

**1999-2000 GRAND JURY FINAL REPORT**  
**VENTURA COUNTY ORDINANCE NO. 4088**

Respondents: Board of Supervisors  
Chief Administrative Officer

Recommendation (R-1):

*The budgets of the public safety departments and the allocation and proposed use of Proposition 172 moneys should be reviewed annually by the Board of Supervisors as part of the overall budget process and in accordance with The California Budget Act.*

Response: Concur

The Board and CAO concur with the Grand Jury's recommendation that the Board should review annually all potential resources in the development of the Budget.

The Budget Act requires the Board of Supervisors to annually exercise its judgement in setting a financial program for the fiscal year. In doing so, the Board is to consider proposals from each department head and to make revisions as necessary to develop a budget in the **best interest** of the county.

The Board is the authoritative body that directs and defines the fiscal priorities of the County in determining the most effective and prudent use of public funds. This mandate is consistent and is further guided in part by Constitutional duties and principals as illustrated by the adoption of Proposition 172 which states in part:

"The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services."

Consideration of priorities and public needs as well as the determination of adequate services rest solely with the discretion of the Board and cannot be abdicated by means of a formulaic or an entitlement process. To do so, would result in the removal of the elective discretion that is statutorily granted to the Board and would leave the citizenry void of any representation.

The development and establishment of public policy and the resultant of "what is in the best interest of the County" necessitates the continual (annually) directing of resources as seen fit by the representative and authoritative body.

Recommendation (R-2):

*The Sheriff's Department should budget more accurately so the excess funds, now included in its budget and returned to the General Fund at the end of the year, are available to other agencies during the course of the fiscal year. If necessary, the County's contingency funds should pay Sheriff's Department overruns caused by unforeseen emergencies.*

Response: Concur

The Board and CAO concur with the Grand Jury's recommendation.

This most recent budget cycle followed a similar budgetary practice. Mainly, each departmental budget was developed and approved based on current service level needs. As a result, budgetary savings were captured "up-front" during the development of the budget.

In addition, any further departmental savings that may be generated throughout the fiscal year will be captured and redistributed if appropriate.

Extraordinary events and emergencies that cannot be customarily financed from the existing Sheriff's Department annual budget, as well as other General Fund budgets, should be financed through other unencumbered discretionary sources.

Recommendation (R-3):

*The Board of Supervisors should rescind the constraints of Ordinance No. 4088 and reconsider the allocation of Proposition 172 funds to public safety agencies during their annual budgeting process.*

Response: Does not Concur

The Board and the CAO do not concur with the recommendations of the Grand Jury to rescind Ordinance No. 4088. The Board and the CAO are of the legal opinion that Ordinance No. 4088 is invalid, and therefore, has no power to constrain the budgetary discretion of the Board. It is the opinion of the Board and the CAO that rescinding the Ordinance is unnecessary since the Ordinance cannot overrule the provisions of the "Budget Act" (Government Code section 29000 et seq.) Attached are the detailed legal options as provided by County Counsel. The legal issues presented by Ordinance No. 4088 are similar to issues presented in Measure O, Tobacco Settlement Initiative (see attachment).

Recommendation (R-4):

The public safety departments should work together with the CAO and Board of Supervisors to ensure availability of funding for staffing of the Juvenile Justice Complex when it is completed.

Response: Concur

The CAO and Board of Supervisor are committed to working together with the public safety departments to assure that adequate resources are provided to the Juvenile Justice Complex to ensure its long-term viability and success.

## INTRODUCTION

This memorandum analyzes the legality of local initiatives or locally enacted ordinances that would appropriate funds to a particular department or program without continuing control by boards of supervisors or that would require that boards of supervisors appropriate such funds as a part of their county budgets. Such devices are referred to below as "Budget Limitation Ordinances." This analysis applies to Ordinance No. 4088, which was enacted in response to an initiative petition regarding use of Proposition 172 funds, and to the recent initiative known as Measure O, addressing use of tobacco settlement funds. It would also apply to any other local initiative or ordinance that attempts to bind the board of supervisors as to appropriations. This analysis only applies to locally enacted ordinances, not to laws enacted by the State Legislature.

