

The California Supreme Court (and Court of Appeal) – August 12, 2022

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The California Supreme Court issued the following decision on Thursday:

Zolly v. City of Oakland, No. S262634: In a case involving the California Constitution's taxpayer approval requirements for local taxes, the California Supreme Court held the City of Oakland had not met its burden to establish as a matter of law, on demurrer, that an exemption to the statute applied.

In 2012, the City of Oakland approved two contracts granting private waste haulers the right to "transact business, provide services, use the public street and/or other public places, and to operate a public utility" for waste collection services. As "consideration for the special franchise right," the waste haulers agreed to pay certain fees to Oakland. Plaintiffs sued, claiming the franchise fees ran afoul of the California Constitution's requirement that local taxes be approved by a vote of taxpayers. (See Cal. Const., art. XIII C.)

The Court began by holding that plaintiffs, who owned multi-family properties and paid their tenants' waste collection bills, had adequately pled their standing to pursue the lawsuit. Under California Code of Civil Procedure section 367, plaintiffs had alleged an economic injury caused by the challenged fees, as they claimed the fees had caused their waste collection rates to increase every month.

Next, the Court rejected Oakland's argument that the fees did not constitute a "tax" within the meaning of article XIII C. Specifically, the Court rejected the notion that the fees were not "taxes" imposed by the local government because they were the product of voluntary contractual negotiations. Instead, the Court agreed with plaintiffs that it was sufficient that Oakland had established the fees by exercising its legal authority to execute the franchise agreements and then enacting those charges into law by ordinance. The Court also rejected Oakland's contention that the fees were not "imposed" on customers because the service provider may use these charges as but "one cost factor among many in setting rates to customers." Rather, "[i]t is sufficient that Oakland, pursuant to its

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own legal authority, enacted these franchise fee agreements into law, thereby imposing these fees on the waste haulers that are indisputably obligated to pay them. Any uncertainty as to whether any portion of customers' bills is actually attributable to the fees would be a 'factual issue' that 'cannot be resolved on demurrer.'"

Finally, the Court held that Oakland had failed to demonstrate on demurrer that the fees fell within an exemption **from article XIII C's voter approval requirements, applicable to** "charge[s] imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property." In this regard, the Court rejected two separate arguments advanced by Oakland.

The Court first rejected Oakland's argument that because the franchise included both the right to use government property and the right to profit from that use, the franchise itself was a form of "local government property." The Court questioned the notion that the term "property" in this context could mean anything other than physical objects such as government streets and land. Further, even if the definition was so broad, the interest would not be of the government, but of the franchisee, and thus could not be considered "local government property." Thus, the fees were not for the "purchase of" any "local government property."

The Court also rejected Oakland's argument that its fees qualified as charges "imposed for ... use of local government property" because the right to use the public street and/or other public places was part of the interest conveyed by Oakland to the waste haulers. Oakland had failed to demonstrate as a matter of law that the waste haulers paid the challenged fees in exchange for a "specific use of government property that they would not have enjoyed had they not paid the fee." Thus, "Oakland has yet to demonstrate that the waste management providers gained any 'use of local government property' in exchange for their payment of the challenged fees."

In a concurring opinion joined by Justice Corrigan, Justice Jenkins agreed with the majority opinion, but viewed the discussion of whether the term "local government property" included more than "physical property" as unnecessary.

The full opinion, including the concurring opinion, is available [here](#).