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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 **GLENDAL COALITION FOR**
11 **BETTER GOVERNMENT,**

12 **Petitioner,**

13 **vs.**

14 **CITY OF GLENDALE and DOES 1**
15 **through 10, inclusive,**

16 **Respondents.**
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18
19

20 **AND RELATED CASE**
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) **CASE NO: BS147376**
) **JUDGE JAMES C. CHALFANT**
) **DEPT 85**

) **GLENDAL COALITION FOR**
) **BETTER GOVERNMENT**
) **OPENING BRIEF**

) **Date: May 31, 2016**
) **Time: 1:30 p.m.**
) **Dept: 85**

) **CASE NO: BC539160**

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27
28

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

OPENING BRIEF..... 1

I. STATEMENT OF LAW1

II. STATEMENT OF FACTS3

III. THE GLENDALE CITY CHARTER VIOLATIONS

(CAUSES OF ACTION 1-6)..... 6

 A. THE CITY CHARTER.....6

 B. THE CHARTER VIOLATIONS.....9

IV. ARTICLE XIIIC (PROPOSITION 26) VIOLATIONS

(CAUSES OF ACTION 7-8)..... 12

V. ARTICLE XIID (PROPOSITION 218) VIOLATIONS

(CAUSES OF ACTION 9-10)..... 15

VI. CONCLUSION 16

1 TABLE OF AUTHORITIES

2 Cases

Page

3 *Bighorn-Desert View water Agency v Verjil*

4 (2005) 39 Cal.4th 205.....15

5 *Creighton v. City of Santa Monica*

6 (1984) 160 Cal.App.3d 1011.....7

7 *Domar Electric, Inc. v City of Los Angeles*

8 (1994) 9 Cal.4th 161..... 1, 6, 17

9 *Harman v City and County of San Francisco*

10 (1972) 7 Cal.3rd 1616

11 *San Diegans for Open Government v City of San Diego*

12 (2015) 242 Cal.App. 4th 416..... 1, 6

13
14 State Constitution/Statutes

15 California State Constitution, Article XIII C (Proposition 26)..... 2, 12, 13, 17

16 Text of Proposition 26 12, 13

17 California State Constitution, Article XIII D (Proposition 218)..... 2, 12, 15, 17

18 Text of Proposition 21812, 13

19 California Code of Civil Procedure §1021.5..... 17

20
21 Miscellaneous

22 Glendale City Charter..... Passim

23 League of California Cities Proposition 26 Implementation Guide.....14

1 **GLENDALE COALITION FOR BETTER GOVERNMENT**

2 **OPENING BRIEF**

3
4 The Glendale Coalition for Better Government (hereinafter "Coalition") hereby submits
5 its opening brief in support of its First Amended Petition for a Writ of Mandate, for a Writ of
6 Prohibition and for Declaratory Relief against the City of Glendale (hereinafter "City").

7 *Causes of Action 1 – 6* pertain to violations of the Glendale City Charter. *Causes of Action*
8 *7 – 10* pertain to violations of the State Constitution. This opening brief addresses only the
9 merits of this case. The respective issues of merits and remedies have been bifurcated.

10
11 **I. STATEMENT OF LAW**

12
13 1) The Charter represents the Supreme law of the City (*Domar Electric, Inc. v City*
14 *of Los Angeles* (1994) 9 Cal.4th 161, 170)

15
16 2) The sections of a Charter must be construed together (*San Diegans for Open*
17 *Government v City of San Diego* (2015) 242 Cal.App.4th 416, 443)

18
19 3) A Charter City may not act in conflict with its Charter (*Domar Electric, Inc. v*
20 *City of Los Angeles* (1994) 9 Cal.4th 161, 171)

21
22 4) The Glendale City Charter states that "SHALL" is mandatory and "MAY" is
23 permissive. (Charter, Article I, Section 2; Judicial Notice No. 8)

