The Metropolis, Home Rule, and the Special District

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“People, people everywhere, and the smog begins to stink!” This rude paraphrase of Coleridge’s famous line is real to the people of California, and air pollution is only one of the many (though perhaps the more dramatic) physical problems which result from the population explosion that California is experiencing. Unfortunately, the difficulties that arise in solving these physical problems frequently are compounded by the fragmentation of local government. Smog recognizes no governmental boundaries, nor does water pollution, nor urban blight, nor crime. Yet the man-made boundary lines of local governments are as real in the eyes of the law as a chain of mountains in the eyes of the human beholder. The result—the metropolis¹ and the metropolitan problems. It is with one type of governmental solution to metropolitan problems that the present discussion is concerned.

**Home Rule**

Before examining the characteristics of a metropolitan area, brief consideration should be given to “Home Rule” and to the division of government between the traditional units of local government—cities and

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¹ A metropolis or metropolitan area may be defined as a central city surrounded by populated areas, incorporated or unincorporated, which do not come under the governmental control of the central city, but which with the central city form a “social, economic, and sometimes physical unit.” Studenski, *Government of Metropolitan Areas*, National Municipal League (1930), p. 7. The U.S. Bureau of the Census defines a “standard metropolitan area” as a county or group of contiguous counties (except in New England) which contains at least one city of 50,000 inhabitants. In addition to the county or counties, containing such a city, or cities, contiguous counties are included if according to certain criteria they are essentially metropolitan in character and sufficiently integrated with the central city. *Statistical Abstract of the United States*, 1955, p. 18. California possesses eight such areas, two of which are San Francisco–Oakland and San Jose. *Statistical supra*, at 18–19.
counties. The desire for independence and freedom in local government gives rise to "Home Rule" sentiments within the local area. "Home Rule" as used here means the right of the populace of a local area to create (within limits laid down by the state constitution and/or state statutes) their own local governments, define its powers, describe the boundaries within which it is to exist, and prevent interference by the state government with what they have created. This right has been embodied in the constitution of California, and, in this state, the problems thus posed are constitutional and not statutory. Apparently these provisions were designed as protection against the state legislature, but more recently they have been used to preserve local identity against an encroaching city or prevent a change in local zoning by a county.

While cities may turn over to the county certain of their municipal functions when the county is authorized to perform such functions, the fact remains that these units are independent in the view of the law. As to functions not surrendered by the city and as to matters involving regulation within the city, the county cannot operate within the limits of the city. By the same token the city is generally unable to regulate conduct beyond its boundaries. When various independent special districts

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2 CAl. CONST. art. XI, § 1 recognizes the counties as legal subdivisions of the state. It has been held that counties are not municipal corporations though they are public corporations, People v. McFadden, 81 Cal. 489, 22 Pac. 851 (1889), and more recently that they are not corporations at all, but possible quasi corporations, Estate of Miller, 5 Cal. 2d 588, 55 P.2d 491 (1936).

3 CAl. CONST. art. XI, §§ 6, 11, 12, 13. These sections were part of the constitution as adopted in 1879 and, while amended in certain particulars, remain substantially the same. A provision restricting the legislature in specific instances and generally in passing local and special laws is article VI, § 25.

4 At one point in the Constitutional Convention discussion of § 6 of article XI it was suggested that the clause prohibiting special creation of "corporations for municipal purposes" was unnecessary because the subsequent provision requiring a general incorporation law for cities was sufficient. Debates and Proceedings of the Constitutional Convention of the State of California, Vol. II, p. 1050 (1878). However, the clause appears in the final draft as adopted. Debates; supra Vol. III, p. 516.

5 E.g., the formation of Fremont in Alameda County (encroaching city); Los Altos Hills in Santa Clara County (change in county zoning). Palo Alto Times, Apr. 2, 1956, p. 18.

6 CAl. CONST. art. XI, § 6, last sentence; art. XI, § 71/2 (41/2) (last part).

7 According to one writer the cases are in confusion on this point, but he suggests the better view is that the county should not be permitted to regulate within cities. Peppin, Municipal Home Rule in California, 32 Cal. L. Rev. 341, 376–379 (1944). An examination of the cases cited by Mr. Peppin supports his conclusion, but in 1953 a district court of appeal held that a county zoning ordinance could not continue to be operative for land annexed to a city even though the city had no zoning ordinance for the land. City of South San Francisco v. Berry, 120 Cal. App. 2d 252, 260 P.2d 1045 (1953). This case suggests that the restrictive view of county power, which is in line with the more recent cases discussed by Mr. Peppin, is to prevail.

8 City of Oakland v. Brock, 8 Cal. 2d 639, 67 P.2d 344 (1937). The court noted that there are exceptions but held that inspection of slaughter houses in adjacent cities is not within the
performing nominally "city" functions for urbanized but unincorporated areas are added to the structure, confusion is compounded.9

**The Metropolitan Area**

This brings us to the metropolitan area for it is the fragmentation of local government due to theories of independence and the desire for "Home Rule" that causes the development of a metropolis. If the central city could easily expand its boundaries as required by population growth on its fringes, or if the county could carry on all the functions of city government without regard to the boundary lines of cities (or of other counties), there would be no metropolitan area. The physical conditions which give rise to demands for governmental solution would be within the competence of a government which could proceed to deal with them.10 On this basis metropolitan problems are caused by the relationships between local governments and are only incidentally related to the problem of state-local relationships. The state-local relationship becomes involved when there is an appeal to the state to coerce a recalcitrant city which is causing difficulty to its neighbors or when some new grant of authority is thought to be needed to create a new local-local arrangement. Since the physical problem may be characterized as local—applying only to the metropolitan area—and difficult in solution primarily because of the relationship of city to city, city to county, and county to county, any act by the state in providing machinery for solution raises the questions of state interference with "Home Rule."

