

Proposition 26: One Perspective – General Counsel

Presented By:

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OVERVIEW

- Initiative Purpose: Overturn *Sinclair Paint Co. V. State Bd. of Equalization*;
- What it does in a nutshell: redefines all fees as taxes with a handful of exceptions, and reinforces the notion that governmental agencies have the burden establishing that a fee is not a tax; and
- Applies to both State and Local Governmental Agencies.

SECTION 3 OF PROPOSITION 26

Addition to Section 1 of Article XIII C of the California Constitution:

- (e) As used in this article, “tax” means any levy, charge, or exaction of any kind imposed by a local government, except the following:

- 1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

- 2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

- 3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

- 4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

- 5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

- 6) A charge imposed as a condition of property development.

- 7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Issues encountered since passage:

- Questions regarding what constitutes imposition of a fee
- Low-income rates
- Non-property related fees

Thank you!

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