

Recent Cases Affecting School Facilities: Parcel Taxes and Bond Expenditures



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Borikas v. Alameda USD: Parcel Taxes

Background: Qualified Special Taxes

- A special tax authorized by Section 50079 of the Government Code.
 - The tax is authorized for a specific purpose – typically used for operations, programs and salaries.
 - The tax may not vary based on the value of land (i.e. not an “ad valorem” tax).
 - Must be approved by a 2/3rds vote.
- Important Limitations:
 - The tax must be applied “uniformly to all taxpayers or real property within the District.”
 - Limited statutory exceptions: (i) senior citizens, (ii) persons on disability.
 - Term is unlimited.

Borikas v. Alameda USD: Parcel Taxes

Facts: Voters in Alameda Unified School District approved Measure H, a temporary parcel tax.

- Measure H imposed parcel tax based on property classification.
 - \$120 flat tax on residential properties and non-residential properties of 2,000 sq.ft. or smaller.
 - \$0.15/sq.ft. tax on non-residential parcels larger than 2,000 sq.ft. up to a limit of \$9,500.00 per parcel.
- Justification: the tax is levied “uniformly” within each category within equal protection principles.

Borikas v. Alameda USD: Parcel Taxes

Court holding: “Uniformly” means same tax on each parcel.

- The authority to levy a special tax is a limited authority granted by statute, not the Constitution.
- School districts have not been delegated broad taxing authority, bounded only by equal protection principles.
- There is no authority for school districts to create classifications of taxpayers beyond those present in the statute (senior citizens/disabled).

WHAT NOW?

- Existing Borikas-type Parcel Taxes
 - Not subject to challenge – passive validation 60 days after election results (Gov. Code § 50077.5)
 - Severability of defective provisions.
 - Borikas: court permitted the \$120 per parcel tax on all parcels to remain.
- New Parcel Taxes
 - Borikas is binding law—progressive qualified special taxes are illegal.

Taxpayers for Accountable School Bond Spending v. San Diego USD: Bond Expenditures

Background: Prop 39 GO Bonds

- Proposition 39 approved in 2000
 - Acquisition/improvement/equipping of real property.
 - Any regularly scheduled local/general election.
 - 55% voter approval.
 - Accountability safeguards: (1) tax rate limitations, (2) Citizens' Oversight Committee, (3) Annual performance/financial audits, (4) **"A list of the specific school facilities projects to be funded..."** (California Constitution, Article XIII A).
 - Foothill Community College District v. Emerich (2007): specificity requirement satisfied by a bond project list that described **the types of projects to be undertaken.**

**Taxpayers for Accountable School Bond Spending v.
San Diego USD: Bond Expenditures**

Facts: Taxpayer waste action challenging the use of bond proceeds to fund stadium lights at Hoover High School.

- Project to be funded with proceeds from Proposition S.
- Prop S project list broken into three parts:
 - Part One – general statement of projects that apply to all schools in the District.
 - Part Two – very detailed list of projects at individual schools.
 - Hoover High School: upgrade bleachers and press box, and upgrade fields for accessibility compliance
 - Part Three – incidentals clause.

**Taxpayers for Accountable School Bond Spending v.
San Diego USD: Bond Expenditures**

Court Holding: Stadium Lights for Hoover High not on Prop S project list—may not be funded with bond proceeds.

- Narrowly interpreted the project list.
- Not justified under Part One—cannot “reasonably assert” that stadium lighting is a safety or accessibility upgrade.
- Not specifically listed under Part Two for Hoover High.
 - Not an upgrade to the bleachers or press box (plain meaning) and not an “accessibility” upgrade.
- Incidentals under Part Three are not individually authorized projects—only authorized to extent “necessary and incidental” to projects already listed in Part One or Part Two.

WHAT NOW?

- Petition for review in Supreme Court denied - now binding law
 - Enforcement?
- Project Lists—Pre-Authorization.
 - Project-Type List vs. Enumerated List.
 - Foothill De-Anza and the Attorney General Opinion
- Project Planning—Post-Authorization.
 - Early board approval by resolution that clearly identifies borderline projects as funded by bond proceeds.
 - Make findings supported by facts showing why the project is on the list.
 - Validation authorized and can protect the project – “the bonds and the ordering of the improvement or acquisition...” (Ed. Code Sec. 15110)