## QUESTION

Are local initiatives or locally enacted ordinances that require appropriation of funds to, or a level of funding for, a particular department, project or program legally valid?

## CONCLUSION

No. Neither the voters nor boards of supervisors may enact ordinances on a local level that would require the appropriation of funds to, or a level of funding for, a particular department, project or program.

## ANALYSIS

### **I. BUDGET LIMITATION ORDINANCES ARE INVALID BECAUSE THE AUTHORITY TO APPROPRIATE FUNDS HAS BEEN EXCLUSIVELY DELEGATED TO BOARDS OF SUPERVISORS BY THE STATE LEGISLATURE.**

In Government Code section 29000 et seq. ("Budget Act"), the State Legislature exclusively delegated to boards of supervisors the power to make budgets and appropriations. Budget Limitation Ordinances, as defined above, are beyond the power of the voters and boards of supervisors to enact because such laws would usurp exercise of local fiscal powers delegated exclusively to boards of supervisors. In contrast to cities, the State's counties, including Ventura County ("County"), are subdivisions and administrative arms of the State, exercising control over property that ultimately belongs to, and administering programs mandated by, the State. The State Legislature regularly makes exclusive delegations to county boards of supervisors (sometimes referred to as "Boards."). It has done so as to county fiscal powers. Because this delegation is by State authority, local initiatives or ordinances cannot interfere with exercise of these fiscal powers by Boards. Nor can a Board itself enact an ordinance that would undermine their continuing authority on such matters.

### **A. Budget Limitation Ordinances Interfere with the County's Budget Process.**

The Budget Act establishes the budget procedures for counties and their Boards. (*Board of Supervisors v. Superior Court* (1995) 33 Cal.App.4th 1724, 1738-1739.) Budget Limitation Ordinances would contravene the decision-making process set up by the Budget Act for a number of reasons. Most importantly, Budget Limitation Ordinances, as defined above, would require that certain funds be set aside for or be guaranteed for use to a specific project, department or program without continuing control by Boards or require that the Board appropriate certain funds each year. Budget Limitation Ordinances would directly or indirectly preclude the use of such funds by Boards for any other program, whether mandated or not, despite any present or future need identified by them. As such, these laws would interfere with the local fiscal process set up by the State Legislature.

The Budget Act delegates to Boards the means and tools by which policy is set and accountability is maintained. Budget Limitation Ordinances would endanger this process as a whole by destroying the elements necessary for that process to work, such as the typical weighing and balancing of programs on an integrated basis. Budget Limitation Ordinances would endanger the budget process by establishing local entitlements that would be beyond the normal budgetary checks and balances allowed to the Boards. These ordinances would interfere with the Boards' ability to control waste, which is an executive function. While the budget process as a whole is legislative in nature, there are aspects of that process that are also executive in nature, providing independent grounds for finding exclusive delegation to Boards. Executive functions are outside the scope of the initiative process. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776.)

In *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699, the court, after finding that budget authority is "vested" in Boards, recognized the potential "chaos" to local government if individual agencies could determine their own budgets or if they could be dictated by court action. The court reasoned:

The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available. . . . It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available.

The same chaos would result if a Board attempted to limit its own budget powers or such powers were to be limited by local initiatives, which must only address a single subject. (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142 [single subject requirement].) Budget Limitation Ordinances would set a terrible precedent impacting government by encouraging or

inducing other special interests to lock up funds to protect their programs.<sup>17</sup> As in *County of Butte, supra*, 176 Cal.App.3d 693, this would undermine not only a Boards' tasks under the Budget Act but also good government as a whole, adversely implicating State governance as well. This inevitable chaos helps explain why the Legislature exclusively delegated budgets and appropriations to Boards.