24
25 5) A violation of the Glendale City Charter shall be a misdemeanor subject to the
26 discretion of the City Attorney to charge and prosecute the violation as an infraction. (Charter,
27 Article XXIII, Section 27; Judicial Notice No. 15)

1 6) Glendale **SHALL** annually set aside monies from its Waterworks Revenue Fund
2 and Electric Works Revenue Fund as estimated by the Glendale City Manager to meet normal
3 depreciation of the Waterworks and Electric Works to be used only for repair, replacement,
4 betterment, and extensions of plants and equipment. (**Charter, Article XI, Section 17; Judicial**
5 **Notice No. 12)**

6
7 7) After payment of all outstanding demands and liabilities, the excess, if any, in the
8 Waterworks Revenue Fund and Electric Works Revenue Fund **SHALL** be transferred to the GWP
9 Surplus Fund. (**Charter, Article XI, Section 20; Judicial Notice No. 13)**

10
11 8) Subject to the right to reduce or waive a transfer, at the end of the fiscal year, an
12 amount equal to 25% of the operating revenues of Glendale Water & Power **SHALL** be
13 transferred **from** the **GWP Surplus Fund** to the GWP General Reserve Fund. (**Charter,**
14 **Article XI, Section 22; Judicial Notice No. 14)**

15
16 9) A city may not use receipts from the Waterworks Revenue Fund for general
17 governmental services including, but not limited to, police, fire, ambulance or library services.
18 (**California Constitution, Article XIII D Section (6)(b)(2,4); Judicial Notice No. 1)**

19
20 10) A city may not impose, extend or increase any general tax without the approval
21 of the electorate by a majority vote. (**California Constitution, Article XIII C (2)(b); Judicial**
22 **Notice No. 3)**

23
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1 **II. STATEMENT OF FACTS**

2
3 1) The City credits all receipts derived from electric works in a city created “electric
4 fund” reported in the Comprehensive Annual Financial Report (“CAFR”) for accounting purposes
5 rather than in the Electric Works Revenue Fund established by Article XI, Section 20 of the
6 Charter. **(Stipulation of Facts 4, 5, 6)**

7
8 2) The City credits all receipts derived from water works in a city created “water
9 fund” reported in the CAFR for accounting purposes rather than in the Waterworks Revenue Fund
10 established by Article XI, Section 20 of the Charter. **(Stipulation of Facts 4, 5, 7)**

11
12 3) City has created a general fund for accounting purposes which pays for general
13 fund operations which includes, among other things, fire, police and libraries. The general fund is
14 **not** a Charter fund. **(Stipulation of Facts 5, 14, 21, 28, 39, 46)**

15
16 4) In November 2012, City sought to amend those sections of the Charter pertaining
17 to Glendale Water & Power and the required transfer of monies to the various charter funds by
18 eliminating, among others, the General Budget Fund, the General Reserve Fund, the Waterworks
19 Depreciation Fund, the Electric Works depreciation Fund, the Waterworks Revenue Fund, the
20 Electric Works Revenue Fund, and the GWP Surplus Fund. **(Exhibit 32, Bate pages JE 186 -**
21 **JE 189; Exhibit 35, Bate page JE 202)**

22
23 5) The ballot measure seeking to amend the Charter failed. **(Judicial Notice No. 18;**
24 **Robert Elliot deposition Page 54, Line 11 – Page 55, Line 19)**

25
26 6) The Glendale City Manager, who is the executive head of the various departments
27 of the city **(Judicial Notice No. 9)**, presented the City with estimated depreciation amounts for
28 electric works and waterworks for fiscal years ending June 30, 2011, June 30, 2012, June 30, 2013

1 and June 30, 2014. These amounts are reported in the CAFR. **(Stipulation of Facts 12, 13, 19,**
2 **20, 26, 27, 37, 38)**

