

New Case Invalidates Landowner Vote for Taxes

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A California city cannot limit the qualified voters in a tax election to include only those persons who would pay the city's proposed tax and exclude registered voters. In a recent decision, the California Court of Appeal held that the State Constitution requires a city's registered voters to approve a city's proposed special tax and that the city cannot define the qualified voters to consist solely of landowners and lessees who would be subject to the tax.

In *San Diego v. Shapiro*, the City of San Diego adopted an ordinance pursuant to its charter city authority to establish a convention center facilities district and to impose a special tax on hotel properties within the City. The City modeled its ordinance on California's Mello-Roos Community Facilities District Act, and defined the qualified voters as hotel property owners and lessees, because only the hotels would be subject to the tax. Over 92 percent of the hotel owners and lessees approved the tax and the City initiated a legal action to validate the tax.

The trial court upheld the City's decision to exclude registered voters from the tax election. The court of appeal considered whether Propositions 13 and 218, which amended the California Constitution to require voter approval of taxes, require registered voters to approve the tax or whether the City could limit the qualified voters to just the landowners and lessees paying the tax. The City argued that the State Constitution does not expressly define the qualified voters for a tax; however, the Legislature defined qualified voters to include landowners in the Mello-Roos Community Facilities District Act. The Court of Appeal rejected the City's argument, reasoning that the text and history of Propositions 13 and 218 clearly show California voters intended to limit the taxing powers of local government. The court was unwilling to defer to the Mello-Roos Act as legal authority to provide local governments more flexibility in complying with the State's constitutional requirement to obtain voter approval for taxes. The court held that San Diego's tax was invalid because the City's registered voters did not approve it.

The *San Diego* case must be considered by local governments proposing to levy special taxes based on a landowner vote, which is a common practice for community facilities districts. California's Mello-Roos Community Facilities District Act authorizes landowner votes under two circumstances. First, as discussed in the *San Diego* case, landowners may approve a tax when the tax will not be levied on residential property. The *San Diego* decision finds this invalid. Second, landowners may approve a tax when less than twelve registered voters reside in the proposed district. The court expressly declined to address this situation, but the court's analysis raises questions about the validity of such a vote.

For advice concerning the effect of this decision or election policies in general, please contact Trisha Ortiz, or any member of the Firm's Public Law Group.