## **B. The Legislature Has Exclusively Delegated Implementation of Fiscal Affairs To Boards of Supervisors.**

The courts determine whether exclusive delegation exists by applying the following test. First, the legislative intent is measured against the language of the relevant statute. If delegation is to a specific governing body, exclusive delegation is inferred. Second, such delegation is demonstrated where there is a "statewide concern," thereby explaining the reason for exclusive delegation. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501, 505.) The language of the Budget Act and related statewide concern leave no doubt as to exclusive delegation of fiscal affairs, precluding Budget Limitation Ordinances. The two prongs of the test are applied below.

### **1. Statutory Language**

Express statutory language delegating decision-making to a specific governing body such as "board of supervisors" or "city council," in contrast to "governing body," supports a strong inference of exclusive delegation. (*Committee of Seven Thousand v. Superior Court, supra*, 45 Cal.3d at p. 501.) Thus in *Simpson v. Hite* (1950) 36 Cal.2d 125, 129-130, the Supreme Court construed legislation which authorized the "board of supervisors" to provide quarters for the courts and concluded that the legislation conflicted with and rendered invalid a proposed local initiative that would have repealed a board resolution designating a site for the court. A similar result occurred in *Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 838, where the Supreme Court considered language in the Revenue and Taxation Code. Concluding that local referendum was not available, the court found that when a statute specifies that adoption of a tax is to be done by the Boards, the Legislature intended to limit such authority to the Boards.

Applying the first prong of the test, the Legislature through the Budget Act specifically and repeatedly delegates to the "board of supervisors" all decisions regarding the adoption of budgets and appropriations. It is the "board," defined by the Budget Act to be the "board of supervisors of the county" (Gov. Code, § 29001), that must review the proposed budget. (Gov. Code, § 29065.5.) The "board" must conduct hearings on the budget and consider the public input. (Gov. Code, §§ 29080, 29081.) After such hearings, it is the Boards that must weigh and balance the respective public needs, to decide what, if any, revisions to the budget should be made. (Gov. Code, § 29088.)

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<sup>17</sup> Similar concerns have been raised with respect to appropriations by statewide initiative. (See 51 So. Cal. Law Rev. 847.)

Most importantly, it is the Boards that must adopt a balanced county budget.<sup>2/</sup> (Gov. Code, §§ 29009, 29088.) The Boards also determine how a county's funds are appropriated. (Gov. Code, §§ 29089, 29092.) In addition, Government Code section 25252 specifically confers on the Boards the power to establish or abolish separate funds and to transfer money to and from funds. Government Code section 29125 again provides that transfers and revisions are to be made by the Boards. Cancellations and emergency appropriations are also similarly delegated. (Gov. Code, §§ 29126, 29127.)

Exclusive delegation of fiscal affairs to "boards of supervisors" appears in other statutes that inferentially support exclusive delegation in the Budget Act. (Gov. Code, § 26227; Health & Saf. Code §§ 1442.5, 1445.) For example, Government Code section 26227 provides, in part:

*The board of supervisors . . . may appropriate and expend money from the general fund . . . to establish county programs or to fund other programs deemed by the board of supervisors to be necessary to meet the social needs . . . of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education . . . .*

*The board of supervisors may contract with other public agencies or private agencies . . . to operate those programs which the board of supervisors determines will serve public purposes. In the furtherance of those programs, the board of supervisors may make available . . . any real property of the county which is not . . . needed for county purposes, to be used to carry out the programs, upon terms and conditions determined by the board of supervisors to be in the best interest of the county and the general public . . . . (Italics added.)*

Accordingly, by specifically and repeatedly designating the "boards of supervisors" as responsible for adopting county budgets, for establishing separate funds and for appropriating funds to use, the Legislature exclusively delegated those functions to the Boards and such functions are not subject to local initiative or to limitations imposed by the Boards themselves.

