CLIENT NEWS BRIEF

California Court of Appeals Raises Questions Regarding Mello-Roos Landowner Voting

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Since its enactment, local government has turned to the flexibility of the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311, et seq., the "Mello-Roos law") to provide a vehicle for financing needed infrastructure, through the levying of a special tax to support issuance of bonds. However, a recent California appellate court opinion, *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 256 (*Shapiro*), casts some doubt as to the constitutionality of landowner elections authorizing the formation of a Mello-Roos district.

Proposition 13, enacted in 1978, amended the California Constitution to place limits on the taxing power of local and state governments. It allows cities, counties and special districts to impose a special tax only if at least a two-thirds affirming vote is received from the qualified electors. Proposition 218, enacted in 1996, further provides that, "(n)o local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." Mello-Roos financing, through what are commonly called community facilities districts (CFDs), generally requires a two-thirds vote of the qualified electorate. However, under Government Code section 53326, subdivision (c), the electorate may be composed of only landowners within the CFD, each with one vote per acre held, to the extent that the special tax to be levied will not be levied on any residential property within the same tax year as the election.

In *Shapiro*, the City of San Diego sought to finance the expansion of its Convention Center by passing an ordinance to create a special tax district that covered the entire city. While not relying on the Mello-Roos law directly, the City modeled the special tax district and its corresponding formation procedures on the Mello-Roos law. In the election, the City sought approval of the special tax only from the owners of real property upon which a hotel was located, and the lessees of the hotels, rather than a broader spectrum of voters. The election was challenged on the grounds that it was unconstitutional because the election should have been opened to all registered voters. The appellate court ruled that the election was invalid under the California Constitution because the hotel landowners and lessees were not "qualified electors" of the City, and they did not comprise a proper "electorate." The appellate court held that the Constitution mandated that natural persons registered to vote within the special district the City created comprised the electorate, not hotel landowners and their lessees.

The appellate court made it clear that it was not deciding the validity of landowner voting under the Mello-Roos law, although the City incorporated components of the Mello-Roos law into its charter and ordinances. However, in arriving at its decision related to the financing provisions of the City's charter and related financing ordinance, the court concluded that "(t)here is nothing in either the text or the constitutional history of Proposition 13 that suggests that voters intended for local governments to be able to exclude large numbers of registered voters from voting in a special tax election by limiting who would be deemed 'qualified electors' for purposes of the election."


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This decision may foreshadow future constitutional challenges to landowner voting under the Mello-Roos law. Local agencies should take this into consideration in future financings implicating the Mello-Roos law and involving initial formation of an assessment district by landowner vote, and should consult their legal counsel regarding the best approach to structure and validate any such financing.

If you have any questions regarding bonds or other financing vehicles, please contact one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.