

KENNETH  
EMANUELS

AND ASSOCIATES

LEGISLATIVE ADVOCACY  
GOVERNMENT RELATIONS

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MEMO

Date: September 17, 1990

To: Members of the Budget and Finance Committee and the Law and Legislation Committee, City of Sacramento

From: Ken Emanuels

Re: Impact of Proposition 136 on Charter Cities.  
November 6, 1990 Statewide Ballot.

Introduction

Proposition 136 on the November 6, 1990 ballot is sponsored by Joel Fox of the Howard Jarvis Taxpayers Association and Richard Gann of Paul Gann's Citizens Committee. It amends several important provisions of Article 13A of the California Constitution, the original Proposition 13. The sponsors claim that Proposition 136 simply carries out the intent of Howard Jarvis and Paul Gann.

Proposition 136 is a constitutional amendment relating to both state and local taxing authority. This summary memorandum will only address the implications of Proposition 136 for charter cities.

Most political observers believe that the voters will follow past voting patterns and overwhelmingly approve Proposition 136, as they did Proposition 13 by 64% (1978) and Proposition 62 by 58% (1986), a very similar measure which was an initiative statute rather than an initiative constitutional amendment.

However, the California Poll conducted by Mervin Field and released on September 7 indicates that voters after being informed of the contents of Proposition 136 oppose it by 44% and support it by only 37%.

Background

In City and County of San Francisco v. Farrell (1982), the California Supreme Court interpreted Proposition 13 as only requiring a 2/3 vote on local special taxes, which are those tax increases designated for a specific purpose. The court said that for other tax increases, only action by the governing body was necessary, whether a general law city or charter city.

The decision resulting from Farrell prompted Paul Gann to sponsor Proposition 62, an initiative statute which was approved by the voters in 1986. It purported to require all local government general tax increases to be approved by a majority of the voters of the jurisdiction and restated Proposition 13's requirement for a two-thirds vote for special taxes imposed by local taxing jurisdictions.

However, the requirements of Proposition 62 were subsequently found not to apply to charter cities, which may enact a general tax by a majority vote of the council and without a popular vote. In two recent decisions, the California courts have held that Proposition 62, as an initiative statute, does not apply to charter cities and that charter city home rule taxing authority cannot be restricted by statute, whether adopted as an initiative or by the Legislature.

Provisions of Proposition 136 Relating to Charter Cities

- Majority Vote for Charter Cities.

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 This measure establishes a constitutional requirement that general tax increases imposed by either charter cities or other local governments be approved by a majority of the voters. For charter cities, this measure prohibits the imposition of new or higher general taxes without voter approval.

- Disaster Relief Provisions.

In order to raise funds for disaster relief, this measure allows certain requirements to be suspended for up to two years. Specifically, the governing body of a local government may, with a 2/3 vote, suspend the vote requirements relating to local government tax proposals.

- Definition of "General" and "Special Taxes".

"General taxes" are defined as taxes levied for the General Fund to be used for general governmental purposes. "Special taxes" are defined as taxes levied for a specific purpose or deposited in a fund other than the General Fund.

- Effective Date.

The proposition provides that it shall become effective on November 6, 1990.

Open Issues to be Settled by Future Constitutional Amendments or Court Interpretation.

- Real property documentary transfer tax. Increases prohibited or entire tax repealed?

The California Taxpayers Association argues that the provisions of Proposition 136 merely "plug a loophole" by more clearly stating that new ad valorem or sales taxes on real property (i.e. local documentary transfer tax) are prohibited. CalTax suggests that this is necessary because an Alameda County Superior Court concluded in Cohn v. City of Oakland (1988) that Oakland's documentary transfer tax is not limited by Proposition 13 because it is a general and not a special tax. According to CalTax, the restriction on local documentary transfer taxes is limited to newly proposed taxes and does not affect existing taxes.

However, a joint research report issued by the Senate and Assembly Revenue and Taxation Committees (August 15, 1990) suggests that the inappropriate location of the adjective "new" causes Proposition 136 to repeal the local documentary transfer tax altogether. Apparently, the repeal of the documentary transfer tax is not intended by the drafters.