**The Special District**

The special district, as that term is used here, contemplates a form of governmental organization which is independent of other governments; it is a body, responsible directly to the people, or to member cities, counties, or possibly even states, with power to initiate and complete projects, provide for financing, and otherwise behave as much like a government as is necessary to accomplish its purposes. When a problem arises which is viewed as a local rather than a state matter, yet which is metropolitan in scope, the use of the special district to provide machinery for solution has exceptions. See also Peppin, supra note 7, at 348 n.17 which indicates that the exceptional situation results when the external regulation is incidental to granting a permit to engage in an activity within the city.

9 The *Annual Report of Financial Transactions Concerning Special Districts of California* for 1952-53 prepared by the State Controller lists 64 different authorizations for districts covering 37 service groupings. At that time there were 1322 such districts in the state. *Annual Report*, supra pp. vi, vii, and xi.

10 For a delineation and discussion of some of these physical problems which have become metropolitan in scope see Bollens, *The Problem of Government in the San Francisco Bay Region*, Bureau of Public Administration University of California Berkeley (1948). Various governmental solutions are also discussed.
strong appeal: It is familiar; it has been used successfully to solve similar problems (or at least it appears to have been successful); it does not appear to be a politically violent method of achieving area control for it does not appear to involve the giving up of more than one function by the cities and counties; and it does not mean that one city is taking over another, nor is the county interfering with a city or another county. As a matter of practical politics all these arguments can be made, but it is the thesis of this discussion that the use of the special district to solve metropolitan government problems involves serious questions about the survival of the concept of "Home Rule." Perhaps the concept is no longer of value, but its destruction, if that is to be, ought to come as a part of a redetermination of the framework of local government rather than by a process of expediency.

Methods of Formation of Special Districts

There are three basic methods for the formation of special districts:
1) By direct action of the state legislature;12
2) Under a statute authorizing the formation of such districts:
   a) By election following notice of hearing, hearing before, and approval by a local administrative or legislative body (ordinarily the county Board of Supervisors).13
   b) By election without hearing after approval by a local administrative or legislative body.14

The restrictions on the use of any of these methods contained in the United States Constitution are very slight. Apparently the only due process requirement imposed by the fourteenth amendment is that there be a hearing on the matter of taxation if the method of taxation used is to assess the cost of the project against the land benefitted according to the benefits.15 There is a presumption of hearing in the first method,16 and one is specifically provided for in the second. A district formed by the third method would appear bad if the tax were the special assessment, benefit-burden

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11 Bollens, supra note 10, at 27. For a discussion of the political problems involved in integrating local government in a metropolitan area, see, Bollens, supra note 10, at 54–94.
12 This is the method used in creating the Bay Area Air Pollution Control District, Cal. HEALTH & SAFETY CODE § 24350.
14 This was the method used in the formation of the irrigation district approved in In re Madera Irrigation District, 92 Cal. 296, 28 Pac. 272 (1891).
15 Fallbrook Irrigation District v. Bradley, 164 U.S. 112 (1896) in which a California irrigation district was upheld. The court held that there was a hearing as to the apportionment of the tax and that it was not necessary to hold a hearing as to creation.
type. However, if the district does not tax on a benefit-burden basis, but on a general revenue basis for general district purposes, i.e. in a manner similar to a city, there need be no hearing. Thus the hearing requirement is related solely to the tax—that which takes property—and is not concerned with the form of organization, the powers granted, or the duties to be performed except insofar as these matters affect the tax levy. As far as the federal constitution is concerned, the state has full power to create whatever local governments it wishes, provided only that hearing be granted to affected property owners when the tax assessment purports to relate burden to benefit.

While the federal constitution appears unconcerned with matters of method of creation, powers granted, and duties given, the California Constitution is somewhat more specific. It is with these constitutional limitations on the power of the legislature that the special district, when used to provide government for a metropolitan area, may conflict. A prime example of the use of the special district in this manner is found in the San Francisco Bay Area Air Pollution Control District which was created in 1955 by act of the California Legislature and will be used here as a basis for discussion of the issues raised by such an attempt at imposition of a new governmental unit on top of the existing cities and counties. The District presents some very interesting questions because it has been given regulatory power, it spans both cities and counties, and was created by special law. This appears to be the first attempt to combine all these features in one district.

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17 Fallbrook Irrigation District v. Bradley, 164 U.S. 112 (1896); Henshaw v. Foster, 176 Cal. 507, 169 Pac. 82 (1917) (upholding lack of hearing on ground that district was public corporation with political duties); Miller & Lux, Inc. v. Board of Supervisors, 189 Cal. 254, 208 Pac. 304 (1922) (holding that hearing was required because taxation was to assess benefits of the district on private lands, not to tax for municipal purposes). Miller & Lux, Inc. v. Board of Supervisors, supra at 267, 208 Pac. at 310, the court in commenting on these cases stated:

The only difficulty in applying the decisions on this subject is to determine whether or not the district created by the subordinate body in pursuance of an act of the legislature is in the nature of a public corporation, the inhabitants of which are subject to taxation without any hearing as to the benefits to be derived from the creation and conduct of such a corporation, or is an assessment district created for the primary purpose of assessing upon private lands the benefits to be derived thereby from the public improvements for the purpose the district is formed.

18 Fallbrook Irrigation District v. Bradley, supra note 25, at 174. The court, after noting that the district had been characterized as a public corporation by the California court, stated:

There is nothing in the essential nature of such a corporation, so far as its creation only is concerned, which requires notice to or hearing of the parties included therein before it can be formed. It is created for a public purpose, and it rests in the discretion of the legislature when to create it, and with what powers to endow it.

