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A. JUDICIAL REVIEW OF PROPERTY TAX VALUATION METHODS: A REQUIREMENT OF REASONABLE ACCURACY

*Bret Harte Inn, Inc. v. City & County of San Francisco.* In affirming a lower court's refusal to give effect to a property tax assessment based on a method of valuation which deducted a uniform 50 percent of acquisition cost as depreciation, regardless of the property's age or condition, the California Supreme Court has reconsidered and redefined the role of the judiciary in reviewing local property tax assessment methods. The court held that the constitutional command that all property be assessed at full cash value requires that depreciation formulas meet a standard of "reasonable" accuracy. In determining the reasonableness of a method of valuation, the courts may be required to balance possible increases in assessorial costs against the increases in accuracy resulting from the use of a different method. Part I of this Note presents the historical and factual background of the decision. Part II analyzes the decision itself. Part III argues that the extensive judicial analysis of assessment practices that the court appears to invite will be difficult for reviewing courts to perform. As an alternative, this Note proposes that the State Board of Equalization adopt specific and inclusive regulations governing valuation practices.

I. Historical and Factual Background

a. Facts

The *Bret Harte Inn* litigation had its origins in the San Francisco assessor's scandals of 1965. Grand jury investigations disclosed misconduct in the assessor's office and criminal proceedings were begun. Shortly thereafter, a taxpayer brought suit seeking a writ of mandate to compel corrective action. The superior court granted summary

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2. Id. at 25, 544 P.2d at 1360-61, 127 Cal. Rptr. at 160-61.
judgment for the plaintiffs and ordered reassessment of all property that had escaped taxation.\(^5\) On appeal the order was affirmed.\(^6\)

Pursuant to the court's order, personal property belonging to the Bret Harte Inn was reassessed and escape assessments levied.\(^7\) Because no comparative sales or income data was available, the assessor's office used the acquisition cost-less-depreciation method in valuing the property.\(^8\) Regardless of the property's age or useful life, 50 percent of the acquisition cost was deducted to reflect depreciation.\(^9\) A 50 percent assessment ratio was then applied to this depreciated value figure.\(^10\) As a result, all personal property valued by this method was taxed at 25 percent of acquisition cost.\(^11\)

The taxpayer appealed the escape assessments to the Board of Supervisors, sitting in their capacity as a board of equalization. They refused to overturn the assessor's valuation. The assessments were then paid under protest and an action filed for refund. At trial the plaintiff presented uncontradicted evidence that the assessor's method substantially overvalued his property. The trial court held the method invalid and rendered judgment for the taxpayer. This appeal followed.\(^12\)

**b. Legal Developments Leading to Bret Harte Inn**

Close review of assessment methods is a relatively recent development in California. Early court decisions are marked by pronounced

\(^{5}\) Id. at 193-95, 81 Cal. Rptr. at 688-89.

\(^{6}\) Id. at 195, 81 Cal. Rptr. at 689.

\(^{7}\) 16 Cal. 3d at 18, 544 P.2d at 1356, 127 Cal. Rptr. at 156. Escape assessments are levied to capture revenue lost due to incorrect previous assessments. See Ehrman & Flavin, supra note 3, § 258; see note 42 infra.


\(^{9}\) Id. at 18-19, 544 P.2d at 1356, 127 Cal. Rptr. at 156.

\(^{10}\) Id. at 19, 544 P.2d at 1356, 127 Cal. Rptr. at 156. This case arose before the enactment of Cal. Rev. & Tax. Code § 401 (West Supp. 1976), which now requires that the assessor assess all property subject to general property taxation at 25 percent of its full value. See generally D. Paul, supra note 3, at 93-116.

\(^{11}\) 16 Cal. 3d at 25, 544 P.2d at 1361, 127 Cal. Rptr. at 161. The use of this method of valuation was discontinued in San Francisco in 1967. Id. at 25 n.7, 554 P.2d at 1361 n.7, 127 Cal. Rptr. at 161 n.7.

\(^{12}\) Id. at 18-19, 544 P.2d at 1356, 127 Cal. Rptr. at 156.
judicial reluctance to review the actions of local assessors. The basic rule was that the courts would overturn the assessor's decision only upon a showing of "fraud or something equivalent to fraud" in the making of the assessment.

Under the early standard the court had twice considered the use of fixed-percentage depreciation, with inconsistent results. In Mahoney v. City of San Diego, the assessor had assessed all improvements to real property at a fixed percentage of construction cost. Frame and stucco buildings were assessed at 15 percent of construction cost, brick or tile buildings at 20 percent, and concrete buildings at 25 percent with no allowance for differences in age or useful life. The court overturned the challenged assessments, stating that in the future the use of any fixed-percentage valuation formula that failed to take account of those factors "which in common experience ordinarily determine values," (including the property's age, physical condition, and location) would be illegal whenever the use of the formula resulted in actual discrimination.

Eight years later, however, the court considered a similar method of valuation and reached a different result. In Rittersbacher v. Board of Supervisors, the assessor had divided personal property in his jurisdiction into classes and applied a fixed depreciation percentage to all property within each class. Depreciation percentages for individual classes varied between 20 and 40 percent, without any attempt to distinguish within classes on the basis of age or useful life. Although the use of these fixed percentage depreciation formulas appears to ignore those factors "which in common experience ordinarily determine values," the court nevertheless found the method of valuation acceptable. The court admitted that the depreciation formulas adopted by the assessor were arbitrary but refused to hold that the values arrived at through their use were not, as a matter of law, equivalent to the full cash value of the properties involved. Furthermore, the court held

15. 198 Cal. 388, 245 P. 189 (1926).
16. Id. at 401, 245 P. at 194.
17. Id. at 402, 245 P. at 195.
19. Id. at 544-45, 32 P.2d at 139-40.
21. 220 Cal. at 544-45, 32 P.2d at 139-40.
that the method used, unlike that in *Mahoney*, did not constitute a constructive fraud on the taxpayer.\(^{22}\) Instead, the decision emphasized the practical factors that weighed in favor of a finding for the assessor, including the need for stable county assessment rolls and the economic burden of applying more refined methods of valuation to millions of items of property.\(^{23}\) The court also stressed the discretion historically given to assessors in the performance of their duties.\(^{24}\)

Although *Rittersbacher* was never overruled, a shift in judicial attitudes had made its continued vitality doubtful since judicial review of assessment practices had substantially expanded in scope in recent years. The *Bret Harte Inn* court located the turning point in the case of *De Luz Homes, Inc. v. County of San Diego*,\(^ {25}\) in which the court, speaking through Justice Traynor, eliminated the constructive fraud standard. The court instead held that decisions of local assessors were reviewable for "arbitrariness, abuse of discretion or failure to follow the standards prescribed by the Legislature."\(^ {26}\) Subsequent cases have shown a continued willingness to evaluate local assessment practices.\(^ {27}\)

### II. The Decision

In *Bret Harte Inn*, the court regarded the taxpayer's challenge to the validity of the method chosen by the assessor as a question of law.\(^ {28}\) To be valid the method had to satisfy the constitutional command that

\(^{22}\) Id. at 545, 32 P.2d at 140.

\(^{23}\) Id. at 542-43, 32 P.2d at 138-39.

\(^{24}\) Id. at 545, 32 P.2d at 140.