3
4 7) For fiscal year ending June 30, 2011, City transferred no monies from the Electric
5 Revenue Fund to the Electric Depreciation Fund nor to the GWP Surplus Fund nor from the GWP
6 Surplus Fund to the General Reserve Fund. Rather, City transferred \$19,107,000 from the Electric
7 Fund *directly* to the City General Fund. **(Stipulation of Facts 14, 15, 16; Exhibit 26, Bate pages**
8 **JE 149 - JE 150)**

9
10 8) For fiscal year ending June 30, 2012, City transferred no monies from the Electric
11 Revenue Fund to the Electric Depreciation Fund nor to the GWP Surplus Fund nor from the GWP
12 Surplus Fund to the General Reserve Fund. Rather, City transferred \$21,107,000 from the Electric
13 Fund *directly* to the City General Fund. **(Stipulation of Facts 21, 22, 23; Exhibit 30, Bate pages**
14 **JE 168 - JE 169)**

15
16 9) For fiscal year ending June 30, 2013, City transferred no monies from the Electric
17 Revenue Fund to the Electric Depreciation Fund nor to the GWP Surplus Fund nor from the GWP
18 Surplus Fund to the General Reserve Fund. Rather, City transferred \$20,857,000 from the Electric
19 Fund *directly* to the City General Fund. **(Stipulation of Facts 28, 29, 30; Exhibit 41, Bate pages**
20 **JE 228 - JE 229)**

21
22 10) For fiscal year ending June 30, 2014, City transferred no monies from the Electric
23 Revenue Fund to the Electric Depreciation Fund nor to the GWP Surplus Fund nor from the GWP
24 Surplus Fund to the General Reserve Fund. Rather, City transferred \$20,607,000 from the Electric
25 Fund *directly* to the City General Fund. **(Stipulation of Facts 39, 40, 41; Exhibit 50, Bate pages**
26 **JE 319 - JE 320)**

27
28 ///

1 11) For fiscal year ending June 30, 2010, City transferred \$4,160,000 from the
2 Waterworks Fund *directly* to the City General Fund. **(Stipulation of Facts 44)**

3
4 12) For fiscal year ending June 30, 2011, City transferred no monies from the
5 Waterworks Revenue Fund to the Waterworks Depreciation Fund nor to the GWP Surplus Fund
6 nor from the GWP Surplus Fund to the General Reserve Fund. Rather, City transferred
7 \$4,160,000 from the Waterworks Fund *directly* to the City General Fund. **(Stipulation of Facts**
8 **46, 47, 48)**

9
10 13) On February 8, 2011 City discontinued the transfer of Waterworks Fund monies to
11 the General Fund commencing fiscal year end June 30, 2012, **(Exhibit 22, Bate pages JE 131 -**
12 **JE 133)**

13
14 14) On August 13, 2013, City increased electric rates to be charged to city rate payers
15 over a five year period. **(Stipulation of Facts 33; Exhibits 43, 46; Answer to First Amended**
16 **Petition ¶48)**

17
18 15) The August 13, 2013 electric rate increase was not submitted to a vote of the
19 electorate. **(Stipulation of Facts 34; Answer to First Amended Petition ¶48)**

20
21 16) A component of the rate to be charged to ratepayers consists of an amount to cover
22 a transfer of \$21,107,000 from the electric fund to the general fund. **(Stipulation of Facts 36)**

23
24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. THE GLENDALE CITY CHARTER VIOLATIONS**

2 **(Causes of Action 1 -6)**

3 **A. THE CITY CHARTER**

4
5 Glendale is a Charter city. The Charter represents the supreme law of a city. In fact, an
6 act in violation of the Charter is **void**. The following is from our Supreme Court in *Domar*
7 *Electric, Inc. v City of Los Angeles* (1994) 9 Cal.4th 161, 170-171:

8
9 We begin with the cardinal principle that the charter represents the
10 supreme law of the City, subject only to conflicting provisions in the
11 federal and state Constitutions and to preemptive state law.
12 (See *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150,
13 161 [101 Cal.Rptr. 880, 496 P.2d 1248].) In this regard, “[t]he charter
14 operates not as a grant of power, but as an instrument of limitation
15 and restriction on the exercise of power over all municipal affairs
16 which the city is assumed to possess; and the enumeration of powers
17 does not constitute an exclusion or limitation. . .