19 CAL. HEALTH & SAFETY CODE § 24345 et seq.

20 Districts to provide flood control, drainage, levees, and irrigation have been created by special law. See, e.g., Peppin, Municipal Home Rule in California, 34 CALIF. L. REV. 644, 668 n.94; People Levee District No. 6, 131 Cal. 30, 63 Pac. 676 (1900); People Sacramento Drainage District, supra note 26. These districts were created to provide specific services and not to regulate conduct.
The Physical Problem (Air Pollution)  
Giving Rise to a Metropolitan Special District

The need for control of air pollution in the Bay Area—the existence of a physical problem—is well documented. While the conditions had not reached the degree experienced in the Los Angeles area, there was sufficient pollution that some remedial step seemed imperative to the people in the Bay Area. While cities and counties had the power to deal with the problem within their respective spheres, the limited nature of their power made effective control impossible. Since 1947 a law had existed permitting counties to form air pollution control districts for the county. Insofar as the problem is localized within the county, such a district should be able to deal with it (saving whatever might be said about interference within the cities by a county-wide agency). However, the problem in the Bay Area is not so conveniently isolated and multi-county organization was necessary. To provide this the 1947 statute authorized adjoining counties having air pollution control districts to unite these districts. The big hitch was the requirement that the county districts exist before unification was possible. In 1948 one county (Santa Clara) of the nine Bay Area counties formed a district. Up to the passage of the act creating the Bay Area District, no other county had done so, though Alameda County was considering the step. Since permissive joinder was not working and the physical problem was growing, compulsory joinder seemed imperative to the Assembly Committee investigating the matter. It therefore recommended the passage of the act and the Bay Area District came into being in October 1955 for six of the nine counties with option to the remaining three to join later.

22 Id. at 24-41.
23 Kennedy, The Legal Aspects of Air Pollution Control, Municipalities and the Law in Action, 1947 Ed. 424.
24 CAL. HEALTH & SAFETY CODE §§ 24198 et seq. The validity of the standard used for testing pollution density was tested in the Appellate Division of the Los Angeles Superior Court in People v. Plywood Mfrs. of California, 137 Cal. App. 2d 859, 291 P.2d 587 (1955). None of the California Constitutional issues were raised.
25 CAL. HEALTH & SAFETY CODE §§ 24330-24341.
26 Id. § 24330.
27 Air Pollution in the San Francisco Bay Area, supra note 31.
28 CAL. HEALTH & SAFETY CODE § 24350.2 specifies that the district shall commence business in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties. Sections 24350.3-24350.8 provide for the admission of Napa, Solano, and Sonoma Counties into the district.
Constitutionality of a Metropolitan District Under "Home Rule"—The Most Recent View

The California Supreme Court in its most recent expression of opinion on the subject of the constitutional validity of a metropolitan agency offers a clear indication of determination to uphold such an agency when it is needed to solve a metropolitan problem without any reference to or apparent concern with questions of constitutional "Home Rule." This case—Santa Barbara etc. Agency v. All Persons—was decided in 1957, and while the Agency is apparently not a full-blown regulatory body such as the Bay Area District, and while, therefore, the conclusions of the court with reference to the Agency may not be considered binding if and when the court examines the Bay Area District, the opinion does represent evidence of the view which the court seems likely to take. Questions of constitutionality under sections 6 and 12 of article XI (which with sections 11 and 13 of that article constitute the basic "Home Rule" sections) were raised without success by counsel seeking to defeat the agency, and the opinion hinges to some degree on a commonalty of treatment of all these sections. However, for the moment discussion of sections 12 and 13 as well as 11 will be postponed and section 6 considered first.

Creation by Special Law—Section 6 of Article XI

In some ways the view of section 6 taken by the court is surprising for it depends in part on a case which the court had overruled in 1946, in part on a District Court of Appeal decision which the court had previously ignored, and in part on the doctrine of the "larger municipality" imported from the court’s treatment of sections 12 and 13. Section 6 provides in part: "Corporations for municipal purposes shall not be created by special laws; . . ." It is reasonably clear that the Bay Area District is a "corporation" and that it was created by special law. The court in Santa Barbara apparently assumed that the Agency was a "corporation" and it is clear

29 47 Cal. 2d 699, 306 P.2d 875 (1957). The Agency is a county-wide agency covering one city and four water districts. It was formed under special law to deal with the water shortage problem in the county. Reversed on other grounds, Ivanhoe Irrigation District v. McCracken, 357 U.S. 275 (1958). The case was part of the series which involved the 160 acre limitation on water use imposed by federal law. It was on this point that the California Supreme Court was reversed.

30 To be discussed in Part II.

31 This conclusion stems from the Madera case, text infra at note 35, in which the court characterized irrigation districts as public corporations. Certainly special districts as defined above are a sufficiently separate entity that they cannot be considered as simply a department of some other organization. So the appellation "corporation" signifying separate legal existence and status seems proper. But cf., the statement of the court quoted in the text at note 38 and a subsequent statement in that case that the district was not a corporation at all.
that it was created by special law. The crucial issue is whether the District and the Agency are "for municipal purposes," for if they are there would be a violation of section 6, and it is to this point that the court in Santa Barbara addresses the opinion. The problem would be less troublesome if the court had always construed the clause above quoted in conjunction with the next clause which provides:

... but the legislature shall, by general laws, provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which may be altered, amended or repealed; . . . . (Emphasis supplied.)

The balance of the section deals with cities, their creation and privileges. It would not be an unreasonable construction to consider the section as a whole and limit the meaning of "corporation for municipal purposes" to cities. With this restricted meaning, a special district could be created in any manner so long as it did not qualify as a city, and, it is submitted, a special district even with regulatory powers would not be likely to qualify. This is the course chosen by the court in Santa Barbara, but it is a course at striking variance from the line of decision preceding this case.