## **2. Statewide Concern**

In evaluating whether the State Legislature intended exclusive delegation to boards of supervisors, the courts created the second prong: whether there is an issue of statewide concern that would explain the need for such delegation. (*Committee of Seven Thousand v. Superior Court, supra*, 45 Cal.3d at p. 505.) While statewide concern is ultimately a legal question, the issue depends on the facts of each case, including likely legislative purpose. Statewide concern is not a static legal fact but rather changes with evolving circumstances. Thus, in the late 1970's

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<sup>2/</sup> See also, Government Code section 29040 (Boards direct submission of financial and budget estimates); section 29084 (Boards determine budget appropriations for contingencies); and section 29085 (Boards determine general reserves).

the passage of Proposition 13 made property taxation a matter of statewide concern. (*City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929, 945.)

Several factors are important in this evaluation. First, if statewide or even regional interests are affected, the matter is typically of statewide concern. (*Committee of Seven Thousand v. Superior Court*, *supra*, 45 Cal.3d at pp. 505-507; *DeVita v. County of Napa*, *supra*, 9 Cal.4th at p. 781); *CEEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 320-23.) Thus, in *Committee of Seven Thousand*, *supra* and *City of Santa Clara v. Von Raelsfeld* (1970) 3 Cal.3d 239, 246-47, the Supreme Court found statewide concern as to the public's need for regional roads and navigable waters.

Second, State interests, and therefore issues of statewide concern, are typically implicated in the acquisition, sale or leasing of property. (*City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95,101-02, [board's leasing school property beneficially owned by the State]; 80 Ops.Cal.Atty.Gen. 315 (1997) [acquisition, sale and lease of county real property].) County property is ultimately owned by and controlled by the State, and thus disposition of such property affects State interests. As the Supreme Court said in *County of Marin v. Superior Court* (1960) 53 Cal.2d 633, 638-39:

[A]ll property under the care and control of a county is merely held in trust by the county for the people of the entire state. The county is merely a political subdivision of state government, exercising only the powers of the state, granted by the state, created for the purpose of advancing 'the policy of the state at large . . . in matters of finance . . . provision for the poor, . . . The county holds all its property . . . as agent of the state. . . .

In *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1450-54, the court applied the same principle to county tax revenue when it found in favor of the Legislature's "plenary authority" to transfer such funds to schools. The California Constitution defines counties as "legal subdivisions of the state" and requires that they perform "functions required by statute." This contrasts with charter cities, which enjoy considerable autonomy as to municipal affairs. (Cal. Const., art. 11, §§ 1, 4, 5, & 7.)

Third, a statewide concern is typically found where the health and safety of the public is implicated. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 139-40.) This ranges from police affairs, as in *Baggett*, to health care. In *City of Santa Clara v. Von Raelsfeld*, *supra*, 3 Cal.3d 239 at pp. 246-247, the Supreme Court found the issuance of bonds for a water project was a statewide concern because of the need to protect navigable waters for public health purposes. The same principle applies to essential programs mandated by the State, whether or not funded locally under the discretion of the Boards. (*DeVita, v. County of Napa*, *supra*, 9 Cal.4th 763 at p. 781.)

Necessarily, this statewide concern extends to appropriations affecting such matters. For example, because the counties are mandated by state law to provide medical services for the indigent, their Boards are directly authorized to implement these services (Health & Saf. Code,



§§ 1442.5, 1445, 1447; see also Welf. & Inst. Code, § 17000 et seq.), and the Attorney General has opined that financial decisions related to health care are matters of statewide concern. (80 Ops.Cal.Atty.Gen. 315 (1997); also see *City of Los Angeles v. Department of Health* (1976) 63 Cal.App.3d 473, 477-480 [same for housing of mentally ill]).