18
19 [I]t is well settled that a charter city may not act in conflict with its
20 charter. (Citations omitted) Any act that is violative of or not in
21 compliance with the charter is void. (emphasis added)

22
23 In 2015, our Court of Appeal added the following in *San Diegans for Open*
24 *Government v City of San Diego* (2015) 242 Cal.App.4th 416, 443:

25
26 Under settled rules of statutory interpretation, however, “the various
27 sections of a charter must be construed together, giving effect and
28 meaning so far as possible to all parts thereof, with the primary

1 purpose of harmonizing them and effectuating the legislative intent
2 as therein expressed.” (*Creighton v. City of Santa Monica* (1984) 160
3 Cal.App.3d 1011, 1017, 207 Cal.Rptr. 78.) (emphasis added)
4

5 The following sections of Article XI of the Glendale City Charter provide a “*Roadmap*”
6 as to how receipts derived for electric and water services are to be used.
7

8 **Charter Article XI, Section 20 (Judicial Notice No. 13)**

9 This section creates a **Glendale Water and Power (GWP) Electric Works Revenue**
10 **Fund to receive electric receipts and a Waterworks Revenue Fund to receive water**
11 **receipts.** It states that after payment of all outstanding demands and liabilities, the excess, if
12 any, in either fund “*shall be transferred to the Glendale Water and Power surplus fund.*”
13

14 **Charter Article XI, Section 17 (Judicial Notice No. 12)**

15 This section creates a **GWP Electric Works Depreciation Fund and a GWP**
16 **Waterworks Depreciation Fund.** It expressly states that the council shall annually set aside
17 income from the Electric Works Revenue Fund and from the Waterworks Revenue Fund which
18 are based upon required estimates of the city manager. These estimates “*shall be sufficient to*
19 *meet the normal depreciation of such electric works*” and “*shall be sufficient to meet the*
20 *normal depreciation of such waterworks.*”
21

22 This section further states that the monies to be set aside in the Electric Works
23 Depreciation Fund and in the Waterworks Depreciation Fund “*shall be used only for the*
24 *repair, replacement, betterment and extensions of the plants and equipment of the*
25 *waterworks or electric works, as the case may be, from which said revenue is derived.*”
26

27 **Charter Article XI, Section 22 (Judicial Notice No. 14)**

28 This section creates a **GWP Surplus Fund.** It confirms that set forth in Article XI,
Sections 17 and 20 and expressly states that the Surplus Fund “*shall be credited from the*

1 *receipts of the department of Glendale Water and Power in the waterworks revenue fund and*
2 *the electric works revenue fund, any amounts in excess of the requirements of the several*
3 *funds as hereinbefore set forth.”*

4
5 **Charter Article XI, Section 15 (Judicial Notice No. 11)**

6 This section creates a **General Reserve Fund** to temporarily advance cash to other
7 funds as may be needed. Article XI, Section 22 further states, subject to the right to reduce or
8 waive a transfer, *“At the end of each fiscal year an amount equal to twenty-five (25)*
9 *percentum of operating revenues of the Department of Glendale Water and Power for such*
10 *year...shall be transferred from said Glendale Water and Power surplus fund to the general*
11 *reserve fund.”*

12
13 **Charter Article XI, Section 14 (Judicial Notice No. 10)**

14 This section creates a **General Budget Fund**. It expressly states, *“All receipts from the*
15 *general tax levy, licenses, fines, permits, and interest on bank deposits, and all other receipts*
16 *except those from the department of Glendale Water and Power, and those which are*
17 *collected for a specific purpose, or are herein ordered to be credited to some other fund, shall*
18 *be credited to said [general budget] fund.”*