Section 6—A Narrow Construction

The above approach was used once by a District Court of Appeal in 1921 in People v. Rinner 32 (cited in Santa Barbara) which was concerned with the abolition of a school district by special law as one of the reasons why the special law was not invalid. However, the District Court of Appeal did not let matters rest there. As an alternative basis for finding that section 6 was not applicable, the court noted that even if it disregarded the "apparently strict limitation," a school district is just not a "corporation for municipal purposes." 34 Prior to Santa Barbara the Supreme Court had been content to use this latter approach in upholding a special district challenged under section 6. Why the court changed tack is uncertain, but some consideration should be given to the approach since it is somewhat inconsistent with Santa Barbara.

Section 6—A Broad Construction

The court's former method of avoiding section 6 was founded on the concept of the district as a "state agency" apparently under an assumption that section 6 applied to the district form, but finding that the particular

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32 This was the argument used in the Constitutional Convention, supra note 4.
33 52 Cal. App. 747, 199 Pac. 1066 (1921).
34 It is for this latter proposition that the case was subsequently cited until the citation in Santa Barbara on the former proposition. See, e.g., Butler v. Compton Junior College District, 77 Cal. App. 2d 719, 176 P.2d 417 (1947).
district was not a "municipal corporation."\textsuperscript{35} Whether the use of this assumption is by design or not is uncertain, but the roots of the assumption may be found in the opinion of the court in the 1891 decision of \textit{In re Madera Irrigation District}\textsuperscript{36} which is the fountainhead of much of the California law on special districts. The district had been created under a general law authorizing the formation of irrigation districts, but the contention was made that the statute violated section 6 because it provided for the creation of municipal corporations contrary to the claimed constitutional scheme. In answering this contention the court stated that the legislature did not have to provide one general plan for creation of all municipal corporations, but could provide separate plans for each type; that it is not an unconstitutional delegation to have the community seeking incorporation indicate assent to the terms of the statute by some act; and that the municipal corporations that could be so created are not limited to cities and towns. Thus there was an implication in \textit{Madera} that section 6 was not limited to cities and towns and that a special district (or at least an irrigation district) was a municipal corporation. In fact the whole tenor of the \textit{Madera} opinion was that the district was a municipal corporation, and in 1897 this concept gave the court trouble.

\textit{People v. Reclamation District No. 551,}\textsuperscript{37} decided that year, was not concerned with section 6, but it did concern the definition of municipal corporations. The argument here was that the district was void because the act under which it had been formed imposed a property qualification on voters contrary to article II, section 1, and article I, section 24 of the California Constitution. The court was of the opinion that this argument was sound if the reclamation district was a municipal corporation, and that \textit{Madera} had indicated that it was. But the court distinguished between irrigation districts and reclamation districts. The latter were not for local self-government, but part of a scheme for conducting a public work and no one voting for formation was a voter in the constitutional sense. In developing the public welfare demands which would justify the exercise of the police power in authorizing irrigation districts, the court in \textit{Madera} had emphasized the similarity between irrigation and reclamation districts of which latter there already existed several examples. This point was simply ignored by the opinion in \textit{People v. No. 551}, and the difference between the

\textsuperscript{35} The term "municipal corporation" does not appear in § 6, and it can be argued that there is a broader meaning in "corporation for municipal purposes" than in "municipal corporation."\textsuperscript{36} However, the courts take the liberty of substitution of the latter for the former and that course is followed here in discussing the cases. See text, \textit{infra}, at p. 123. Another example of substitution is found in \textit{In re Orosi Public Utility District}, 196 Cal. 43, 52-53, 235 Pac. 1004, 1008 (1925).

\textsuperscript{36} 92 Cal. 296, 28 Pac. 272 (1891).

\textsuperscript{37} 117 Cal. 114, 48 Pac. 1016 (1897).
two types of districts was declared established. In discussing the problem of labeling the district the court stated:

If these districts can be said to be corporations at all, I think they are properly called public corporations for municipal purposes. That phrase means no more than that they are state organizations for state purposes.\(^{38}\)

If we ignore the remarkable substitution of words in these two sentences, this label is almost the language of section 6. If the court were consistent in its use of language, this quotation would seem to indicate that even though not a "municipal corporation" the district would be within section 6. But the court was not so linguistically consistent when faced with the problem.

Three years after *People v. No. 551* the court was directly faced with the problem of section 6 and its application to levee districts in *People v. Levee District No. 6*.\(^{39}\) In this case the district was claiming that it existed under an 1891 statute which had been passed to correct deficiencies under a previous statute and which applied only to District No. 6. The court concluded that the descriptions of districts as:

..."corporations for municipal purposes," or "public corporations," or "corporations for public purposes,"...were convenient phrases of designation and description, rather than judicial declarations as to the nature of these agencies.\(^{40}\)

Then *People v. No. 551* was cited as conclusively settling the matter that such districts, while corporations, are not "corporations for municipal purposes" but are a special breed which the opinion does not choose to characterize.

**Section 6—The State Agency Doctrine**

The characterization process developed the next year with *Reclamation District No. 551 v. County of Sacramento*\(^{41}\) in which the district was said to be a part of a scheme of reclamation originating with the state and carried to conclusion by agents of the state, *i.e.* the district, which is a public agency. Therefore, the district was entitled to exemption from county taxation under article XIII, section 1, taking the exemption of the state although it was not entitled (due to the previous holding involving this district) to the exemption granted to municipal corporations.

Local government has the state as the source of its existence and powers, and in this sense all local government is an agency of the state. However,

\(^{38}\) *Id.* at 120, 48 Pac. at 1017.

\(^{39}\) 131 Cal. 30, 63 Pac. 676 (1900).

\(^{40}\) *Id.* at 33, 63 Pac. at 678.

