[Bond Case Briefs]

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[City of San Jose v. Sharma]

Court of Appeal, Third District, California - November 3, 2016 - Cal.Rptr.3d - 2016 WL 6520123

City petitioned for writ of mandate to compel county to give city tax increment revenue from county's ad valorem tax on real property. County cross-petitioned for writ of mandate.

The Superior Court ruled that city was entitled to the tax increment portion of the tax proceeds to put toward the winding down of city's former redevelopment agency, but that tax increment revenue not needed to pay bond debt of the former redevelopment agency was subject to a passthrough agreement requiring the revenue to be passed through to the county. City and county appealed.

The Court of Appeal held that:

- Tax increment revenue from county's ad valorem tax on real property had to be used to pay obligations of city's former redevelopment agency, and
- The amount necessary to service former redevelopment agency's bond debt could be deducted from the amount that passed through to the county.

Under the constitutional provision stating that tax increment "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency," tax increment revenue from a county's ad valorem tax on real property had to be used to pay the obligations of a city's former redevelopment agency, even though the tax was a special tax to finance county's participation in the Public Employees Retirement System (PERS), where the tax increment portion of the special tax had been, for 60 years, a tax on real property within the former redevelopment agency's project area to finance redevelopment in that area.

The constitutional provision stating that tax increment "shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency" prevails over the statute providing that "revenues from any special tax shall be used only for the purpose or service for which it was imposed," since the constitutional provision applies to all ad valorem taxes on real property, without regard to whether the tax is a general or special tax.

City's use of tax increment revenue associated with county's ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not constitute an unconstitutional gift of public funds, since the tax increment revenue never belonged to the county, and since redevelopment in the city was a public purpose of general interest to the county, where the tax increment portion of the retirement levy was collected within the city's former redevelopment agency's project area, by law, for the purpose of paying the obligations of the redevelopment agency.

City's use of tax increment revenue associated with county's ad valorem tax on real property to pay the obligations of city's former redevelopment agency did not violate county employees' vested contractual rights to continuation of retirement benefits or of the funding for such benefits, even though the tax was a special tax to finance county's participation in the Public Employees Retirement System (PERS), since distribution of the tax increment portion of the retirement levy did not prevent the county from paying the required amount to PERS for the county employees' benefits.

Under the statute authorizing deduction of a trust fund deficiency from payment of passthrough funds in the "waterfall" payment schedule for the benefit of the holders of former redevelopment agency enforceable obligations, the amount necessary to service a former redevelopment agency's bond debt could be deducted from the amount that passed through to the county under a contractual passthrough agreement between the county and the former redevelopment agency, and thus tax increment revenue that would have passed through to a county could be used to pay the former redevelopment agency's enforceable obligations listed in the Recognized Obligation Payment Schedule (ROPS), where the passthrough agreement made payment of passthrough funds to the county subordinate to the former redevelopment agency's "debt service payments."

Under the statute authorizing deduction of "funds for servicing bond debt" from payment of passthrough funds in the "waterfall" payment schedule for the benefit of the holders of former redevelopment agency enforceable obligations, the amount that could be deducted from the ad valorem tax revenue proceeds that passed to a county under a passthrough agreement was limited to the amount necessary to service a former redevelopment agency's bond debt.