19
20 The **“Roadmap”** as created by the Charter may be summarized as follows:

- 21
- 22 • **The GWP Electric Works Revenue Fund and GWP Waterworks Revenue**
23 **Fund receive revenue from multiple sources including rate payers.**
 - 24
 - 25 • **The two Revenue Funds pay all outstanding demands and liabilities including**
26 **that required to be set aside for the GWP Electric Works Depreciation Fund**
27 **and GWP Waterworks Depreciation Fund.**
 - 28

- 1 • After payment of all outstanding demands and liabilities, the excess, if any,
2 shall be transferred to the GWP Surplus Fund.
- 3
- 4 • Subject to the right to reduce or waive, an amount measured by 25% of the
5 operating revenues of GWP shall be transferred from the GWP Surplus Fund
6 to the General Reserve Fund.
- 7
- 8 • The General Budget Fund receives most all receipts from city operations with
9 the express exception of those from the department of GWP.
- 10

11 For the convenience of the Court, a “Roadmap” flowchart is attached hereto as
12 Appendix “A.” The flowchart illustrates what the Charter requires and what the City actually
13 does in violation of the Charter.

14

15 **B. THE CHARTER VIOLATIONS**

16

17 The City has admitted in the Stipulation of Facts that it violated its Charter with respect to
18 its use of electric works receipts and waterworks receipts for fiscal years ending June 30, 2011
19 through and including June 30, 2014. These violations simply disregard the Charter “roadmap”
20 which the City had faithfully followed in past years. (Judicial Notice No. 17, pages M-13, M-23,
21 M-24). These admissions are consistent with the actions of the city council as evidenced by the
22 exhibits that accompany this opening brief.

23

24 The Coalition further asserts that violations with respect to electric works
25 receipts are *continuing*. This assertion is confirmed by the July 22, 2013 presentation of City
26 Manager Ochoa to the GWP Commission (Exhibit 74, Bate page JE 2036) and by the August
27 2013 Cost of Service Analysis (COSA) (Exhibit 44, Bate pages, JE 267, JE 277, JE 283)

28

1 The very existence of these Charter violations are made even more disturbing by the fact
2 that the City attempted to amend those sections of the Charter which pertain to GWP and the
3 transfer of monies by eliminating the “roadmap” in order to reflect what the City actually does.
4 (Exhibits 32, Bate pages 186-189; 35, Bate page JE 202)

5 The amendment failed (Judicial Notice No. 16; Robert Elliot deposition Page 54,
6 Line 11 – Page 55, Line 19); yet the City has knowingly and willfully continued its admittedly
7 illegal transfers.

8
9 The following summarizes the illegal and, thus, *void* conduct as admitted by the City.

10
11 Fiscal Year End June 30, 2011

12 The City transferred \$19,107,000 from the electric fund directly to the city general fund.
13 The City transferred no monies to the electric works depreciation fund nor to the general reserve
14 fund nor to the GWP surplus fund. (Stipulation of Facts 14, 15, 16; Exhibit 26; Bate pages
15 JE 149 – JE 150) \$19,962,000 was required to be transferred to the depreciation fund.
16 (Stipulation of Facts 13)

17 The City transferred \$4,160,000 from the water fund directly to the city general fund.
18 The City transferred no monies to the waterworks depreciation fund nor to the general reserve
19 fund nor to the GWP surplus fund. (Stipulation of Facts 46, 47, 48) \$3,494,000 was required to
20 be transferred to the depreciation fund. (Stipulation of Facts 45)

21
22 Fiscal Year End June 30, 2012

23 The City transferred \$21,107,000 from the electric fund directly to the city general fund.
24 The City transferred no monies to the electric works depreciation fund nor to the general reserve
25 fund nor to the GWP surplus fund. (Stipulation of Facts 21, 22, 23; Exhibit 30; Bate pages
26 JE 168 – JE 169) \$22,226,000 was required to be transferred to the depreciation fund.
27 (Stipulation of Facts 20)