\(^{41}\) 134 Cal. 477, 66 Pac. 668 (1901).
the "state agency" doctrine goes beyond this simple notion of ultimate source of existence and power. Because the constitution gives "corporations for municipal purposes" a special status with respect to manner of creation, and because a special district was thought to be within that category, when the court wanted to preserve a district which was apparently of considerable value to the growth of the state, the district had to be taken out of the category and classified as something else. The most handy something else was the source of power and hence the "state agency." The court in Madera had stated—and thus started this process along—:

Inasmuch as there is no restriction upon the power of the legislature to authorize the formation of such corporations for any public purpose whatever, and as when they are organised they are but mere agencies of the state in local government, without any powers except such as the legislature may confer upon them, and are, at all times subject to a revocation of such power, it was evidently the purpose of the framers of the constitution to leave in the hands of the legislature full discretion in reference to their organization. . . . (Emphasis supplied.)

At this point the court was merely stating the existence and source of power to create districts, and was not concerned with any labeling process under section 6. However, the subsequent cases just discussed carried the process forward.

By the time that People v. Sacramento Drainage District was decided in 1909, there was authority for the creation of a special district by special law. The court cited the three levee and reclamation district cases and then stated that these districts were not really corporations at all, but were governmental agencies for a specific purpose. The state could have done these things directly, but it generously permitted local participation in the management through the district device. This case seems to have settled the matter of section 6 as far as counsel were concerned until the issue came up in Santa Barbara. Later cases challenging the formation of districts by special law never mention section 6, but center the attack on another constitutional restriction on the legislature's power—article IV, section 25, subdivision 33, which prohibits local or special laws: "In all other cases where a general law can be made applicable."

42 92 Cal. at 319, 28 Pac. at 278.
43 155 Cal. 373, 103 Pac. 207 (1909). The district was a multi-county district formed to drain lands in the Sacramento River Valley—a metropolitan district.
44 This is perhaps one very good reason for the failure of the court to use the approach used by the District Court of Appeal in Rinner in 1921. Between 1921 and 1957 the court had no opportunity to do so. The problem did not come up directly, but cf. City of Pasadena v. Chamberlain, 204 Cal. 653, 269 Pac. 630 (1928), and text following note 74.
Special Districts and Section 25 of Article IV—
A Note in Passing

This issue was raised in the Sacramento case but disposed of on the ground that the considerations demanding a special law were plain and that a clear showing would have to be made that the law was not required before the court would interfere with the legislature's determination. However, this holding did not stop counsel from pressing the argument in subsequent cases—though with no greater success. The most recent case in this series, Fairfield-Suisun Sewer District v. Hutcheon,\(^4\) decided by the District Court of Appeal in 1956, produced the same result as its predecessors.\(^4\) Though there was a general law providing for the formation of districts to provide similar service, the special circumstances were found sufficient to uphold creation of the particular district by special law following the rule laid down in American River Flood Control District v. Sweet.\(^4\) The result was so predictable on this issue that it is surprising that an appeal was taken.\(^4\)

The Withdrawal from the "State Agency" Doctrine

Despite the fact that section 6 was not raised until Santa Barbara in any direct fashion, there were other developments in the efforts of the court to deal with the definitional problems raised by the term "municipal corporations." These cases indicate that the "state agency" doctrine and the categorization of the Sacramento Drainage case are somewhat dubious in application to all districts. Also these cases may suggest a reason for the adoption of the Rinner construction of section 6 in the Santa Barbara decision, and may offer some basis for the criticism of that position.

Development Under Section 1 of Article XIII

In 1914, the constitution was amended in several places, one of which was article XIII, section 1, and another of which was article XI, section 6 in a matter not of concern in the present article. The amendment of article XIII, section 1, purported to remove the tax exemption enjoyed by "municipal corporations" for property owned by them outside their boun-

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\(^4\) [139 Cal. App. 2d 539, 294 P.2d 102 (1956).]
\(^4\) E.g., Alameda Etc., Water District v. Stanley, 121 Cal. App. 2d 308, 283 P.2d 632 (1953) and see cases cited therein.
\(^4\) [214 Cal. 778, 7 P.2d 1030 (1932). The court emphasized the state activity character of the work to be done by the district in finding a special reason for the special law, which special reason could not be accomplished under general law according to the court.
\(^4\) A possible reason is that this was in essence a bond validation proceeding, and therefore appellate court approval was sought. This may also suggest a reason why invalidity under § 6 was not and has not been urged until Santa Barbara—it would upset the applecart if successful in an action which is friendly rather than adverse. In Santa Barbara there were contestants who were apparently actually opposed to the agency.
daries. At first blush it might seem strange to equate “municipal corporations” in article XIII, section 1, with “corporations for municipal purposes” in article XI, section 6, but that is exactly what the court did in *Turlock Irrigation District v. White*, decided in 1921, and cited for this proposition in *Santa Barbara*. The case involved an attempt by a county to tax the district under the amendment to article XIII, claiming that the district was a municipal corporation and had lost its exemption. The court held that the county could not tax the district to which the amendment did not apply. The reason—the irrigation district took the exemption of the state which was unaffected by the amendment since the district was not a “municipal corporation” but a “state agency.” At this point the case would seem to be a return to *Madera* as an abolition of the distinctions drawn in the cases discussed above, and another application of the “state agency” doctrine. However, it is the reasoning indulged in by the court in arriving at this conclusion which makes the case a startling departure.

