



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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RONALD G. OVERHOLT
Chief Deputy Director

KATHLEEN T. HOWARD
Director, Office of Governmental Affairs

March 21, 2005

Hon. Lynn Daucher
Member of the Assembly
State Capitol, Room 2158
Sacramento, California 95814

Subject: AB 1453 (Daucher), as proposed to be amended (RN#0509026) – Oppose

Dear Assembly Member Daucher:

I regret to inform you that the Judicial Council opposes AB 1453, which creates new Water Courts to adjudicate cases involving the production of groundwater. Among other things, the bill would establish “water divisions” in nine superior courts to handle groundwater cases within specified regions. The bill provides that only these nine courts have exclusive venue to hear such cases, and provides for the transfer of groundwater cases to those courts. It also requires the presiding judge to assign a “water judge” in each of the nine courts, and to consider the experience in groundwater adjudications for each candidate for assignment as a water judge.

The Judicial Council opposes balkanization of the court system, which would be the result of creating new water courts or other specialty courts. The thrust of modern court administration has been to avoid such fragmentation, to consolidate courts, and to adopt common practices and procedures that permit efficient, flexible use of judicial staff and facilities. Courts of general jurisdiction can better meet demand, as the volume of litigation rises and falls within specific areas of the law.

While water matters can present unique and complicated problems, it is also true that complexity can occur in any type of litigation. The creation of specialty water courts would set an inappropriate precedent since other equally valid arguments can be made for separate tax courts, probate courts, criminal courts, family law courts, personal injury courts, and so forth.

In addition, specialty courts are not necessary because the superior courts in each county can create separate departments or calendars within existing structures to deal with cases involving subjects such as tax, probate, product liability, personal injury, family, or criminal law. Under

Hon. Lynn Daucher
March 21, 2005
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local rules, such specialization permits the judicial staff and court facilities to serve changing needs without inflexible constitutional or statutory mandates.

For these reasons, the Judicial Council opposes AB 1435.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Pone", written in a cursive style.

Daniel A. Pone
Senior Attorney

DP/lb

cc: Ms. Diane Colborn, Chief Consultant, Assembly Water Parks and Wildlife Committee
Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee
Ms. Fredericka McGee, General Counsel, Office of Speaker Fabian Nunez
Ms. Karen Pank, Deputy Legislative Secretary, Office of the Governor
Office of Planning and Research



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RONALD M. GEORGE
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November 6, 2003

Mr. William J. Rosendahl, Chairman
California Commission on Tax Policy in the New Economy
1102 Q Street, Suite 6000
Sacramento, California 95814

Subject: Opposition to State Tax Court Option

Dear Mr. Rosendahl:

We have reviewed the discussion by the California Commission on Tax Policy in the New Economy of the option of creating a tax court, and we appreciate the opportunity to comment on the proposal.

The Judicial Council opposes fragmentation of the court system, which would be the result of creating a new tax court or other specialty courts. The thrust of modern court administration has been to avoid such fragmentation, to consolidate courts, and to adopt common practices and procedures that permit efficient, flexible use of judicial staff and facilities. Courts of general jurisdiction can better meet demand, as the volume of litigation rises and falls within specific areas of the law.

Numerous legislative proposals have been introduced over the last 25 years to create tax courts, all of which have been unsuccessful. [See e.g., AB 1155 and ACA 38 (1979), AB 2254 and ACA 38 (1980), SB 2032 and SCA 51 (1984), SB 124 and SCA 6 (1989), SB 23 and SCA 25 (1992).] The Legislature has consistently rejected the creation of tax courts based on many of the same concerns expressed by the Judicial Council and others about the inappropriate balkanization of the court system, as well as the inefficient and costly nature of the proposals.

Past legislative proposals have included creating a separate five- or seven-judge tax court that would hold hearings throughout the state. [See e.g., SCA 6 (Garamendi) and SB 124 (Garamendi) of 1989, and SCA 25 (Kopp) and SB 23 (Kopp) of 1992.)] Each of these proposals would have required the appointment of judges who are certified tax specialists. The tax courts would also have included small claims divisions and would have heard tax-related cases.

exclusively. When these proposals were being considered, the Judicial Council estimated that the costs of operating these tax courts could range from \$6.5 to \$7.5 million for the five-judge court, and \$8.5 to \$9.5 million for the seven-judge court. The present-day costs of operating such tax courts would of course be considerably higher. The cost would also depend on the structure and makeup of the tax court, including the standard for review and other applicable procedures, which are not specified in the option the commission is considering.

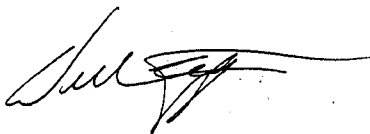
While tax matters can present unique and complex problems, it is also true that complexity can occur in any type of litigation. The creation of a specialty tax court would set an inappropriate precedent since other equally valid arguments can be made for separate probate courts, criminal courts, family law courts, personal injury courts, and so forth.

In addition, specialty courts are not necessary since the superior courts in each county can create separate departments or calendars within existing structures to deal with cases involving subjects such as tax, probate, product liability, personal injury, family, or criminal law. Under local rules, such specialization permits the judicial staff and court facilities to serve changing needs without inflexible constitutional or statutory mandates.

Furthermore, cases cannot be arbitrarily classified into segments dealing exclusively with one field of law. They do not divide neatly into tax, tort, contract, property, and other such categories. The field of tax law touches on a wide variety of legal fields, including probate, real property, divorce, and personal injury. Under the option being considered by the commission, a new state tax court would be established "to resolve all tax disputes, including personal income tax, corporate income tax, sales and use tax, property taxes, payroll taxes, and excise taxes." (Commission, "Options for Revising the California Tax System," June 15, 2003 draft, at p. 33.) The judges deciding such matters should not come from a specialized field that traditionally focuses primarily on matters related to the federal Internal Revenue Service.

For the above reasons, the Judicial Council opposes the creation of a specialty tax court and respectfully requests that the commission reject this option at its November 17, 2003, meeting. However, we would be pleased to meet with the proponents of this proposal and discuss how best to address the handling of tax cases in the courts. This could include possible rules changes, increased resource materials for judicial officers, improved calendaring and record-keeping systems and other case management enhancements to make the processing of tax cases as effective and efficient as possible. If you have any questions or need any additional information, please feel free to contact Daniel Pone, Senior Attorney in our Office of Governmental Affairs, at 916-323-3121.

Sincerely,



William C. Vickrey
Administrative Director of the Courts