\(^{26}\) Id. at 564, 290 P.2d at 555. Justice Traynor cited several earlier cases as authority for the new standard. A close examination of those cases discloses that at the very least the *De Luz* standard is, as *Bret Harte Inn* noted, a reinterpretation of earlier law. 16 Cal. 3d at 22, 544 P.2d at 1359, 127 Cal. Rptr. at 159.


all property be assessed at its full cash value.\textsuperscript{29} The court had no objection to the use of a cost-less-depreciation method to determine full cash value, but held that to meet the full cash value requirement, cost-less-depreciation valuation methods “must be designed so that cost factors . . . are modulated by depreciation factors in a manner reasonably calculated to achieve an approximation of such value with respect to the individual taxpayer.”\textsuperscript{30} In this case, the method used by the assessor failed this test because it “wholly abandon[ed] any attempt to achieve a reasonable estimate of the true present value of the property to which it addresses itself.”\textsuperscript{31} The court termed the notion that the property of all taxpayers was worth 50 percent of its purchase or construction cost “absurd” and “contrary to reason and experience.”\textsuperscript{32}

To guide assessors seeking to meet the “reasonably calculated” standard, the court resurrected the Mahoney opinion, citing with approval the earlier court's view that any method of calculating depreciation must take into account “those factors which in common experience ordinarily determine value.”\textsuperscript{33} Presumably, age and useful life are at least two factors which must be considered in developing depreciation formulas.\textsuperscript{34} The court did not prescribe how, or to what extent, these factors are to be taken into account. But it did indicate some of the

\textsuperscript{29} 16 Cal. 3d at 20, 544 P.2d at 1357, 127 Cal. Rptr. at 157.

This constitutional provision has been changed since the time the Bret Harte Inn assessments were made. The court decided the case under former Cal. Const. art. XI, § 12 (1933, repealed 1974), which provided that “[a]ll property . . . shall be assessed . . . at its full cash value.” In 1974 the constitutional standard was altered. It now reads “All property . . . shall be assessed at the same percentage of fair market value.” Cal. Const. art. XIII, § 1. The Bret Harte Inn decision should be equally applicable to assessments made after the change in wording. The change from “full cash value” to “fair market value” should have no effect since the two terms share a common definition. Cal. Rev. & Tax Code § 110 (West Supp. 1976). There is no reason why the insertion of the “same percentage” term should affect the Bret Harte Inn result. Even under the old constitutional provision, the general practice was to assess at a percentage of full value. See County of Sacramento v. Hickman, 66 Cal. 2d 841, 428 P.2d 593, 59 Cal. Rptr. 609 (1967).

\textsuperscript{30} 16 Cal. 3d at 25, 544 P.2d at 1360-61, 127 Cal. Rptr. at 160-61. Later in the decision the court expanded upon the requirement that the method of valuation must be “reasonably accurate with respect to the individual taxpayer.” The court disapproved language in Eastern-Columbia, Inc. v. County of Los Angeles, 70 Cal. App. 2d 497, 505, 161 P.2d 407, 411-12 (2d Dist. 1945), which suggested that to challenge the adequacy of methods of valuation, the taxpayer must plead and prove both discriminatory overvaluation of its property and undervaluation of other taxpayers' property. The Bret Harte Inn decision reasoned that such a showing was unnecessary where a method of valuation “wholly fail[ed] to conform to constitutional provisions requiring assessment at full value.” 16 Cal. 3d at 28, 544 P.2d at 1363, 127 Cal. Rptr. at 163.

\textsuperscript{31} 16 Cal. 3d at 27, 544 P.2d at 1362, 127 Cal. Rptr. at 162.

\textsuperscript{32} Id. at 27 n.9, 544 P.2d at 1362 n.9, 127 Cal. Rptr. at 162 n.9.

\textsuperscript{33} Id. at 26, 544 P.2d at 1361, 127 Cal. Rptr. at 161 (quoting Mahoney v. City of San Diego, 198 Cal. 388, 402, 245 P. 189, 195 (1926)).

\textsuperscript{34} Id. at 25, 544 P.2d at 1360, 127 Cal. Rptr. at 160.
arguments that will be considered in defense of a method of valuation challenged for inaccuracy. These arguments, similar to those made in Rittersbacher, primarily concern the administrative and financial capacity of the assessor's office. But in this case the court rejected the appellant's contention that the time pressure of the court-ordered reassessment and the prospective costs of additional accuracy justified the method used by the assessor. The opinion, however, expressly allows the continued use of depreciation formulas apparently because the court believed that onsite inspection would demand too great an expenditure of tax dollars. Thus, the opinion implies that a method of valuation must meet minimum standards of accuracy regardless of cost. Beyond that threshold, reviewing courts will be allowed to weigh the costs of additional accuracy against the increased fairness to individual taxpayers.

III. Limitations of the Reasonable Accuracy Standard

The court's holding in Bret Harte Inn raises two potential problems. First, a "reasonable" accuracy requirement opens the door to cases that the courts will find difficult to decide by using the balancing test outlined in the opinion. Second, because the standard of "reasonable" accuracy does not provide specific guidelines and will be applied after the assessment process has been completed, it may create undesirable uncertainty in local property tax administration.

In Bret Harte Inn, the challenged method "wholly abandon[ed]" any attempt at reasonable accuracy. The case was therefore an easy one for the court to decide. But many methods will not be patently inadequate, and yet will still raise disturbing problems of inequity or inaccuracy. Those methods will require the courts to apply a balancing test like that suggested in Bret Harte Inn in order to determine the "reasonableness," and hence the legality, of the method chosen.

There are many situations in which balancing the costs and benefits will not provide the courts with a clear basis for a finding of illegality. An example is the method challenged in Hunt-Wesson Foods, Inc. v. County of Alameda. There the assessor used a replacement costless-depreciation method of valuation which allowed no depreciation for the fraction of a year between the date of acquisition and the first

35. Id. at 26-27, 544 P.2d at 1361-62, 127 Cal. Rptr. at 161-62.
37. 16 Cal. 3d at 27, 544 P.2d at 1362, 127 Cal. Rptr. at 162.
At the first assessment, all property was valued at its full replacement cost. Assessments in subsequent years continued to ignore fractional first-year depreciation. The county assessment appeals board upheld this method of valuation, noting that it eliminated the cost of developing tables and new procedures for the calculation of the fractional year's depreciation. The trial court disapproved the method of valuation. The court of appeal could not determine whether the lower court decision resulted from the application of an incorrect standard of review. Therefore, in its decision it restated the applicable law and remanded to the trial court for reconsideration. Because the court of appeal never reviewed the method on the merits, the case provides a useful vehicle for analysis under the new Bret Harte Inn standard of reasonable accuracy.

A court may feel uncomfortable holding reasonably accurate a method like that in Hunt-Wesson, which clearly discriminates against all taxpayers who purchase property shortly after the lien date and to some extent overvalues all property not purchased on the lien date. But the court will also find it difficult to determine and weigh the increased assessorial costs involved in calculating depreciation for fractions of years against the increased fairness to individual taxpayers. In general, review of borderline methods of valuation like that in Hunt-Wesson will require an extensive investment of time and resources to determine precisely the costs and benefits of increased accuracy. The courts are not in a particularly good position to perform this difficult task; courts have limited expertise in dealing with technical questions of appraisal accuracy and administrative costs, and they do not have the time and resources to perform the large amount of research and analysis required to produce accurate calculations of these costs and benefits.

Local assessors may also have problems with the standard outlined in the Bret Harte Inn opinion. Cautious assessors who use expensive methods to insure sufficient accuracy may incur unnecessary costs of assessment. At the same time, those assessors who attempt to cut corners run the risk of an expensive, judicially ordered reassessment. The adoption of more explicit standards will reduce these risks, thereby promoting efficiency.

