

# **Bond Case Briefs**

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## **TAX - CALIFORNIA**

### **Johnson v. County of Mendocino**

**Court of Appeal, First District, Division 2, California - August 8, 2018 - Cal.Rptr.3d - 2018 WL 3750338 - 18 Cal. Daily Op. Serv. 7881**

Objectors brought declaratory judgment action against county, challenging validity of county ballot measure imposing tax on commercial cannabis businesses.

The Superior Court dismissed action. Objectors appealed.

The Court of Appeal held that:

- Tax imposed was a general tax rather than a special tax that would require two-thirds majority, and
- County was not required to prove that so-called tax was in fact a tax rather than a fee.

Tax imposed on commercial cannabis businesses by county pursuant to ballot measure was a general tax rather than a special tax, and therefore simple rather than two-thirds majority was required for approval of tax, even though ballot measure listed certain types of services for which tax might be allocated; funds from tax were not earmarked or dedicated to any specific project but rather were described as being for support of general county services, and measure did not in any way limit county's ability to spend proceeds collected under tax.

Pursuant to Proposition 26, which had amended constitution to define a tax as opposed to a fee, county was not required to prove that so-called tax, which was imposed on commercial cannabis businesses pursuant to ballot measure, was in fact a tax rather than a fee disguised as a tax; Proposition 26 was concerned with requiring government to prove that a fee was not in fact a tax, rather than the other way around.