constraints on our ability to raise revenue, both at the state level and the local government level, then we need to find ways to allow those who benefit from programs to volunteer new revenue sources. So if the residents of the region served by the Santa Monica Mountains Conservancy will want to tax themselves, effectively, to make those programs available, they should be allowed to do so without a veto in the form of a state constitutional provision passed by the statewide electorate, which might or might not care about what goes on in the Santa Monica Mountain Conservancy's service area. So, broadly pursuing assessment power, but being careful to protect the right to vote granted to the affected property owners that Prop. 218 creates, is a pretty good political bargain. It lets the people put their money where their mouth is and make

choices about their own quality of life.

Does that mean the League of Cities is going to write an amicus brief in support of the Santa Monica Mountains Conservancy?

If they asked for that support, I would anticipate they would receive it. So the short answer is "yes."

Lastly, you have writen that "the law of public finance grows increasingly complex as new developments arise regularly." You cite a Prop. 218 case on water fees. Could you elaborate on the significance of that court case?

Actually that's a case that I'm handling currently-Richmond vs. Shasta Community Services District. The Shasta Community Services District serves 640 water customers in an unincorporated area of Shasta County east of Redding. What underlies this dispute is a failed real estate development project involving perhaps fifty lots. There's an irony in how small and ordinary the facts were that led to the case that will be the California Supreme Court's second opportunity to comment on Prop. 218.

But the questions in the case are: does a water connection charge, which is the charge a utility imposes on a newly developed unit for the connection to the system, constitute an assessment on which the property owner should be allowed to vote before it's imposed? Or, is it the kind of utility charge that is essentially voluntary in nature? If you want the service, you pay for it on the terms we make it available to you or you don't take the service.

Another way to look at that is: who bears the burden of new development? Does the development bear that burden or do the existing utility ratepayers bear that burden by having to provide the capital for new connections at their expense? If the development community is looking to the charitable intentions of existing utility customers to make possible the infrastructure on which development turns, they're kidding themselves. So the interest of the development industry in this case, in my view, is the same interest of local government-it needs to be possible for development to pay for the infrastructure it requires to make a profit.

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