39. Id. at 166-67, 116 Cal. Rptr. at 161-62.
40. Id. at 167, 116 Cal. Rptr. at 162.
41. Id.
42. Id. at 167-68, 177-80, 116 Cal. Rptr. at 162, 169-71.
43. For a good discussion of the many factors that an assessor must consider in allocating the resources available to him, see Aaron, Some Observations on Property Tax Valuation and the Significance of Full Value Assessment, in The Property Tax and Its Administration 153, 159-65 (A. Lynn ed. 1969).
44. A related development in the law indicates that reassessments may become in-
In sum, it appears that the court has opened the judiciary to many of the practical problems that the Rittersbacher court sought to avoid. But a return to the hands-off attitude of earlier decisions would clearly be a poor response. For several reasons, it is important that responsible judicial review for accuracy continue. Inaccurate methods of valuation impose inequitable burdens upon owners of taxable property. Furthermore, recent cases in the appellate courts have given the judiciary good reason to be concerned with the conduct of local assessors. Finally, the growing importance of the local property tax to the increasingly common. In Bauer-Schweitzer Malting Co. v. San Francisco, 8 Cal. 3d 942, 506 P.2d 1019, 106 Cal. Rptr. 643 (1973), the California Supreme Court held that former article XI, section 12 of the constitution requiring that "[a]ll property ... be taxed in proportion to its full value" is "self-executing." The opinion stated that enabling legislation is not required to authorize escape assessments and implied that the legislature cannot limit by statute the assessor's right to levy escape assessments. Id. at 946, 506 P.2d at 1021-22, 106 Cal. Rptr. at 645-46; Ehrman & Flavin, supra note 3, § 258 (Supp. 1976).

The incorrect assessment in Bauer-Schweitzer resulted from the use of an improper assessment ratio. Ex-Cello Corp. v. County of Alameda, 32 Cal. App. 3d 135, 107 Cal. Rptr. 839 (1st Dist. 1973), however, extended the "self-executing" reassessment doctrine to errors of valuation. In that case the errors were caused by misconduct on the part of the taxpayers. In Hewlett-Packard Co. v. County of Santa Clara, 50 Cal. App. 3d 74, 123 Cal. Rptr. 195 (1st Dist. 1975) the rule was further extended to encompass "good faith" errors of valuation. If Hewlett-Packard is the law, then within the 4-year statute of limitations, the assessor has the authority and duty to correct all under-assessments including those resulting from inaccurate methods of valuation. Id. at 80-81, 123 Cal. Rptr. at 198-99. Moreover, taxpayers may be able to sue to require corrective action by the assessor. Ehrman & Flavin, supra note 3, § 258 (Supp. 1976). See Knoff v. City & County of San Francisco, 1 Cal. App. 3d 184, 81 Cal. Rptr. 683 (1st Dist. 1969). Bret Harte Inn did not discuss this recent development in the law. But when the increased access to the courts that may result from the Hewlett-Packard decision is considered in conjunction with the reasonable accuracy standard announced in Bret Harte Inn, it appears likely that taxpayers' suits seeking judicially ordered reassessment will become more frequent and more successful.

45. See, e.g., Bret Harte Inn, Inc. v. City & County of San Francisco, 16 Cal. 3d 14, 128, 544 P.2d 1354, 1363, 127 Cal. Rptr. 154, 163 (1976); Mahoney v. City of San Diego, 198 Cal. 388, 402-03, 245 P. 189, 195 (1926).

The goal of property tax reform in California has been to assure that properties of equal value receive the same assessed valuation. See D. Paul, supra note 3, at 100-02, 106-09. See generally Shannon, The Property Tax: Reform or Relief, in PROPERTY TAX REFORM 28-29 (G. Peterson ed. 1973). The legislature has already prescribed that a uniform assessment ratio be applied to classes of property in the state. CAL. REV. & TAX. CODE § 401 (West Supp. 1976). Without accurate methods of valuation, however, uniformity of assessed valuation cannot be achieved. A reasonable accuracy requirement is therefore an essential element of any effective reform in this area.

implementation of important statewide policies (notably in educational funding and conservation) enhances the state's interest in thorough review. What is required, therefore, is not judicial passivity, but more specific nonjudicial guidelines and standards.

The legislature has delegated authority to the State Board of Equalization to prescribe rules and regulations to govern local assessment practices. These rules, passed in response to the same assessor misconduct that spawned Bret Harte Inn, are binding on all California assessors. Unfortunately, however, the current regulations are so general that they scarcely reach the method condemned in Bret Harte Inn and do not speak at all to cases like Hunt-Wesson. More useful are the detailed descriptions of valuation methods contained in the Assessors' Handbook prepared by the Board. But local assessors are not bound to follow Handbook methods, and in the face of pressure to cut costs and increase revenues, they may fail to do so.

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48. The State Board of Equalization shall:

(c) Prescribe rules and regulations to govern local boards of equalization when equalizing, and assessors when assessing.

(f) Subdivisions (c), (d) and (e) in this section shall include, but are not limited to, rules, regulations, instructions and forms relating to classifications of kinds of property and evaluation procedures. All rules and regulations adopted by the board pursuant to subdivision (c) shall be adopted, on and after January 1, 1968, pursuant to the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of this division. CAL. GOV'T CODE §§ 15606(c), 15606(f) (West Supp. 1976).

49. See EHRMAN & FLAVIN, supra note 3, §§ 37, 276, 431. In Bret Harte Inn, the court noted the enactment of these rules, but stated that they were not applicable to the tax years in question. 16 Cal. 3d at 21 n.5, 24 n.6, 544 P.2d at 1358 n.5, 1360 n.6, 127 Cal. Rptr. at 158 n.5, 160 n.6.

50. See, e.g., 18 CAL. ADMIN. CODE § 6(e). This section, governing the type of method used in Bret Harte Inn and Hunt-Wesson, provides: "Reproduction or replacement cost shall be reduced by the amount that such cost is estimated to exceed the current value of the reproducible property by reason of physical deterioration, misplacement, over- or underimprovement, and other forms of depreciation or obsolescence." The section provides no guidance for the assessor as to how he should take account of those factors. Conceivably, the assessor in Bret Harte could have contended that 50 percent was an adequate estimate of the factors. There is certainly no way of determining from the text of the rule whether the practices at issue in Hunt-Wesson are legal or not.


There are two possible solutions to this lack of specific and binding standards. First, the courts could give evidentiary weight to the Assessors' Handbook when testing the various valuation methods for accuracy. If the method conformed to the Assessors' Handbook the evidentiary weight would go to show reasonable accuracy; if it did not conform, the weight would go to prove lack of reasonable accuracy. Courts seem already to be moving in this direction. There are, however, problems with this approach. To the degree that the evidentiary weight of the Handbook is limited, the reviewing court will still be required to weigh costs and benefits; thus, the problems of judicial competence and retroactive effect will remain. But to grant the Handbook extraordinary evidentiary weight would amount to de facto judicial enactment of binding administrative regulations. In the absence of formally enacted legislative or administrative rules, however, this approach offers at least a partial solution.

Judicial enactment is not the only solution, however. Under section 15606(c) of the Government Code, the State Board of Equalization has the power to establish a comprehensive set of approved methods of valuation. It should act now to do so. These regulations should specify both the type of property to which each method may be applied and exactly how to apply it. Local assessors should, in turn, be required to select valuation methods from the approved list. This course would meet the objections to judicial enactment and would allow assessors and local governments to plan with certainty. Instead of analyzing the merits of individual methods on an ad hoc basis, the courts would decide the much simpler question of whether the challenged method conformed to the regulations. If the method conformed to the regulations a rebuttable presumption should arise that the method is reasonably accurate. It would still be possible for the taxpayer affir-
matively to show that the method did not meet that standard. Thus, in the unlikely event that a method as unreasonable as that involved in *Bret Harte Inn*, was enacted into the regulations as a permissible method of valuation, the taxpayer would be able to rebut the presumption of reasonable accuracy.