At the outset, the court was faced with the *Madera* assumption that the term “municipal corporations” encompassed more than cities and towns and with *Merchants Bank v. Escondido Irrigation District* which had attempted a broad definition for the purposes of sections 12 and 13 of article XI. To avoid these cases the majority opinion construed the term as used in the amendment narrowly, applying only the cities, and basing this construction on the manner in which the amendment had been presented to the people—as a measure to protect counties against the acquisition of property by San Francisco and Los Angeles for their water systems which acquisition, free from taxes, would destroy the counties’ tax base. As further buttress for this construction, the opinion referred to section 6 and stated:

> At the same election, article 11, § 6, was amended by the people. This section restricts the power of the legislature in the formation of municipal corporations, to providing by general law for their formation, and prohibits the formation of such corporations by special statute. That section uses the term “municipal corporations” as synonymous with “cities and towns.”

Since only cities and towns could be “municipal corporations” and since an irrigation district was not a city or town, an irrigation district could not be a “municipal corporation.” It was this reasoning and this quotation which the
court in Santa Barbara used to conclude that section 6 is limited to cities and towns of which the Agency was not an example. So dicta, and somewhat gratuitous dicta at that, becomes authority. However, there is an even greater objection to the use of Turlock as authority—it was specifically overruled in 1946 by Rock Creek Water District v. County of Calaveras. Nothing was said about Rock Creek in The Santa Barbara opinion which leaves the matter open for speculation. Did the court intend to overrule Rock Creek or was it an error with respect to Turlock’s status as authority?

Before examining the Rock Creek case, it is necessary to consider the developments which preceded that case. The first case in this series, Henshaw v. Foster, decided in 1917 (before Turlock); concerned the formation of the San Diego Municipal Water District. The District was challenged on the ground that no hearing had been given to property owners before the election for formation was called. In answering this challenge (raised by an action to enjoin the calling of the election), the court characterized the District as a public corporation with political duties and distinguished it from a district where the benefits were to be assessed against the land. In support of this position the court cited and quoted from Madera. It is interesting to note that the court had already termed the District a “municipality” for purposes of sections 12 and 13 of article XI.

In Turlock the opinion embraced the “state agency” doctrine as noted before. The opinion did not stop with the reasoning previously discussed, but went on to explain that the exemption that irrigation districts had been enjoying was not founded on the “municipal corporation” provision, but on the state’s exemption provision, citing No. 551 v. County of Sacramento at 710, 306 P.2d at 882. There was no reason for the opinion to consider § 6, and it did not bother to use the actual § 6 terminology. Rinner was not cited, but since it was decided the same year, the court may have been aware of the construction used there. The opinion in Turlock makes no mention of the assumption in a situation where the point need not have been brought up.

The briefs of the parties cite and discuss Rock Creek and its possible effect on Turlock so the court must have been aware of the situation. Opening Brief for Appellant, p. 30; Brief for Respondent, pp. 33–34; Closing Brief for Appellant, pp. 4–5 and 17. Respondent’s brief contended that Rock Creek did not overrule Turlock on the matter of § 6, only on the matter of article XIII, § 1. The trouble with this position is that § 6 was not at issue in Turlock, but the references to that section were merely dicta. Further, the court clearly rejected a narrow construction of “municipal corporations” in Rock Creek, approving the dissenting opinion in Turlock. This last was pointed out in the appellant’s closing brief.

The district is properly described as metropolitan, covering three incorporated cities and one irrigation district. Id. at 508, 169 Pac. at 83. To be discussed in Part II.
which had made a similar determination with reference to reclamation
districts. Then the opinion equated irrigation districts with reclamation
districts (à la Madera) and concluded that the district was a “state
agency” quoting from Madera to the effect that the property of the district
(which had just been labelled state property) was subject to state control.
All this despite the apparent denial of the assumption underlying Madera—
that irrigation districts are “municipal corporations.”

The year after Turlock (1922) the Henshaw decision was to haunt the
court when it considered the formation of a new Madera Irrigation District
in Miller & Lux, Inc. v. Board of Supervisors. An election had been
called by the Board of Supervisors and suit was brought by a property
owner to test that call, claiming that it had not received an adequate hear-
ing. In holding that the district was of the type of which a hearing must be
given, the court distinguished Henshaw on the ground that the Municipal
Water District was something greater governmentally than an irrigation
district. Thus whatever might be said concerning the necessity for hearing
preceding the formation of such a district, it did not apply to an irrigation
district, which was of the benefit-burden type. Madera was disposed of on
the ground that it had been decided prior to the federal constitution deci-
sion in Fallbrook Irrigation District v. Bradley which set forth the benefit-
burden hearing requirement, and so Madera must be disregarded.

From Madera to Turlock an irrigation district was a “municipal cor-
poration,” and from Madera to Miller & Lux it could be created as a
“municipal corporation”—without hearing as to the inclusion of property
within its boundaries. After these cases (at least until Rock Creek and
possibly after Santa Barbara) an irrigation district was a “state agency”—
assessment district. But from Henshaw and inferentially from Miller &
Lux there was a type of district which could be created as a “municipal
corporation.”

The “Quasi-Municipal Corporation”

In 1925 the terminology of the Henshaw type of district became more
concrete. The In re Orosi Public Utility District opinion of that year
called the district a “quasi-municipal corporation.” Again the district was

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63 See text, supra at note 41.
64 189 Cal. 254, 208 Pac. 304 (1922).
65 176 Cal. 507, 169 Pac. 82 (1917).
66 One interesting consequence of the “state agency” doctrine is that the officers of the dis-

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67 196 Cal. 43, 235 Pac. 1004 (1925).
formed without a hearing, and the action was brought to test the validity of its formation so that bonds could be sold. Again there was discussion of the distinction between this type of district and the “assessment” districts which are not “municipal corporations.” The court noted that under article XI, section 19, “any municipal corporation may establish ... public works ...” for supplying utilities to their inhabitants; that the legislature sought to give the same power to unincorporated areas; and that the legislature can give such governmental powers as it desires (relying on the Madera opinion three years after Miller & Lux!), stating:

“The creation of municipal corporation does not have for its sole object the formation of political subdivisions of the state for governmental purposes, but there is also the association of the members of the particular community for the administration of their local business and affairs in matters largely outside of the sphere of government as such.”

