

## Charter Amendment Regarding Lease Revenue Bonds Did Not Require Voter Approval

The California Court of Appeal held that 2016 amendments to the San Diego City Charter did not require the City to obtain voter approval prior to entering into a lease revenue bond transaction with the Public Facilities Financing Authority of the City of San Diego. [\*San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego\*](#), No. D075157 (4th Dist., April 19, 2021). In 2016, San Diego voters approved amendments to the City Charter relating to bond issuance. One such amendment modified Section 90.1 to allow the City Council to authorize the issuance of revenue bonds by City Council vote, as opposed to voter approval, provided the bonds were not paid for from the general fund and the bonds were used to fund water facilities.



Subsequently, the City entered into a lease revenue bond transaction with the Financing Authority to fund the construction of a parking lot and other improvements in Balboa Park. Per the structure of the transaction, the City would lease the land to the Financing Authority for a nominal fee, the Financing Authority would sell bonds to fund the improvements, and the Financing Authority would lease the land and improvements back to the City. The bonds sold by the Financing Authority were secured by the City's lease payments. For payment, the City planned to put the money generated from the parking lot into the City's general fund and pay the lease payments from the general fund. Following the City Council's authorization of the transaction without voter approval, San Diegans for Open Government ("SanDOG") brought suit challenging its validity under Section 90.1, as amended in 2016. SanDOG claimed the transaction was invalid because the City was paying for the bonds out of the general fund, the bonds were not going to be used for any of the specified water activities, and the City had not obtained voter approval. The court held that the transaction did not violate Section 90.1 because Section 90.1 did

not apply to Financing Authority-issued bonds or lease revenue bonds. The court reached its decision after evaluating the historical context of the Charter and the ballot materials provided to voters prior to the amendments' approval. Historically, prior iterations of Section 90.1 had dealt with funding mechanisms for water facilities, and the 2016 amendments continued this trend. The use of the Financing Authority for issuance of lease revenue bonds was a well-established, distinct issue, indicating that the amendments did not cover these types of bonds. Additionally, the ballot materials provided to voters exclusively discussed "city-issued bonds," and did not mention the Financing Authority. The omission of any mention of the Financing Authority indicated that voters did not contemplate the Financing Authority when voting. Further, the court held that bonds issued by the Financing Authority were not under the umbrella of "city-issued bonds" because those were not sold by the City and did not require the City to pay back investors. Even though governed by members of the City Council, the Financing Authority was a separate entity from the City, in that they did not share debt or bond obligations. Thus, the court held that Section 90.1 did not apply to Financing Authority-issued bonds. The court held that even if Section 90.1 did apply to Financing Authority-issued bonds, the transaction still would not be in violation of the Charter because the Charter did not apply to lease revenue bonds. Relying again on historical context and ballot materials, the court found that, historically, revenue bonds were not considered to include lease revenue bonds. The court further found that the description of revenue bonds in the ballot materials as "bonds that are payable from enterprise funds" did not encompass the lease revenue bonds at issue because the City was making the lease payments from its general fund and the City did not pledge its lease payments to the bonds. Thus, Section 90.1 did not apply to the lease revenue bonds in this transaction. In short, because Section 90.1 applied to neither the Financing Authority-issued bonds nor the lease revenue bonds, the transaction was not within the scope of Section 90.1 and was valid without voter approval.

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