In closer cases, however, the effect of the presumption would be to cause the bulk of the problems of evaluating methods of valuation to be resolved before the State Board of Equalization, which is a more appropriate forum than the courtroom. Not only has the legislature authorized the State Board of Equalization to perform this function, but the State Board has more time, money, and expertise in this area than the courts and is therefore better qualified to make the necessary compromises between accuracy and efficiency involved in selecting methods of valuation.

**Conclusion**

The court's extension of judicial review in *Bret Harte Inn* remedied an obvious injustice. The history of California assessment law indicates that ready access to judicial review is a vital protection for the taxpayers. But the "reasonable accuracy" requirement will be difficult for the courts to administer and will not provide sufficient guidance for local assessors. Specific, binding, statewide regulations are needed to guide both local assessors and reviewing courts.

Fred M. Schwarzer
B. ENFORCEABILITY OF MEMORANDA OF UNDERSTANDING UNDER THE MEYERS-MILIAS-BROWN ACT

Glendale City Employees' Association v. City of Glendale.¹ Municipal employee collective bargaining in California is governed by the Meyers-Milias-Brown Act,² which provides that representatives of local governments "shall meet and confer in good faith"³ with representatives of recognized employee organizations. The Act further provides that any agreement these parties reach shall be reduced to a written memorandum of understanding to be presented to the public entity's governing body for determination.⁴ In Glendale the California Supreme Court held that such a memorandum is binding upon a city once it has been approved by the city council⁵ and that the court will issue a writ of mandate to compel the city council and city officials to compute and pay salaries consistent with the terms of the memorandum.⁶ This Note evaluates the soundness of the court's reasoning in light of the purposes of the Meyers-Milias-Brown Act and the proper distribution of powers between courts and legislative bodies.

I. The Facts

On June 19, 1970 the Glendale City Council passed a motion ap-

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² CAL. GOV'T CODE §§ 3500-3510 (West Supp. 1976). The California Legislature adopted the Act in 1968 as a series of amendments to the George Brown Act, which had previously governed all public employees in California. The Meyers-Milias-Brown Act applies only to local public employees; it governs all municipal government labor relations, except for school district employees, who are subject to the Winton Act (id. §§ 3540-3549), and employees of some transit districts, who are subject to various statutory provisions. The original George Brown Act provisions, now id. §§ 3525-3536, still govern state employee labor relations.
³ The Meyers-Milias-Brown Act grants municipal employees more extensive bargaining rights than did its predecessor. The George Brown Act provided that the governing body of the public entity should meet and confer with employee representatives and consider their proposals "as fully as it deems reasonable"; the Meyers-Milias-Brown Act, however, provides that the employer "shall meet and confer in good faith" and consider employee proposals fully before taking any action. id. §§ 3505, 3530.
⁴ id. § 3505.
⁵ id. § 3505.1.
⁶ 15 Cal. 3d at 337-38, 540 P.2d at 615, 124 Cal. Rptr. at 519. The court's decision is applicable to other local legislative bodies, such as county boards of supervisors, which are also subject to the Meyers-Milias-Brown Act. See note 2 supra.
⁷ 15 Cal. 3d at 343-45, 540 P.2d at 619-20, 124 Cal. Rptr. at 523-24. The writ "did not command the enactment of a new salary ordinance, but directed the non-legislative and ministerial acts of computing and paying salaries as fixed by the memorandum and judgment." Id. In his separate opinion Justice Mosk noted that in order to comply with the court's decision, the city council would have to repeal the existing ordinance and enact a new one regardless of the technical wording of the writ of mandate. Id. at 349, 540 P.2d at 623, 124 Cal. Rptr. at 527.
proving a memorandum of understanding negotiated by the Glendale City Employees' Association, Inc. and Glendale's assistant city manager. The memorandum provided that the city conduct a survey of salaries in eight neighboring jurisdictions and use the data as guidelines to "place Glendale salaries in an above-average position with reference to the jurisdictions compared . . ." The city conducted the survey, and in September 1970 the city manager prepared a draft salary ordinance based on the survey data. The Association, after making its own calculations of average salaries from the same data, challenged the proposed ordinance on the ground that it established salaries at levels lower than those agreed to by the parties in the earlier memorandum of understanding. Despite this objection by the Association, the city council passed a salary ordinance incorporating the city manager's average salary determinations.

The Association sued for a writ of mandate to compel the city and the city council to provide salaries in accordance with the negotiated memorandum. The trial court concluded that (1) the memorandum was binding upon the parties; (2) the city had not computed average salaries in accordance with the intent of the memorandum; (3) the failure to compute salaries correctly was a violation of the city's duties under the Meyers-Milias-Brown Act; and (4) mandamus should issue to compel the defendants to compute and pay compensation to city employees in accordance with the trial court's findings and conclusions. The court of appeal reversed, holding that the memorandum was a mere declaration of policy and that the council's formal approval of the memorandum did not affect its discretion to adjust salaries by ordinance at a later date.

7. Id. at 332, 540 P.2d at 611, 124 Cal. Rptr. at 515.
8. Id., 540 P.2d at 612, 124 Cal. Rptr. at 516.
9. Within each job classification there was a five-step salary range. Id. The dispute focused on the fifth or "E" step of each range because a majority of the city's workers were within that step. The city's normal practice was to compile the survey data, construct bar graphs showing salary schedules in neighboring jurisdictions, and visually estimate the average salaries. The Association did not use bar graphs, but instead computed the arithmetic average of salaries for the top step of the salary range for each job classification. Id. at 333, 540 P.2d at 612, 124 Cal. Rptr. at 516.
10. Id.
11. Id. at 333-34, 540 P.2d at 612, 124 Cal. Rptr. at 516. Finding the agreement to be uncertain on its face, the trial court took evidence on the negotiators' intent and concluded that the memorandum required the city (1) to compute the arithmetic averages of salaries received by the highest paid employees in each job classification in the surveyed jurisdictions; (2) to pay Glendale employees in the fifth step of each pay range that average plus one cent; and (3) to recompute salaries in the other four steps so that the existing ratio of the fifth step to other salaries would be maintained. Id. at 333, 540 P.2d at 612, 124 Cal. Rptr. at 516.
I. The Decision

The supreme court ruled that as a matter of statutory interpretation the memorandum of understanding was binding on the city once the city council had approved it\(^\text{13}\) and upheld the trial court's factual finding that the salary ordinance subsequently adopted by the council did not reflect the intent of the parties as manifested in the earlier memorandum.\(^\text{14}\) The court remanded the case, however, to allow the plaintiff to join as defendants the city officials responsible for the disbursement of salaries.\(^\text{15}\) Under the court's analysis the city council had

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\[\text{II. The Decision}\]

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\[\text{13. CAL. GOV'T CODE § 3505.1 (West Supp. 1976) provides:}\]

\begin{quote}
If agreement is reached by the representatives of the public agency and a recognized employee organization . . . they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination.
\end{quote}

The court interpreted this provision as implying that an agreement must be binding once approved by the governing body:

This statutory structure necessarily implies that an agreement, once approved by the agency, will be binding. The very alternative prescribed by the statute—that the memorandum “shall not be binding” except upon presentation “to the governing body . . . for determination”—manifests that favorable “determination” engenders a binding agreement.

\[\text{15 Cal. 3d at 336, 540 P.2d at 614, 124 Cal. Rptr. at 518 (emphasis in original).}\]

