

Propositions 62 and 218: The Law of Municipal Revenues

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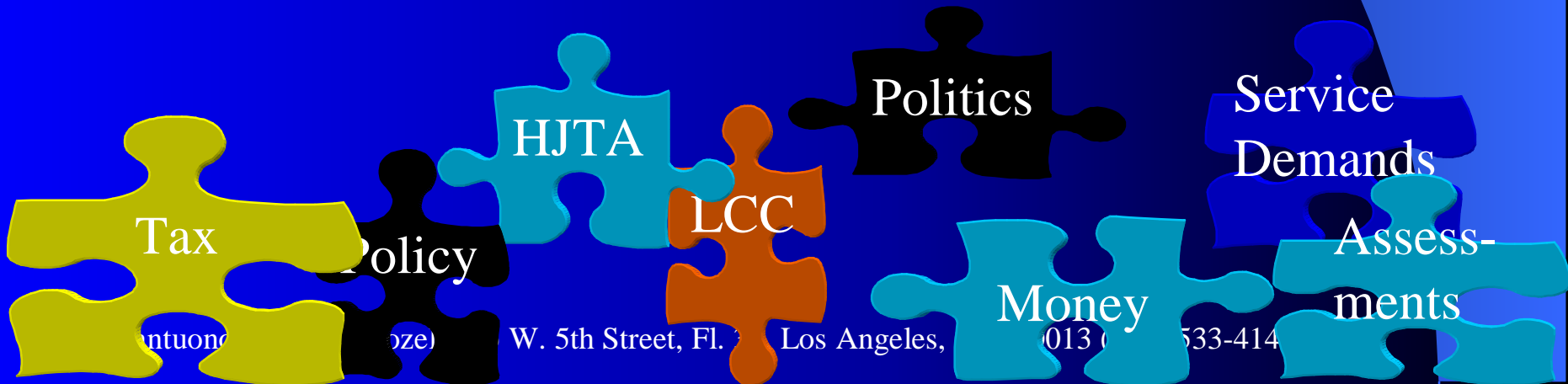
Introduction

- Propositions 62 and 218
- Overview
- Recent Developments



Prop. 62

- **HJTA v. La Habra** 3-year statute of CCP 338(a) applies but new cause of action with each payment
- Gov't Code 53724(b) requires 2/3 of General Law City Council to Propose General Tax



Prop. 218: Taxes

- Repeats Rules of Props. 13 & 62 Requiring Voter Approval of Taxes
- 2/3 Voter Approval for Special Taxes; Simple Majority for General Taxes
- Measure A / Measure B Strategy of Coleman v. County of Sta. Clara



Prop. 218: Taxes

- Mandatory Accountability Measures for Special Taxes and Bond Measures
- New Requirements for Annual Report on Mello-Roos Taxes (Gov't Code §53343.1)
- Claiming Ordinances
- Cities immune from county real property transfer taxes (85 AG 235)

Prop. 218: Special Taxes

HJTA v. Roseville

- Initiative repeal of UUT
- Competing measure to reduce and restrict to police, fire, parks and library
- City measure got more votes, but court found it a special tax that needed 2/3

Prop. 218: Transit Sales Taxes

- Props. 62 and 218 Require 2/3
- SCA 2 (Torlakson) would allow 55%
- Not likely to make it to the ballot this year

Prop. 13 and Property Taxes

- Huntington Beach, Special Retirement Tax
- 2% Annual Increases Under the Orange County Case
- Bunker v. County of Orange – Prop. 8 Appeals defaulted if not decided in a year

Prop. 218 & The Budget

- Does Triple Flip Violate Prop. 218?
 - *White v. State* allowed transfer of revenues among Orange County agencies without constituting “new” taxes requiring voter approval
 - Leg. Counsel concluded AB 1221 (sales for property tax swap) would require voter approval of “new” 1% sales tax

Prop. 218: Assessments

- Detailed new procedures; property owner approval required
- “Grandparenting” exceptions for certain pre-1996 assessments unless and until increased
- Standby fees treated as assessments and also need property owner approval, but grandfathered till increased

Prop. 218: Assessments

- **HJTA v. Riverside**
- Streetlights are “streets” for purposes of “grandparenting” exception
- **HJTA v. San Diego**
- 1989 Act BID’s not subject to Prop. 218

Prop. 218: Assessments

- **Not About Water**

- Weighted Ballots Constitutional
- Older Caselaw regarding special benefit applies
- Shifting Burden of Proof May Matter Less than we thought

Prop. 218: Open Space Assessments

- **Badtax v. MRCA**
 - Trial court win
- **Silicon Valley Taxpayers Ass'n v. Sta. Clara Co. Open Space Auth.**
 - Trial later this year
- **Does regional open space provide special benefit?**

Prop. 218: Assessments

- Richmond v. Shasta CSD
 - Are Connection Fees Assessments?

Prop. 218: Assessments

- Ballot Secrecy Now Required by Gov't Code Sections 53753(c) and (e)
- Ballots remain sealed until close of public hearing
- Tabulation cannot commence until close of public hearing
- Ballots are public records when tabulation begins

Prop. 218: Assessments

- Duty to Give Recorded Notice of Assessments and Mello-Roos Taxes

Prop. 218: Fees

- Property-Related Fees Require Majority Protest Proceeding and Mailed-Ballot Property-Owner Election
- **Apartment Assn v. LA:** If you can avoid the fee without selling property, it is not property related
- **HJTA v. LA:** Metered Fees are not covered by 218

Prop. 218: Fees

- **Salinas:** property-tax-roll fees based on physical characteristics of parcel is covered by 218
- **Roseville:** in lieu franchise fee transferred to general fund violated 218 because imposed as a separate fee (cf. rate component)

Prop. 218: Fees

- General Fund Transfers

- HJTA v. Fresno

- Voter-approved charter provisions provides for in-lieu of property tax
 - HJTA sees illegal use of fees
 - City sees voter-approved general tax
 - Trial later this summer

Prop. 218 Fees

- Richmond v. Shasta CSD
 - Grandfathering of fees
 - Development fee exemption
 - Fire service fees
- Pending in Cal. S.Ct.
 - Decision in 2003 ?

Prop. 218: Initiative Issues

- Extends Initiative to Taxes, Assessments and Fees Whether or Not City Acts by Ordinance
- Limitations inherent in the Initiative Power do apply (legislative matters only)
- No Special Elections on Low Signature Counts



Prop. 218: Initiative Issues

- Bighorn-Desert View Water Agency v. Beringson
 - Initiative repeal of water rates
 - Now pending in 4th DCA

Other Issues

- Voting Rights Act
 - Multi-lingual ballot materials
 - Preclearance in Kings, Merced, Monterey and Yuba Counties?
- Campaign Issues
 - Political Reform Act does not apply to protest proceedings
 - Reporting of “campaign” expenditures

League of California Cities Assistance

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- Amicus Support
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Conclusion

- Prop. 62 Is Becoming Clearer
- Most News on 218 Is Good
- Key Court Decision Due in 2003: **Shasta**
Connection Fee Case