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Update on Public Law No Local Public Funding of Political Campaigns

By Gary B. Bell

For a short time, it looked like public funding of political campaigns was permissible, provided local governments — including counties, cities, special districts, school districts — adopted an ordinance, resolution, or charter provision allowing it. Public moneys for this purpose were required to be held in a dedicated fund and made available to all qualified, voluntarily participating, candidates for an office without regard to incumbency or party. And local agencies were required to establish criteria for qualifying candidates.

In 2016, Governor Brown signed SB 1107 (Allen, D-Sta. Monica) to amend the Political Reform Act to add these provisions. It took effect January 1, 2017 and was quickly challenged in court. In *Howard Jarvis Taxpayers Association v. Newsom*, the Sacramento Court of Appeal recently affirmed a trial court's finding the bill was an improper amendment of the Act by the Legislature.

Approved by voters in 1974, the Act may be amended: (1) by a statute "to further its purposes" passed by a two-thirds vote of the Legislature, or (2) by the voters. While the Legislature has amended the Act some 200 times, the voters have done so only four times, including 1998's Proposition 73. That initiative adopted Government Code section 85300 to state: "No public officer shall expend and no candidate shall accept any public money for the purpose of seeking elective office." SB 1107 amended this section to allow public funding of political campaigns under rules it prescribed.

The purposes of Act as stated in 1974 do not directly address public funding of campaigns. However, courts are not limited to the expressly stated purposes and may rely on historical context, ballot arguments, and

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Colantuono Appointed to Appellate Advisory Commission

The Judicial Council of California has appointed Michael G. Colantuono to its appellate advisory commission.

The Judicial Council is the governing body of California's judicial branch. The Council works through subcommittees, each of which oversees a number of advisory bodies which include judges, attorneys, court staff, court uses, and court partners. The appellate advisory "committee is charged with making recommendations to the council for improving the administration of justice in appellate proceedings." "The committee's goal is to provide a forum with broad representative of appellate justices, administrators, and practitioners to make recommendations to the Judicial Council concerning the appellate courts and appellate practice and procedure."

Congratulations, Michael!

Sales Tax Law Develops in the Legislature

By Michael G. Colantuono

With the mid-October deadline for Governor Newsom to sign or veto 2019's legislation, we have a crop of new statutes affecting sales and use taxes.

LOCAL SALES TAXES: The Revenue & Taxation Code caps all local transactions and use ("sales") taxes at 2 percent, whether imposed by a County, a County transportation agency, or a City. This has created a race to the ballot box in the Bay Area and Los Angeles County. Some cities are already at the cap. Several statutes sought to lift the cap for particular local governments. 2017's SB 703 (Skinner, D-Berkeley) lifted it for Alameda and Santa Clara Counties and Santa Fe Springs. 2018's SB 152 (McGuire, D-Healdsburg) lifted it in Sonoma County. But Governor Newsom vetoed AB 618 (Stone, D-Sta. Cruz) that would have raised the cap for Scotts Valley and Emeryville in July. SB 732 (Allen, D-Sta. Monica), to allow the South Coast Air Quality Management District to impose a TUT, did not make it out of committee in May. However, the Governor did sign AB 723 (Quirk-Silva, D-Fullerton) lifting the cap for Alameda County and the cities within it and for cities in Santa Cruz County. More such proposals are likely, perhaps, to exempt all county transportation taxes from the measure, lifting the cap by 0.5 percent statewide.

TAX SITUS: Sales tax situs agreements were also debated. Under such agreements, a city or county rebates sales tax to a business to persuade it to establish a sales office there, reassigning sales taxes from other communities. The Legislature approved SB 531 (Glazer, D-Contra Costa) to ban such agreements, with the League of California Cities' support. Governor Newsom, however, vetoed it, stating a wish to preserve this economic development tool. His veto message noted he signed AB 485 (Medina, D-Riverside), a labor-backed (and League-opposed) bill requiring disclosure of wage,

hour and working conditions in warehouse distribution centers, which the Governor described as a "transparency" measure.