The court concluded that the primary purpose of the Meyers-Milias-Brown Act was to resolve labor disputes and that this purpose would be frustrated if negotiations under the Act did not lead to mutually binding promises and concessions. \(\text{Id., 540 P.2d at 614-15, 124 Cal. Rptr. at 518-19}\). For a further discussion of this portion of the court's opinion, see text accompanying notes 24-29 \text{infra}. \(\text{Id.}\)

\[\text{14. The written memorandum involved in Glendale was not a detailed document.}\]

For instance, it stated that “the intent of the [salary] survey will be to place Glendale salaries in an above average position with reference to the jurisdictions compared . . . .” Arguably, the city council believed that it was agreeing in principle to conduct a salary survey, but not committing itself to pay Glendale employees exactly one cent above the arithmetic average obtained through the survey. \(\text{Glendale}\) demonstrates that a trial court may elect to resolve any ambiguities on the face of such a memorandum and enforce it accordingly. Attorneys involved in public employment disputes would therefore be well advised to set forth specifically in these agreements the contemplated terms of employment, in order to avoid the uncertainties of trial court interpretation.

Defendants did not attack the sufficiency of the extrinsic evidence relied upon by the trial court in its construction of the memorandum. They did argue that the city had a right to adopt any reasonable interpretation of the memorandum and that the ordinance passed by the city council was consistent with the actual terms of the memorandum. The court rejected the first contention, on the ground that one party may not impose its own interpretation upon a two-party labor-management contract, and held that the second raised no issue cognizable on appeal. \(\text{15 Cal. 3d at 338-40, 540 P.2d at 615-17, 124 Cal. Rptr. at 519-21}\). The court invoked “the established rule that if the construction of a document turns on the resolution of conflicting extrinsic evidence, the trial court's interpretation will be followed if supported by substantial evidence.” \(\text{Id. at 340, 540 P.2d at 617, 124 Cal. Rptr. at 521}\). The trial court had found the memorandum uncertain on its face and had based its interpretation of the intent of the parties on parol evidence.

\[\text{15. The Association sued the city and its councilmen but did not sue the city officials responsible for the actual computation and disbursement of salaries. The court remanded the case to allow the Association to join these officials as defendants. Id. at}\]

exhausted its legislative discretion by approving the memorandum of understanding. Therefore, the court had the power to issue mandamus to the city council and the proper city administrative officers to compel the ministerial acts of computation and payment of salaries according to the terms of the memorandum.16

Justice Mosk, concurring and dissenting, agreed that the case should be remanded, but disagreed with the majority's holding that the adoption of the memorandum created a legally enforceable duty. He criticized the majority for analyzing the case as a labor or contracts problem, thereby ignoring separation-of-powers considerations that he considered fundamental.17 He argued that despite language to the contrary in the majority opinion, compliance with the trial court's interpretation of the salary provision would require the council to repeal the existing salary ordinance and enact a new one.18 Finally, he asserted that the court lacked authority to compel such an act of legislative discretion19 and questioned how a court would enforce such a judgment if the city council declined to comply.20

III. The City's Obligations Under the Meyers-Milias-Brown Act

The majority held that the Meyers-Milias-Brown Act imposed a duty on the Glendale City Council to abide by the memorandum of understanding that it had earlier approved.21 Under the Act, which governs municipal government labor relations in California, municipal governments must meet and confer in good faith with employee organizations.22 If an agreement is reached, the employer and employee representatives “shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination.”23

The Act's provision regarding memoranda of understanding is not

345, 540 P.2d at 620-21, 124 Cal. Rptr. at 524-25. The rule appears to be that the administrative officers responsible for payment of funds must be joined and cannot plead laches or statute of limitations if they are joined after judgment and remand. See Martin v. County of Contra Costa, 8 Cal. App. 3d 856, 866, 87 Cal. Rptr. 886, 892 (1st Dist. 1970).
16. 15 Cal. 3d at 343-44, 540 P.2d at 619-20, 124 Cal. Rptr. at 523-24.
17. “[T]he question before us is not the existence of a prior commitment, but whether a court may compel a legislative result.” Id. at 350, 540 P.2d at 623, 124 Cal. Rptr. at 527.
18. Id. at 349, 540 P.2d at 623, 124 Cal. Rptr. at 527.
19. Id.
20. Id. at 350, 540 P.2d at 624, 124 Cal. Rptr. at 528.
21. Id. at 337-38, 540 P.2d at 615, 124 Cal. Rptr. at 519.
22. See note 2 supra.
precisely drafted. The phrase "which shall not be binding," for instance, might mean that such a memorandum is never binding on the public employer, but provides merely a basis for unilateral decision by later legislation. The statute also fails to define the term "determination," which might mean approval or rejection of the terms of the memorandum or a more general exercise of continuing discretion by the legislative body.

Nonetheless, the policies behind the Act support the majority's holding that memoranda of understanding are binding after approval by the governing body. If the council were free unilaterally to change its wage policy despite its approval of the memorandum, employee groups would have little incentive to reach such agreements and secure their adoption. Actions outside the conference table—specifically, resort to economic weapons—would become correspondingly more attractive. Yet while the Glendale rule maintains the incentives to meet and confer, it does not do so by undermining the processes of local government. By denying enforceability of a memorandum prior to city council approval, Glendale adequately protects legislative control over

25. Id. at 13. Although the court in Glendale considered this interpretation to be obviously incorrect, other courts and commentators have expressed the view that a city (or other public entity) may not be able legally to authorize its representatives to execute collective bargaining agreements that bind the city and, moreover, that it should not be able to do so as a matter of policy. See North Carolina Ass'n of Educators v. Phillips, 381 F. Supp. 644 (M.D.N.C. 1974) (balancing public employee demands with interests of private citizens is legislature's prerogative); City of Fort Smith v. Arkansas State Council No. 38, 245 Ark. 409, 412, 433 S.W. 2d 153, 155 (1968) ("[F]ixing of wages, hours and the like is a legislative responsibility which cannot be delegated or bargained away."); Fellows v. LaTronica, 151 Colo. 300, 305, 377 P. 2d 547, 550-51 (1962); City of Biddeford v. Biddeford Teachers' Ass'n, 304 A. 2d 387 (Me. 1973) (delegation of power to arbitrator).

Concern over legislative prerogatives was a major factor in the recommendation of the United States Advisory Commission on Intergovernmental Relations that states adopt legislation that provides for the negotiation of memoranda of understanding, but that makes such memoranda nonbinding until acted upon by legislative and executive officials. U.S. Advisory Comm'n on Intergov'tl Relations, Labor-Management Policies for State and Local Government 99-102 (1969).

For further discussion of this issue see Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 U. Cin. L. Rev. 669 (1975); H. Wellington & R. Winter, The Unions and the Cities 38-40 (1971). Commentators have also pointed out that this "illegal delegation" theory is analogous to the now-rejected argument that collective bargaining in the private sector is an illegal intrusion upon the prerogatives of management. Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 Yale L.J. 1107, 1110 (1969). Other commentators, taking a stance opposed to those cited above, have argued that effective bargaining in any employment context requires that both parties to the negotiations be able to make binding commitments. Anderson, The Impact of Public Sector Bargaining, 1973 Wis. L. Rev. 986, 995, 1006. See also Tate v. Antosh, 3 Pa. Commw. Ct. 144, 281 A. 2d 192 (1971).
the distribution of governmental revenues and services.\textsuperscript{26} The decision also preserves the right of citizens to have their elected representatives decide the questions of policy involved in the acceptance or rejection of public-sector collective bargaining agreements.\textsuperscript{27}

The court's holding that the city council's approval of the memorandum of understanding constituted a legally enforceable "determination" is also sound. The council was under no duty to accept the memorandum of understanding. By arguing on appeal that it should not be bound by such approval, the city was attempting to avoid assuming the costs—the payment of salaries according to the memorandum—of an agreement whose benefits—the immediate settlement of any disputes with city employees—it had already received.\textsuperscript{28} Allowing the city council freedom to rescind formal commitments would undermine the creation of reliable employee expectations, essential to labor stability in the public as well as private sector.\textsuperscript{29}

\textsuperscript{26} For example, a city might be forced to increase its debt, cut back other services, or raise taxes to fund a bargained-for wage increase. The Glendale decision leaves such decisionmaking squarely with the city council, not with an appointed labor negotiator, by requiring council approval of a memorandum of understanding before such an agreement becomes binding on the city.