1 **Fiscal Year End June 30, 2013**

2 The City transferred **\$20,857,000** from the electric fund directly to the city general fund.
3 The City transferred no monies to the electric works depreciation fund nor to the general reserve
4 fund nor to the GWP surplus fund. **(Stipulation of Facts 28, 29, 30; Exhibit 41; Bate pages**
5 **JE 228 – JE 229) \$26,262,000** was required to be transferred to the depreciation fund.
6 **(Stipulation of Facts 27)**

7
8 **Fiscal Year End June 30, 2014**

9 The City transferred **\$20,607,000** from the electric fund directly to the city general fund.
10 The City transferred no monies to the electric works depreciation fund nor to the general reserve
11 fund nor to the GWP surplus fund. **(Stipulation of Facts 39, 40, 41; Exhibit 50; Bate pages**
12 **JE 319 – JE 320) \$26,264,000** was required to be transferred to the depreciation fund.
13 **(Stipulation of Facts 38)**

14
15 The City “electric fund”, “water fund” and “general fund” are funds maintained by the
16 City and reported in the CAFR for accounting purposes. They are distinct from the funds
17 established by the Charter. **(Stipulation of Facts 5)** The City general fund pays for general
18 fund operations which includes, among other things, fire, police and libraries. **(Stipulation of**
19 **Facts 14, 21, 28, 39, 46) This is a direct violation of Article XI, Section 14 (Judicial Notice**
20 **No. 10) which expressly prohibits the use of receipts from GWP for such purposes.**

21
22 Based upon the foregoing, the City has admitted that it illegally transferred monies from
23 the two Revenue Funds directly to the general fund in violation of the Charter over a four year
24 period in the total amount of **\$85,838,000**. The City has further acknowledged that these illegal
25 transfers have deprived the two Depreciation Funds of the monies required to meet normal
26 depreciation as estimated by the City Manager. The stated estimate required for the Depreciation
27 Funds was **\$98,208,000**. **(Stipulation of Facts 12-15; 19-22; 26-29; 37-40; 45-47)**

1 **IV. ARTICLE XIIIC (PROPOSITION 26) VIOLATIONS**

2 **(Causes of Action 7 – 8)**

3 Proposition 218 (**Judicial Notice No. 2**) added Articles XIIIC and XIIID to the State
4 Constitution. Section 5 of Proposition 218 provides:

5
6 **The provisions of this act shall be liberally construed to**
7 **effectuate its purposes of limiting local governmental revenue**
8 **and enhancing taxpayer consent. [Emphasis added]**
9

10 Proposition 26 (**Judicial Notice No. 4**) amended Article XIIIC of the State Constitution by
11 adding Section 1(e) which states:

12
13 **...“tax” means any levy, charge, or exaction of any kind imposed**
14 **by a local government except the following: [seven exceptions]**
15

16 Article XIIIC Section 2(b) provides, in pertinent part:

17
18 **No local government may impose, extend, or increase any**
19 **general tax unless and until that tax is submitted to the**
20 **electorate and approved by a majority vote.**
21

22 The Coalition alleges in Causes of Action 7 and 8 that the City violated Article XIIIC by
23 increasing the rates charged to electric rate payers without submitting the increase to a vote. The
24 Coalition further alleges that the increased charge constituted an illegal tax. The City has twice
25 acknowledged that it did, in fact, increase electric rates charged without submitting the increased
26 charge to a vote of the electorate. It did so in ¶48 of its Answer to the First Amended Petition
27 and it did so in Stipulation of Facts 33, 34 as follows:
28

1 33. On August 13, 2013, the City of Glendale increased electric
2 rates to be charged to city rate payers annually over a five
3 year period.

4
5 34. The August 13, 2013 electric rate increase was not submitted
6 to a vote of the electorate.