The court then held that this district was a “quasi-municipal corporation.” The language just quoted and the analogies to city organization and government used by the court to indicate that such a district is to be treated like a municipal corporation. Of course, this case and Henshaw were concerned with the hearing problem under the federal constitution, but the indicia of similarities and the tests used for this purpose do provide clues to the characterization for other purposes. The court in Santa Barbara did not consider these cases nor the implications they raise. The Agency was not a city, and apparently any similarity to a city was immaterial.

The characterization process continued in City of Pasadena v. Chamberlain,69 decided in 1928, which labelled the Metropolitan Water District in the Los Angeles area as a “quasi-municipal corporation.” The District was being organized to supply water to the cities in the area, and this was an action to compel the Pasadena City Clerk to certify the passage of an ordinance which was one of the steps in formation under the statute. Here too the labelling was done to meet the hearing problem. However, the problem was more complicated because this district (like the district in Henshaw) was a metropolitan district—it spanned several cities. It was contended that the statute was invalid because it interfered with the right of charter cities to make all laws and regulations with respect to their municipal affairs as guaranteed by section 6 (in a portion of that section which appears after the special law restriction). In answering this contention the court concluded that supplying water to all these cities was not an interference in a “municipal affair,” and was, therefore, something the legislature could deal with without violating section 6.70 So the district was

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68 Id. at 57, 235 Pac. at 1010.
69 204 Cal. 653, 269 Pac. 630 (1928).
70 Id. at 659–660, 269 Pac. at 633.
declared to be a "quasi-municipal corporation" not dealing with "municipal affairs." It is for this purpose that the Pasadena case is cited and quoted from in Santa Barbara.71 According to the court in Santa Barbara if there is no "municipal affair," i.e. no activity solely within the province of a city, there is no "municipal purpose" involved in the activities of the Agency and hence no violation of section 6. It is submitted, however, that this is a switch on the "larger municipality" doctrine which was also involved in the Pasadena case.

The Larger Municipality Doctrine

Actually the "larger municipality" doctrine arose under sections 12 and 13 of article XI rather than under section 6, and therefore the bulk of the discussion of the doctrine will be postponed until these sections are taken up.72 The "larger municipality" doctrine is founded on the concept that when a physical problem goes beyond the boundaries of established municipalities (becomes metropolitan), its solution ceases to be a function or purpose of the established governments, but becomes the concern of the "larger municipality." It seems implicit in this doctrine that even though the solution is not a "municipal function" or "purpose" of the established governments, it is a "municipal function" or "purpose" of the "larger municipality." This implication may have been in the mind of the court in Pasadena since the "larger municipality" doctrine was applied to the issues under sections 12 and 13, but a different approach was used with respect to section 6. As far as the "municipal affairs" problem of section 6 was concerned the court stated that there was no interference with the cities since there was no attempt to supply water directly to the populace. Rather the water was to be supplied to the cities which would distribute it, and hence no interference with the cities' rights.73 This is not the "larger municipality" doctrine and does not suggest that the "larger municipality" has no "municipal purposes." However, Santa Barbara appears to conclude that the two concepts are related and there can be no violation of section 6 if a "larger municipality" can be found.

Early in the opinion in Pasadena the court disposed of a contention that the statute was a special law because it did not authorize the formation of districts in unincorporated areas. The law could apply wherever the conditions required its use and thus was general.74 The reason for declaring the

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71 47 Cal. 2d at 710, 306 P.2d at 882.
72 To be discussed in Part II.
73 City of Pasadena v. Chamberlain, 204 Cal. 653, 659-60, 269 Pac. 630, 633 (1928).
74 Id. at 658-659, 269 Pac. at 632. The statute is a good example of a general law which can apply to only one situation.
statute to be a general law appeared later in the opinion when the court in discussing the hearing problem stated:

... we can perceive no real distinction between the organization of a municipal corporation, strictly so called, for the carrying forth of the purposes usually committed to such governmental agencies and the organization under legislative sanction of such other governmental agencies as municipal water districts or public utility districts or metropolitan water districts, which, while these may not exercise all of the functions committed to municipal corporations, strictly so called, are empowered to exercise certain of these functions as at least quasi-governmental in character.76

If a quasi-municipal corporation is no different than a full-fledged "municipal corporation" and can exercise some of the "municipal functions," then it has "municipal purposes" and cannot be created by special law. So the court had to dispose of the general or special nature of the statute and did so in favor of the district. This point is completely ignored in Santa Barbara despite the citation of Pasadena. Certainly there is a logical inconsistency here.

Collision of the "State Agency" and "Quasi-Municipal Corporation" Doctrines

The "state agency" doctrine was rolling along side by side with the "quasi-municipal corporation" doctrine, and the two collided head on in 1930 in Morrison v. Smith Bros., Inc.76 The issue was the liability in tort of the East Bay Municipal Utility District (a metropolitan district organized to supply water to cities in Alameda and Contra Costa Counties). There was an 1898 case which had decided that since a reclamation district was a "state agency," it was not liable for its torts.77 When some workmen working on a project for the East Bay Utility District were injured, the District sought to escape liability on the ground that it too was a "state agency." The attempt was unsuccessful for the District was a "quasi-municipal corporation;" the governmental-proprietary distinction applied as it did to municipal corporations; and this was a proprietary activity.78 This case offers further evidence that at least until Santa Barbara "municipal corporations" encompassed more than cities and towns.