\textsuperscript{27} Commentators have expressed concern that importing private sector collective bargaining rights into the public sector will have an adverse effect on the political process. Summers, supra note 25, at 671; Rhemus, Labour Relations in the Public Sector in the United States, 109 INT'L LAB. L. REV. 199 (1974); Wellington & Winter, The Limits of Collective Bargaining, supra note 25, at 1119-23. Mo. Ann. Stat. § 105.520 (Vernon Supp. 1976) provides that the results of negotiations between public sector employees and employers shall be reduced to writing and presented to the appropriate legislative or administrative body for adoption, modification, or rejection. The Missouri Supreme Court said of this provision:

The act does not constitute a delegation or bargaining away to the union of the power of the public body . . . because the prior discretion in the legislative body to adopt, modify or reject outright the results of the discussion is untouched.

State v. City of Cabool, 441 S.W.2d 35, 41 (Mo. 1969).

\textsuperscript{28} For a similar attempt by a governmental body to avoid being bound by an agreement after obtaining its benefits through union reliance, see East Bay Mun. Employees' Union v. County of Alameda, 3 Cal. App. 3d 578, 83 Cal. Rptr. 503 (1st Dist. 1970).

\textsuperscript{29} This is not to say, as the court did in Glendale, that the memorandum would be useless if it were not binding until implemented as law by the city council. The written memorandum of understanding could define the parameters of debate by the city council over what kind of contract the employees should have with the city. In other instances the city council might rely upon the judgment of the city official who negotiated the agreement and approve whatever terms he had found acceptable. Finally, a city might comply with the terms of a legally unenforceable memorandum because of a moral commitment to honor the city's voluntarily assumed obligations.

A number of states limit public-employee bargaining to this type of "meet and confer" arrangement. Any agreement reached under this bargaining structure is not binding upon the government employer, unless it is embodied in final legislation. See generally Labor-Management Policies for State and Local Government, supra note 25, at 99-102.
IV. Mandamus and Legislative Discretion

Once the supreme court had determined that the Meyers-Milius-Brown Act required the city council to provide the salaries contemplated by the memorandum of understanding, the question remained whether the court could issue a writ of mandate to enforce that requirement. A brief survey of California mandamus law will highlight the difficulty of this remedial problem.

The California Code of Civil Procedure provides that a court may issue a writ of mandate "to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins . . . ."\(^\text{30}\) The supreme court has held that in order to obtain a writ to compel action by a city, county, or other public agency, the plaintiff must establish that there is a clear and present ministerial duty on the part of the public entity to take that action.\(^\text{31}\) Following the supreme court's lead, courts of appeal have held that mandamus will not issue to limit the discretion entrusted to public officials and bodies\(^\text{32}\) unless they abuse that discretion.\(^\text{33}\)

Legislative acts are generally discretionary, nonministerial action.\(^\text{34}\) The California courts have repeatedly stated that a court may not mandate the passage or repeal of legislation,\(^\text{35}\) citing the discretion inherent in the legislative process as well as the separation of powers.\(^\text{36}\) For example, where a plaintiff has sought to force a public entity to pay out salaries or other monies, the courts have ordered city officials to approve a payment or certify a payroll;\(^\text{37}\) they have not, however, mandated the appropriation of necessary funds or actual payment of


\(^{31}\) People v. County of El Dorado, 5 Cal. 3d 480, 491, 487 P.2d 1193, 1199, 96 Cal. Rptr. 553, 559 (1971).


\(^{33}\) See, e.g., City Council v. Superior Court, 272 Cal. App. 2d 876, 77 Cal. Rptr. 850 (2d Dist. 1969). The court noted that abuse of discretion involves more than a good faith mistake or a legislative decision contrary to that which the court would have made. \textit{Id.} at 883, 77 Cal. Rptr. at 853-54.

\(^{34}\) See, e.g., Alpers v. City & County of San Francisco, 32 F. 503, 509-10 (C.C.N.D. Cal. 1887).


claims. The former are ministerial duties subject to enforcement through mandamus, the latter discretionary acts not subject to judicial control.

Local legislatures, however, must exercise their discretionary power in the public employment context within the boundaries imposed by city and county charters and state statutes. In Sanders v. City of Los Angeles and Walker v. County of Los Angeles, charter provisions required the local legislatures to survey salaries paid in neighboring districts and provide their employees “the prevailing wage.” The court held that the local legislatures did not have the discretion to establish wages without first surveying wages as required by the charter. Mandamus was therefore available to compel them to perform the necessary ministerial prerequisites to the exercise of discretionary power.

In Glendale, however, the court did not compel the city council to perform a necessary ministerial prerequisite to the exercise of discretionary power. Rather, the court found that the council had already exhausted its discretion by approving the memorandum of understanding. All that remained was for it and the appropriate city officials properly to compute and disburse salaries. Yet in order to comply with the court’s ruling, the council had to take further legislative action, regardless of the form of the writ. A city controller cannot comply with a writ of mandate to disburse salaries if the council has not appropriated adequate funds. The court assumed that the city council would appropriate the necessary funds to allow other city officials to comply with

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38. In Tevis v. City & County of San Francisco, 43 Cal. 2d 190, 272 P.2d 757 (1954), the court assumed that once city officials certified the plaintiffs’ right to vacation pay, the funds necessary to pay these claims would either be disbursed or appropriated. The opinion implied that the court could not order either release of existing funds or appropriation of needed funds. In Flora Crane Serv., Inc. v. Ross, 61 Cal. 2d 199, 390 P.2d 193, 37 Cal. Rptr. 425 (1964), the court noted that mandate will not lie to compel a city official to certify a right to payment if there are no funds available to make such payment.


41. In Sanders the court of appeal stated that the writ issued by the trial court directed the city officials to fix salaries as required by the city charter, but the writ was silent as to the passage of legislation by the city council. 252 Cal. App. 2d at 489, 60 Cal. Rptr. at 541. The supreme court pointed out, however, that “[h]aving once ascertained the prevailing wage in 1962 defendant [the city] had no discretion to provide less . . . . All that remained for the city was to provide the salary or wages ascertained.” 3 Cal. 3d at 261-62, 475 P.2d at 207, 90 Cal. Rptr. at 175. Thus, the order to determine prevailing wages implied an order to adopt legislation incorporating them.

In Walker the court affirmed a declaratory judgment that provided that the board of supervisors had a duty to ascertain prevailing wages and “provide by ordinance a salary or wage . . . as ascertained.” 55 Cal. 2d at 632, 361 P.2d at 250, 12 Cal. Rptr. at 674.
the mandate. Ultimately, the enforceability of the order to compute and pay the requisite salaries depends upon the willingness of the city council to pass a salary ordinance consistent with the supreme court's ruling.