Fourth, the impracticality of the initiative process is a factor for consideration. If the pertinent decision requires flexible evaluation of complicated data and consideration of alternatives, the matter is more typically of statewide concern. This is so because of the statewide interest in maintaining effective local governance across California. In other words, where disruption of government would otherwise occur, a statewide concern is found in favor of exclusive delegation. (*DeVita v. County of Napa, supra*, 9 Cal.4th at p. 781; *Mervynne v. Acker* (1961) 189 Cal.App.2d 558, 564-565.) Thus, in *Voters for Responsible Retirement* (1994) 8 Cal.4th 765, 780-784, the Supreme Court found exclusive delegation as to labor negotiations pursuant to the Meyers-Milias Brown Act, in part, because of the complicated financial aspects and the flexibility required. Likewise, in *Board of Education v. Superior Court* (1979) 93 Cal.App.3d 578, 582-85, the court found exclusive delegation as to school closure for budget reasons, in part, because the board had to weigh alternatives.

All of the above factors are present as to Budget Limitation Ordinances, compelling a finding of statewide concern with respect to the Budget Act. Once again, the pertinent funds are ultimately controlled by the State as its property. The funding of State and regional programs by counties, as subdivisions of the State, would be thwarted if the Budget Act were undermined because the budget process is critical to these functions. This includes law enforcement and health care for indigents which, while mandated by the State, are funded locally. Budget Limitation Ordinances could also adversely affect a county's ability to be first responder on matters of health and safety, a matter upon which the State depends on counties.

As in the above cases, budgets and appropriations include complicated procedures and entail matters that require detailed review of facts and the flexible weighing and balancing of alternatives, things foreign to the initiative process and foreign to ordinances that would subvert that process. State and county budgets are integrally related, reflecting regional and statewide interests. This has been the case since the passage of Proposition 13 in the late 1970's. Budget Limitation Ordinances, and particularly local initiatives which is limited to single subjects, would lock up funds for particular uses, thereby interfering with the ongoing flexibility required. It cannot be forgotten that most programs are important to and are demanded by the public. Programs should not be evaluated in isolation from one another, as they compete for limited public resources. Integrated budgeting cannot be done if Budget Limitation Ordinances are allowed.

The budget and appropriation process as embodied in the Budget Act is, in fact, the essential management tool of government to establish policy and assure accountability by controlling waste. It is no wonder that this process is governed by very detailed laws prescribing action solely by the Boards. Applicable law compels a finding that the Budget Act is a matter of statewide concern, justifying exclusive delegation.

### **C. Other Authority Is Distinguishable.**

Other case authority is either distinguishable or inferentially supports a finding of exclusive delegation to boards of supervisors. For example, in *Johnson v. Bradley* (1992) 4 Cal.4th 389, the Supreme Court upheld an initiative for the City of Los Angeles that mandated local funding for city election campaigns. It is unclear whether the initiative required a specific appropriation, but it did commit city funds generally. Significantly, the Supreme Court reasoned that its decision was limited to charter cities and would in all likelihood not apply to counties, which have less local control over their affairs. (*Johnson v. Bradley, supra*, 4 Cal.4th 389, 405-06, also see fn. 17.) In other words, charter city cases are to be distinguished from counties which are subdivisions and administrative arms of the State and which must follow the Budget Act procedures.

In *DeVita v. County of Napa, supra*, 9 Cal.4th 763, 773-784, 788-92, the Supreme Court held that amendment of county general plans are not exclusively delegated to Boards and are subject to local initiative. This case did not deal with appropriations although it did address the principles of exclusive delegation. The Court was careful to point out that statutes in the Elections Code and other case law specifically allowed initiatives in that arena and that general plans were the “constitution” of a county’s planning process, not subject to frequent change. The Court also suggested that its decision would have been otherwise if general plans had to be revised on a schedule set by law. These factors are in direct contrast to the circumstances here, where there is no specific statute authorizing appropriations by local initiative or for Budget Limitation Ordinances and where the Budget Act requires that budgets be done on year-by-year basis. Moreover, unlike general plan amendments, budgets and appropriations must be flexible, responsive to new needs, and sensitive to program needs on an ongoing basis.