The trend of distinction was preserved by Metropolitan Water District v. County of Riverside,79 decided in 1943, which held that that district was subject to taxation on property owned outside its boundaries under the

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76 Id. at 663, 269 Pac. at 634.
77 211 Cal. 36, 293 Pac. 53 (1930).
78 Hensley v. Reclamation District No. 556, 121 Cal. 96, 53 Pac. 401 (1898).
79 The distinction for this tort purpose is probably no longer valid, for it has been held that the state is liable for its proprietary activities. People v. Superior Court, 29 Cal. 2d 754, 178 P.2d 1 (1947). This would obviate any necessity to decide whether the district is a "state" or "municipal" agency.
80 21 Cal. 2d 640, 134 P.2d 249 (1943).
1914 amendment to article XIII, section 1, discussed above. The court reasoned that it would be anomalous not to apply the amendment to the district which was accomplishing the purposes, the taxation of which the amendment was passed to cover. The District was still labelled "quasi," but it was so close that the court stated that its purposes were municipal—the language of section 6. This District was the same one involved in Pasadena and its purposes are "municipal," but this case was not considered in Santa Barbara, though it is inconsistent with the result reached there.

The court had carefully distinguished Turlock in the County of Riverside case, but the distinction between "state agency" and "quasi-municipal corporation" lasted only three more years, at least as far as irrigation and county water districts were concerned under article XIII, section 1. As has been noted before, the court overruled Turlock in the Rock Creek case which involved another attempt by a county to tax districts. First the court in Rock Creek discussed the narrow construction given "municipal corporations" in Turlock and concluded that that construction was wrong, quoting from the dissenting opinion in Turlock as setting forth the best reasoning for the broad construction.

Next came the second ground on Turlock—"state agency"—and here the court indulged in an interesting process of reasoning. The County of Riverside case had said that municipal water districts were within article XIII, section 1 and the court could see no valid distinction between such districts and irrigation and water districts (despite the distinction enunciated in County of Riverside which the court did not mention), and so County of Riverside was authority for overruling Turlock. At no point in the opinion is the "state agency" doctrine discussed, but the result of the case was that the District was no longer entitled to the state's exemption, which leads to the conclusion that that doctrine is also overruled, since the case which announced it was so specifically overruled.

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80 Supra notes 57–58.
81 Id. at 10–11, 172 P.2d at 865–66.
82 See text, supra at note 63.
83 The irrigation districts did not take the case lying down. The legislature was prevailed upon to change the statute fixing the boundaries of such districts to permit them to include non-contiguous district owned property within their boundaries, thus getting back under the protection of the exemption. Cal. Water Code §§ 26901 and 29566.1 were amended by Stats. 1947 c. 725 (p. 1776) and c. 749 (p. 1803) to permit the districts to petition for the inclusion of non-contiguous property under § 26875. The court upheld these amendments, though it rejected plea of counsel for the Irrigation Districts Association to overturn Rock Creek. County of Mariposa v. Merced Irrigation District, 32 Cal. 2d 467, 196 P.2d 920 (1948). Counsel contended that there was a long line of decision which used the "state agency" doctrine in other questions concerning the activities of irrigation districts which had not been considered by the court in Rock Creek. Amicus Curiae Brief of Irrigation Districts Association, Sac. Nos. 5914, 1915, 1916, pp. 24–41. The court dismissed these contentions. 32 Cal. 2d at 477, 196 P.2d at 926. One might conclude that these cases are overruled.
It should be noted that the Santa Barbara opinion did not turn the construction of section 6 on the "state agency" doctrine. Rather, the court there chose to rest its position on the first ground of Turlock—a restricted construction of section 6. While this ground was also disapproved in Rock Creek, Santa Barbara may mean that Rock Creek is overruled on the narrow or broad construction issue, but stands with respect to the elimination of the "state agency" doctrine. On the other hand, it can be argued that Santa Barbara was simply wrongly decided in light of Rock Creek and its predecessors and that Rock Creek still stands for both propositions. The court in Rock Creek was careful to limit its interpretation to article XIII, section 1, when it said:

Whether irrigation or water districts such as we have here are municipal corporations in connection with tort liability and other questions is unimportant.\(^{84}\) This may suggest that Rock Creek has no effect on section 6, but Turlock, while concerned with article XIII, section 1, used reasoning based in part on section 6, and Santa Barbara used the overruled article XIII reasoning\(^{85}\) as well as doctrines developed under sections 12 and 13 of article XI in determining the construction of section 6. If it can be said that this broader method is proper, then Rock Creek and the line of cases from Henshaw to County of Riverside indicate that Santa Barbara is a striking departure from the court's previous views, if not an erroneous departure.

**The Bay Area District Under These Decisions**

With respect to the Bay Area District it might be argued that the Santa Barbara case is restricted to agencies concerned with the water problem, an argument which receives support from the opinion.\(^{86}\) However, if the decision is followed literally with respect to its construction of section 6, then the Bay Area District has little to fear from that section since it is not a "city." If this is true, one may well ask what has happened to "Home Rule." If section 6 is only concerned with the creation of cities by special law, why could the legislature not create a multi-function district with regulatory powers and solve the metropolitan problem by eliminating the cause—indeed, independence of local government? Perhaps a multi-function district would be classified as a city because it does so many things, but the present writer fails to see any qualitative difference between such a district and the Bay Area District.

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\(^{84}\) 29 Cal. 2d at 12, 172 P.2d at 866.

\(^{85}\) A District Court of Appeal in Laguna Beach County Water District v. County of Orange, 30 Cal. App. 2d 740, 87 P.2d 46 (1939) (specifically overruled in Rock Creek and cited as authority in Santa Barbara) founded a portion of its reasoning on the proposition that these districts could be created by special law, not being within § 6 (based on Turlock, à la Santa Barbara). The issue raised in the case concerned article XIII, § 1, and the § 6 reasoning was used to show that the district was not a "municipal" corporation.

\(^{86}\) 47 Cal. 2d at 710, 306 P.2d at 882.