Thus, the court's language suggesting that it was not mandating the passage of legislation by the council is misleading.42 The court's holding, however, provides the most acceptable solution to the dilemma it faced. The effectiveness of the Meyers-Milias-Brown Act would be seriously hampered if memoranda of understanding were not enforceable after city council approval. Nonetheless, it is the business of a city council, not the courts, to determine whether and how city revenues should be spent. Although the majority chose not to highlight this dilemma, the Glendale holding nevertheless provides a workable solution to the problem without setting a precedent for general judicial compulsion of legislative action.

V. The Effect of the Decision

The decision in Glendale applies only where a city council has formally approved the terms of a memorandum of understanding.43 By

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42. The court did state in a footnote that California appellate courts have "on numerous occasions" mandated the enactment of legislation. 15 Cal. 3d at 344 n.24, 540 P.2d at 620 n.24, 124 Cal. Rptr. at 524 n.24. The statement not only is puzzling because of its inconsistency with the court's emphasizing that the trial court writ did not direct the council to pass legislation, but is also incorrect. In Walker and Sanders, two of the cases cited in support of this statement, the courts did not mandate passage of legislation. See note 39 supra. Although in the other case cited, Griffin v. Board of Supervisors, 60 Cal. 2d 318, 384 P.2d 421, 33 Cal. Rptr. 101 (1963), the court did order the county board of supervisors to pass reapportionment legislation, this case involved a unique situation. The supervisors had refused to carry out constitutional duties; the political process could not rectify the situation because of the effective disenfranchisement of some citizens caused by the failure to reapportion. In this extreme situation judicial intervention was appropriate. See Justice Mosk's discussion of these cases in his separate opinion. 15 Cal. 3d at 348-49, 540 P.2d at 622-23, 124 Cal. Rptr. at 527-28 (Mosk, J., concurring and dissenting).

43. The court stated that a memorandum of understanding agreed to by representatives of a public agency and an employee organization is binding. 15 Cal. 3d at 337-38, 540 P.2d at 615, 124 Cal. Rptr. at 519 (citing East Bay Mun. Employees Ass'n v. County of Alameda, 3 Cal. App. 3d 578, 83 Cal. Rptr. 503 (1st Dist. 1970)). Despite this language, the holding in Glendale applies only to memoranda approved by a local legislative body. The East Bay decision contains broad language as to enforceability, but that case involved the failure of a board of supervisors to carry out the terms of an ordinance enacted pursuant to an agreement. 3 Cal. App. 3d at 580-81, 83 Cal. Rptr. at 505. In addition, the cases cited in East Bay as establishing a "modern view" that agreements negotiated by its agencies are binding upon the public entity even without its approval do not support that assertion. In Local 266, IBEW v. Salt River Project & Power Dist., 78 Ariz. 30, 275 P.2d 393 (1954), the court held that the district had the power to enter into collective bargaining agreements that would be binding when executed, but said nothing about foregoing approval by the district's governing body. Nor did the court indicate that execution referred to the act of negotiation of the agreement
refusing such approval a city council may reserve its power to pass legislation at variance with the memorandum. Unless time or political pressures force the council to express preliminary approval of a memorandum to settle a labor dispute, Glendale should not limit the council's options.

The Glendale decision may affect the budgetary process of some municipalities. If the salary determination and budgetary processes are not integrated, a city might find itself forced to approve a memorandum of understanding, thus binding itself to a commitment of city funds, before it has thoroughly considered its budgetary limits and priorities or after it has approved a budget and allocated a specific sum to employee compensation. If the salary agreement is reached before consideration of the budget, one major variable in the budgetary formula will be fixed, thus limiting the city's options with regard to expenditures for other services. If an agreement is approved after the budget is passed, the city will be faced with the choice of incurring a deficit (if it can do so legally), raising taxes, or reducing the number of employees. Thus a city should schedule labor discussion to coincide by representatives of the district and its employees. The only issue addressed in IBEW v. Town of Farmington, 75 N.M. 393, 405 P.2d 233 (1965), was whether the town had the power to enter into collective bargaining agreements. In American Fed'n of Mun. Employees v. City of Keene, 108 N.H. 68, 227 A.2d 602 (1967), the court did uphold an agreement by a city officer acting for the city manager to accept the results of a representation election as binding on the city, but the court also held that the mayor and the city council had discretion to refuse to recognize and negotiate with the employees' elected representative. The Glendale court's approval of the broad East Bay language was unfortunate—and unnecessary to its decision.

Some states have enacted legislation apparently making such memoranda binding and enforceable once negotiated. E.g., ALASKA STAT. § 23.40.210 (1972); HAW. REV. STAT. § 89-10a (Supp. 1975). A minority of the Commission on Intergovernmental Relations recommended that states adopt provisions that make such memoranda binding upon the parties. See U.S. ADVISORY COMM. ON INTERGOV'TL RELATIONS, STATE PUBLIC LABOR-MANAGEMENT RELATIONS ACT, in NEW PROPOSALS FOR 1971: ACIR STATE LEGISLATIVE PROGRAM 11 (1970). Even under these provisions, however, requests for appropriations necessary to implement the agreement must be submitted to and approved by the appropriate legislative body. Id. at 21.

44. This problem is discussed in Stanley, The Effects of Unions on Local Governments, in UNIONIZATION OF MUNICIPAL EMPLOYEES 48-49 (R. Connery & W. Farr ed. 1970).

45. See R. Horton, MUNICIPAL LABOR RELATIONS IN NEW YORK CITY 109 (1973). The latter situation is arguably more of a problem for the city. If the city makes salary commitments before the budget is set, it can adjust expenditures for other services and programs to balance the budget. If, however, the budget is set and salaries subsequently increased, commitments to fund these other programs and services cannot be rescinded; increased taxes or attrition of employees are the only means of avoiding a deficit. On the other hand, if the city enters into negotiations with a budget ceiling, the employees may moderate their demands in the face of fiscal reality. If the city negotiates a new contract with its workers before it has set its budget, this moderating factor will be absent and employee demands may be higher.
cide with consideration of the yearly budget so that it may make commitments to its employees without relinquishing control over its budget.

The court's decision that mandamus is a proper remedy will probably have a limited application. Traditionally, mandamus has not been available to enforce agreements made by governmental bodies, absent a showing of constitutional or statutory duty. In Glendale the Meyers-Millas-Brown Act provides the necessary statutory duty; the Act explicitly requires city councils to "meet and confer" with recognized employee representatives. The Glendale decision construes the Act to impose a further duty: to perform the agreement once it has been "determined" by city council approval. Since the statutory basis of these obligations is crucial to the holding of the case, it is unlikely that the court would have granted mandamus had the Act not been involved.

Conclusion

The majority in Glendale reached the correct result in terms of the policies underlying the Meyers-Millas-Brown Act. The court failed, however, to consider fully the separation-of-powers questions inherent in issuing mandamus to a legislative body that has refused to appropriate the funds necessary to achieve compliance with the order. Nevertheless, Glendale does not appear to expand the availability of mandamus to compel legislative action generally, but is probably limited to its unusual factual and statutory context. Indeed, the majority's refusal to characterize its remedy as a mandate to the legislature to enact an ordinance complying with the terms of the memorandum of understanding suggests its unwillingness to depart from established law. The remedial aspect of the Glendale case should not have a generative impact outside the public employment context.