Cities considering local sales taxes should evaluate whether there is room under the 2 percent cap for a tax, whether the County or its agencies may propose such taxes, and decide when and whether to go the ballot and whether legislation will be needed. Those interested in sales tax situs agreements may wish to pursue them soon, as the Legislature might persuade the Governor to sign a ban or override his veto of SB 531.

Finance law develops in the courts, the Legislature, and at the ballot box. As always, we will keep you posted!

For more information on this subject, contact Michael at MColantuono@chwlaw.us or (530) 432-7359.

Public Campaign Funding (cont.)

subsequent amendments to discern voters' purpose. A primary purpose of 1998's Proposition 73 was to prohibit public financing of campaigns. By allowing it, SB 1107 did not further this purpose, the Court of Appeal found, and the bill was therefore invalid.

Proponents of public campaign funding will need to seek voter approval. Local governments that took advantage of SB 1107 may wish to evaluate whether and what amendments are needed to bring their campaign finance regulations into compliance with the Political Reform Act.

For more information on this subject, contact Gary at GBell@chwlaw.us or (530) 208-5346.

Local Agencies Will Soon Face New “Fair” Districting Restrictions

By Pamela K. Graham

Governor Newsom has given a mixed verdict on two bills affecting local governments which elect their governing bodies by districts. He signed AB 849 (Bonta, D-Alameda) and vetoed SB 139 (Allen, D-Sta. Monica), stating the latter should be considered in the budget process. SB 139 would have required 26 counties with populations exceeding 250,000 to create independent redistricting commissions and might have required the State to fund that mandate. Effective January 1st, AB 849, the “Fair Inclusive Redistricting for Municipalities and Political Subdivisions Act” or FAIR MAPS Act, restricts how cities and counties draw districts, imposing procedural and substantive rules.

The U.S. Supreme Court’s recent “punt” in *Rucho v. Common Cause* treating partisan gerrymandering as political issues, not legal questions for federal courts, makes gerrymandering an issue for State legislatures and courts. California’s congressional and state legislative districts are drawn by bipartisan commission, which supporters characterize as “the gold standard” for gerrymandering prevention.

Modeled on State redistricting requirements, AB 849 mandates how cities, counties, schools and special districts draw electoral boundaries, requiring they follow criteria that “respect the geographic integrity of local neighborhoods and communities of interest.” Governing bodies must adopt new district boundaries after each federal census that are substantially equal in population, compliant with federal and state law, and prioritize keeping neighborhoods and diverse communities in common districts. Public notice and comment requirements are extensive, requiring at least two public hearings before final map adoption. Absent strict compliance with FAIR MAPS’ deadlines, an agency’s legal counsel must and, if she does not, any interested resident

may, seek a court order setting fair boundaries. Opponents of AB 849, including the League of California Cities and California Special District Association, criticized it as creating unworkable, highly prescriptive meeting requirements, notification requirements exceeding those of the Brown Act, and as reducing local control.

As to SB 139’s proposal for independent districting commissions, this idea may surface in next year’s budget negotiations. A veto override is possible, too, given that the bill passed both houses of the Legislature with more than 2/3 support, largely along partisan lines. In the meantime, local commissions continue in San Diego and Los Angeles.

These reforms will significantly change how local governments draw district lines following the 2020 census. We will continue to keep you apprised of new legislation and developments under the federal and state Voting Rights Act in the courts.

For more information on this subject, contact Pamela at PGraham@chwlaw.us or (213) 542-5702.

Police Records Webinars

CH&W is offering webinars on SB 1421 and AB 748, recent statutes granting greater public access to police personnel records. A webinar allows police management and counsel advice and guidance regarding responses to Public Records Act requests from the media, activists, and litigants. There will opportunity for questions and answers in an attorney-client-privileged setting. This interactive training takes about 2 hours, depending on questions from participants. The fee is \$1,000 per agency. To schedule a webinar for your agency, contact Bill Weech at BWeech@chwlaw.us or (213) 542-5700.



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