7
8 The record seems clear as to why the City increased electric rates without a vote. The City
9 knew full well that the electorate would not agree. Thus, the City chose to deprive the electorate
10 of the right to vote on whether or not electric fees should be used for the general fund. This is
11 precisely what Proposition 218 (*see Sections 2 and 5*) and Proposition 26 (*see Section 1(e)*) were
12 intended to prevent. (**Judicial Notice No. 2, 4**) The following are comments of City Manager
13 Ochoa to the GWP Commission on July 22, 2013 when responding to a commissioner's
14 suggestion that the City could replace the practice of transferring monies from the electric fund to
15 the general fund by raising taxes:

16
17 ...the idea of a general tax or even a public safety augmentation
18 was something that was completely anathema to [the council].
19 [Exhibit 74; Bate pages JE 2034 – JE 2035]

20
21 As indicated above, Article XIII C Section 1(e) sets forth seven exceptions to what would
22 constitute a tax. In doing so, Article XIII C also expressly states that **the burden of proving that**
23 **an increased charge is not a tax is upon the government.** Article XIII C states:

24
25 The local government bears the burden of proving by a preponderance
26 of the evidence that a levy, charge, or other exaction is not a tax....

27
28 ///

1 It is interesting to note that Michael G. Colantuono, the very attorney who authored
2 the Proposition 26 League of California Cities Implementation Guide (**Judicial Notice**
3 **No. 6**) and who represents the City of Glendale in the case at bar, stated in open court herein
4 on January 22, 2015:

5
6 **MR. COLANTUONO:** I believe they bear the burden of persuasion
7 on their Charter claims. *I acknowledge that I bear the burden of*
8 *persuasion on Prop. 218 and Prop 26 claims, and I bear the burden*
9 *of production on both claims.*

10
11 The Coalition has alleged that the increased charges constituted a tax. The Coalition
12 need do nothing further in its Opening Brief. The burden is upon the City to attempt to prove
13 that the increased charges was not a tax and is subject to one of the seven exceptions. *Yet the*
14 *City has never pled which, if any, of the exceptions might apply.*

15
16 **THE COALITION OBJECTS TO ANY EVIDENCE WHICH THE CITY MAY**
17 **ATTEMPT TO OFFER IN SUPPORT OF ITS BURDEN. THE CITY FAILED TO**
18 **PLEAD AN AFFIRMATIVE DEFENSE IN ITS ANSWER WHICH WOULD HAVE**
19 **ASSERTED THAT BURDEN. THUS, ANY SUCH OFFERED EVIDENCE IS**
20 **OUTSIDE THE SCOPE OF THE PLEADINGS.**

21 **SEE THE ACCOMPANYING MOTION FOR JUDGMENT ON THE**
22 **PLEADINGS FILED BY THE COALITION WITH RESPECT TO CAUSES OF**
23 **ACTION 7 AND 8.**

24
25 ///

26 ///

27 ///

28 ///

1 V. ARTICLE XIIID (PROPOSITION 218) VIOLATIONS

2 (Causes of Action 9 – 10)

3
4 Proposition 218 added Article XIIID to the State Constitution. Causes of Action 9 and 10
5 pertain to constitutional violations as evidenced by the City's illegal use of revenue received by
6 the City Waterworks Revenue Fund. Article XIIID Section 6(b) provides, in pertinent part:

7
8 **(1) Revenues derived from the fee or charge shall not exceed the**
9 **funds required to provide the property related service.**

10
11 **(2) Revenues derived from the fee or charge shall not be used for**
12 **any purpose other than that for which the fee or charge was**
13 **imposed.**

14
15 **(5) No fee or charge may be imposed for general governmental**
16 **services including, but not limited to, police, fire, ambulance or**
17 **library services, where the service is available to the public at**
18 **large in substantially the same manner as it is to property owners.**

19
20 The Supreme Court in *Bighorn-Desert View Water Agency v Verjil* (2005) 39 Cal.4th 205,
21 217 held that "property related service" includes water. The City has Stipulated that it transferred
22 \$4,160,000 from the Waterworks Revenue Fund to the City general fund both for fiscal year end
23 June 30, 2010 (**Stipulation of Facts 44**) and for fiscal year end June 30, 2011 (**Stipulation of**
24 **Facts 46, 47, 48**).