Article 13 C, section 3, of the California Constitution, which was enacted in 1996, apparently in the wake of *Rossi v. Brown* (1995) 9 Cal.4th 688, addresses use of initiatives on fiscal affairs. It authorizes local initiatives that reduce or repeal local taxes, assessments, fees or charges. In other words, the voters can by initiative cut off a revenue source, indirectly affecting budgets and binding the Boards away from a source of revenue. However, this constitutional provision does not authorize the voters to make specific appropriations, as would Budget Limitation Ordinances. One of the principal distinguishing sins of Budget Limitation Ordinances are that they appropriate public funds in a fashion that may remove the public funds from Board control and oversight. (*Citizens Against A New Jail v. Board of Supervisors* (1976) 63 Cal.App.3d 559) does not provide contrary authority. It deals solely with whether a particular project should be disapproved, not what will ultimately be spent on the project.

The local electorate may also vote to enact a special tax by two thirds vote with the proceeds earmarked for particular purposes. (See Cal. Const., art. 13A, § 4.) Under that provision, however, the budget process is left intact because specific projects are still to be defined by the board and general funds are not disturbed. This is in contrast, however, to Budget Limitation

Initiatives where the Boards would lose effective control of the funds and where such funds are otherwise part of a county's general fund.

Budget Limitation Ordinances must also be distinguished from statewide initiatives that amend the Constitution or State law. The people of California have amended the Constitution to require that the Legislature provide a certain level of funding for education. (Cal. Const. art. 13 B §§ 2.2, 5.5 and art. 16, §§ 8, 8.5.) This is valid because all of the people of California may amend the Constitution in any manner they wish provided the United States Constitution is not implicated. Here, in contrast, Budget Limitation Ordinances, being local in nature, would contravene California's constitutional and statutory law and are therefore invalid.

Ventura County Ordinance 4088, which pertains to funding of public safety, has sometimes been inappropriately cited itself as contrary precedent because the Board enacted the provisions without any legal challenge. However, that ordinance is equally invalid under the Budget Act and County Counsel has so advised the Grand Jury. The fact that in the budget process Ventura County's Board has continued to honor 4088 as to the funding of public safety is irrelevant because it is not required to do so.

In summary, Budget Limitation Ordinances, such as Ordinance No. 4088 and Measure O, contravene the Budget Act by interfering with exclusive delegation of appropriations by the Legislature to Boards of Supervisors.

## **II. BUDGET LIMITATION ORDINANCES ARE INVALID BECAUSE THEY INTERFERE WITH ESSENTIAL FUNCTIONS OF GOVERNMENT**

Aside from exclusive delegation under the Budget Act, other legal authority renders Budget Limitation Ordinances invalid because they would interfere with and thwart "essential functions" of government. State programs, including health and medical programs that are mandated by the State, are essential as a matter of law. The budget and appropriation process is also an essential function of government, as shown above. Since Budget Limitation Ordinances would interfere with these essential functions of government, they are beyond the power of the voters or the Boards to enact.

In *Simpson v. Hite*, *supra*, 36 Cal.2d 134, the Supreme Court found an initiative invalid because its "inevitable effect" was to "impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential . . ." In *Geiger v. Board of Supervisors*, *supra*, 48 Cal.2d at pp. 839-840, the Supreme Court made the same holding as to referendum so as "to prevent disruption . . . of its fiscal powers and policies." The appellate court likewise held in *Community Health Assn. v. Board of Supervisors* (1983) 146 Cal.App.3d 990, 993-94, where it concluded that management of fiscal affairs is an essential function of government. (Also see *Rossi v. Brown*, *supra*, 9 Cal.4th at p. 706; *City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466, 470; *Campen v. Greiner* (1971) 15 Cal.App.3d 836, 843.)

As shown above, Budget Limitation Ordinances would appropriate funds to uses that are beyond the effective budget control of the Boards and would preclude use of the funds for all functions of government, including those that are essential, such as health care for indigents. To exclude a stream of general public revenue by law from essential public uses and to preclude accountability for the actual use of these funds would be disastrous, especially when it is done in perpetuity, a likely result.

In addition, Budget Limitation Ordinances would undermine essential budgeting functions of government. This invasion of the public treasury is not just a potential threat but a clear and present impediment: the normal check and balance process to avoid waste that is entailed in budgeting would now and forever be destroyed or severely limited if Budget Limitation Ordinances were enacted. In *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1259, the court found that the entire state is legitimately concerned that local government not be held "hostage" to competing economic interests. Budget Limitation Ordinances and initiatives which make future appropriations binding on the Boards would produce that very result. Budget Limitation Ordinances requiring appropriations for particular special interests would "balkanize" the budget process, destroying essential functions of government.

### **III. BUDGET LIMITATION ORDINANCES THAT PROVIDE FOR CONTINUING APPROPRIATIONS ARE INVALID.**

Budget Limitation Ordinances are likewise invalid because they would typically contravene State law that specifically prohibits counties from appropriating funds beyond the current fiscal year. The Budget Act and related laws require that funds be appropriated on a year-by-year basis, rather than allowing them to be dedicated to a particular interest in perpetuity. Neither the Boards nor the voters can make appropriations beyond a year and since Budget Limitation Ordinances typically would do so, they are invalid.

Except where there has been exclusive delegation, or where an initiative would interfere with essential functions, a county electorate's right to initiative is generally coextensive with the legislative power of the county and its local governing body. (*DeVita v. County of Napa, supra*, 9 Cal.4th, at pp. 775, 778-779.) Accordingly, if Boards cannot enact a measure, neither can the voters. It is also the general rule that one legislative body cannot limit or restrict its own power, or that of subsequent legislative bodies, and that the act of one cannot not bind its successors. (*City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 929; *Mueller v. Brown* (1963) 221 Cal.App.2d 319, 325.) These principles are obviously intended to avoid disruption of future decisions and to allow maximum flexibility in subsequent governance, so that power ultimately resides in the presently elected representatives.

These principles are reflected in various ways in our statutory law. Among them are the statutory duties imposed on counties with respect to fiscal year budgeting. Budgets and appropriations must be done on a yearly basis, containing estimates of annual revenue and establishing appropriations covering the fiscal year's proposed expenditures. (Gov. Code, §§ 29000 et seq.; *McCafferty v. Board of Supervisors* (1969) 3 Cal.App.3d 190, 193.) Of

particular pertinence here, Board's have no authority to make continuing appropriations beyond the current fiscal year for which they are establishing a budget. Local laws that attempt to do otherwise are invalid.

Thus, in *McCafferty*, Placer County enacted a room tax which contained a preamble that apparently established how the revenue could be spent in the indefinite future. Citizens, who apparently disagreed with the way in which the board was actually spending the revenue, filed a lawsuit claiming that its board was bound by the preamble spending provisions. The trial court rejected the petitioner's contentions and denied relief. The Court of Appeal affirmed, finding that:

In effect, petitioner's case is bottomed upon the proposition that the preamble has the status of a continuing appropriation of the county's room tax revenue. The proposition is unsound, because such a continuing appropriation would exceed the power of the board of supervisors. Even as an integral part of the taxing ordinance, the preamble would be invalid. [¶] . . . [¶] Viewed as an operative ordinance, the preamble would form a continuing appropriation of county revenue outside the annual budget, thus offending the state law's directions for county fiscal operation. . . . (*McCafferty v. Board of Supervisors, supra*, 3 Cal.App.3d at pp. 192-193.)

Accordingly, Budget Limitation Ordinances that attempt to require appropriations beyond the current fiscal year are void. Even if Budget Limitation Ordinances were interpreted as an attempt to control the content of future budget year appropriations, rather than a continuing appropriation, they would still be invalid. In *People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, the court held that a statewide initiative measure was invalid because it limited the amount of funds to be appropriated in succeeding years for the specific support of the Legislature. Since legislative bodies were denied such power, so were the people. (*Id.* at pp. 328-329.)

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