25 These were indefensible, illegal transfers which should be deemed *void*. The City
26 acknowledged this when, on February 8, 2011, the City discontinued the transfer of monies from
27 the Waterworks revenue Fund to the City general fund commencing with fiscal year ending June
28 30, 2012 (**Exhibit 22; Bate pages JE 131 - 133**).

1 **VI. CONCLUSION**

2
3 The following is a summary of the violations alleged by the Coalition in the First Amended
4 petition:

- 5 • **Causes of Action 1 - 6:** Illegal transfers in violation of the City Charter in the total
6 amount of \$85,838,000 and the failure to set aside monies in the respective
7 depreciation funds in the total amount of \$98,208,000. **The City has stipulated**
8 **to these violations.**
- 9
- 10 • **Causes of Action 7-8:** Violation of State Constitution Article XIIC
11 (Proposition 26) **The City has failed to assert any affirmative defenses and has,**
12 **thus, failed to meet its burden to even dispute the allegations of a violation.**
- 13
- 14 • **Causes of Action 9-10:** Violation of State Constitution Article XIID
15 (Proposition 218) **The City has stipulated to the violations of Proposition 218**
16 **and, in fact, terminated these illegal practices as of June 30, 2012.**
- 17

18 It cannot be disputed that the illegal transfer of more than \$80,000,000 to the general fund
19 has severely impacted and cannibalized the financial viability of the Glendale Department of
20 Water & Power electric utility. In point of fact, the City may have had to divest itself of the
21 electric utility had it not increased electric charges without a vote of the electorate in 2013. See
22 the transcript of the GWP Commission meeting of July 22, 2013 (**Exhibit 72, Bate pages**
23 **JE 2016, JE 2017, JE 2019, JE 2022, JE 2028, JE 2029)** and the transcript of the Glendale City
24 Council meeting of August 6, 2013. (**Exhibit 75, Bate pages JE 2040, JE 2042, JE 2043,**
25 **JE 2048, JE 2051)**

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1 The illegality was even recognized by the Los Angeles County Grand Jury which stated
2 *"...it is not permissible for the City to use Glendale Water & Power as its 'piggy bank' to satisfy*
3 *budgetary shortfalls."* (Exhibit 72, Bate page JE 2002)

4
5 The Coalition reiterates that the Glendale City Charter expressly states that the term
6 *"shall"* is **mandatory** (Article I, Section 2; Judicial Notice No. 8) and that a **violation** of the
7 Charter is a **misdemeanor** (Article XXIII, Section 27; Judicial Notice No. 15). And the
8 California Supreme Court has stated that *"Any act that is violative of or not in compliance with*
9 *the charter is void."* (Domar Electric, Inc. v City of Los Angeles, supra)

10
11 Nor can it be disputed that the City has violated both Article XIII C and Article XIII D of
12 the State Constitution by increasing the electric rates charged without a vote and by the illegal use
13 of revenues from the Waterworks Revenue Fund.

14
15 The Glendale Coalition for Better Government submits that it has proven its case in its
16 entirety, that the transfers made in violation of the Charter are void as a matter of law, that City
17 has violated the state Constitution, and that this Court shall find that the Coalition shall prevail on
18 all ten Causes of Action asserted and that the Coalition shall be entitled to the remedies sought,
19 attorney fees pursuant to C.C.P. §1021.5 and costs of suit.

20
21 Respectfully submitted,

22
23 LAW OFFICES OF
24 ARTHUR JARVIS COHEN

25 DATED: April 11, 2016

26 By: 

27 Arthur Jarvis Cohen
28 Attorney for Petitioner,
Glendale Coalition for Better Government

Glendale Charter: Article XI, Sections 14, 15, 17, 20 and 22