Jon Craig

C. LIABILITY OF PUBLIC OFFICIALS FOR THE IMPROPER EXPENDITURE OF PUBLIC FUNDS

Stanson v. Mott.1 Stanson updates and reaffirms the principle, established 50 years ago by the California Supreme Court, that the improper expenditure of public funds for ballot proposition electioneering exposes public officials to potential personal liability for the return of

1. 17 Cal. 3d 206, 551 P.2d 1, 130 Cal. Rptr. 697 (1976) (Tobriner, J.) (unanimous decision).
those funds. The court refused, however, to reaffirm the attendant rule that public officials are to be held strictly liable for improperly spent public moneys. Public officials will be held personally liable if they fail to exercise "due care" in their expenditure of public funds. Although more flexible than strict liability, this "due care" standard is correspondingly more difficult to apply. Its unpredictability is aggravated by the absence of clear guidelines for gauging the propriety of election activities that fall short of extreme violations. Consequently, Stanson opens up governmental figures to a heightened sense of public accountability, but provides little assistance regarding the exact scope of their responsibility.

The case was brought on a taxpayer's complaint alleging that William Penn Mott, Jr., the Director of the State Department of Parks and Recreation, had authorized the expenditure of more than $5,000 of public funds to promote the passage of a bond issue for the future acquisition of park land and recreational and historical facilities. The plaintiff sought to enjoin and recover such expenditures for the state treasury. The trial court sustained the director's demurrer and the action was dismissed. On appeal, the supreme court unanimously reversed and remanded the case. The court held that if the taxpayer-plaintiff can prove that the expenditure is improper, he is entitled to a declaratory judgment to that effect and to injunctive relief if similar expenses are threatened in the future. Furthermore, the defendant will be held personally liable for the return of the funds if it is established that he failed to use due care in authorizing promotional expenditures.

The court's treatment of this taxpayer's complaint reopens an area of the law marked by the absence of statutory guidance and a scarcity of helpful precedents. This Note will initially concentrate on the difficulty of determining if and when public money is being improperly spent on an election campaign. The discussion outlines the considerable degree of ambiguity surrounding this issue after the Stanson opinion. Part II examines and evaluates the court's analysis of the issue of personal liability of public officials for misspent public funds. The Note concludes with a brief comment on the impact of Stanson on the right of taxpayers to bring actions against state officials.

2. The bond issue was entitled the State Beach, Park, Recreational and Historical Facilities Bond Act of 1974. The act appeared as "Proposition 1" on the June, 1974 primary election ballot. The voters approved the act.

The plaintiff alleged that Director Mott had authorized the expenditure of state funds for (a) printing and mailing promotional material in favor of the act; (b) mailing informational and promotional materials written by Californians for Parks, Beaches, and Wildlife; (c) travel expenses and speaking engagements to promote the bond act; and (d) salaries of staff who promoted the act. Brief for Respondent at 2-3.
I. Improper Public Spending on Election Issues

a. Clear Statutory Authorization is Required

Stanson firmly reinforces the general principle, established five decades earlier, that expenditures by an administrative official are proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment. In the case before the court, the Department of Parks and Recreation had not been given explicit authority to promote the passage of bond issues. Instead, Director Mott relied on three general statutory policies to justify the Department’s election expenditures. First, Mott emphasized that the bond act was placed on the ballot only after being approved by the legislature and signed by the governor. He argued that promoting its passage thus carries out state policy. Second, he asserted that the legislature’s authorization of $50,000 for “advanced planning” for park land acquisition justified the expenditure. Third, he argued that the expenditure complied with the department’s statutory authority to disseminate “information relating to its activities, powers, duties or functions” and to perform “such acts ... as in the opinion of the director will best tend to disseminate such information.”

Relying on the early precedent of Mines v. Del Valle, the court’s strict statutory construction rejected all attempts to imply legislative authorization for the election-related expenditures. Rather, the court resurrected and confirmed the Mines requirement that legislative authorization for such expenditures must be given in “‘clear and unmistakable language.’” The statutory defenses offered by Director Mott failed to meet this stringent test.

The court’s requirement of explicit legislative authorization notes, but does not address, the possible constitutional problems raised by partisan public spending, even where such spending is explicitly author-

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3. Id. at 10.
5. Brief for Respondent at 11.
6. Id. at 12.
7. CAL. PUB. RES. CODE § 512 (West 1972) (emphasis added).
8. 201 Cal. 273, 257 P. 530 (1927). Mines was a taxpayer action against members of the Los Angeles Board of Public Service Commissioners, the governing board of a municipally owned public utility, to recover more than $12,000 spent by the board to promote the passage of a municipal bond issue. The court rejected broadly stated authority in the Los Angeles City Charter as a justification for expenditure of public funds for handbills, automobile stickers, and other promotional material. These expenditures were judged to be outside the board’s authority and its individual members were held personally liable for the return of the misspent funds.
9. 17 Cal. 3d at 216, 551 P.2d at 10, 130 Cal. Rptr. at 706 (emphasis in original) (quoting Mines v. Del Valle, 201 Cal. 273, 287, 257 P. 530, 537 (1927)).
10. 17 Cal. 3d at 220, 551 P.2d at 10, 130 Cal. Rptr. at 706.
ized. For example, charges might be made that this publicly funded partisan advocacy, however authorized, abuses the right of those voters and nonvoters who disagree with the official's position, distorts the political process, and impairs the right to vote. The Stanson court's desire to preserve "the integrity of the electoral process" from voter manipulation could be used to support this constitutional attack.

Elected and administrative officials attempting to avoid future violations of this particular Stanson principle are left, then, with conflicting mandates. On one side, the court insists that expenditures be explicitly authorized. Yet even where the official acts within legislative authority, the electioneering may be found to be sufficiently manipulative to constitute an infringement of the constitutional right to vote. Until the court more clearly defines these boundaries, this tension between statutory needs and constitutional limits will persist.

b. The Uncertain Boundaries of "Proper" Campaign Expenditures

The court makes it clear that even lacking legislative authorization, a public agency may spend public money to provide the electorate with "relevant facts to aid them in reaching an informed judgment when voting upon the proposal." Funds may not be spent, however, to campaign for or promote a particular position on the election issue. The court thus distinguishes proper from improper expenditures by drawing a line between "informational" and "promotional" activities.

The exact limits of what constitutes acceptable campaign involvement, however, remain unclear. The poles of clearly acceptable and unacceptable activity were illustrated: bumper stickers and other forms of advertising are considered promotional, while certain "fair presentation[s] of the facts" in response to community inquiries are appropriate informational efforts. Between these two extremes the court failed to detail criteria for evaluating the propriety of election activities. It determined that future cases will be evaluated on the basis of the

11. Understandably, the court chose to defer a decision on the constitutional issue until faced with a factual situation posing that question directly. See id. at 219-20, 551 P.2d at 10, 130 Cal. Rptr. at 706.
13. See 17 Cal. 3d at 218, 551 P.2d at 10, 130 Cal. Rptr. at 706.
15. 17 Cal. 3d at 220-21, 551 P.2d at 10-11, 130 Cal. Rptr. at 706-07.
"style, tenor and timing"\textsuperscript{18} of the agency's advocacy, and concluded that "no hard and fast rule governs every case."\textsuperscript{19}

These criteria provide very little new instruction to those concerned with the legal limits of electioneering. Perhaps the difficulty of fashioning a standard that will be applicable in every case explains the lack of clarity. Nevertheless, the very imprecision of the court's "information vs. promotion" standard may further the goal of protecting the public treasury from official misuse. Officials wary of testing the uncertain limits of their spending authority at the risk of personal liability for any improper expenditures\textsuperscript{20} will be inclined to adopt a careful and cautious approach toward campaign activities. To this extent Stanson reinforces a justifiably protective attitude toward the expenditure of public funds.

The broad sweep of Stanson's condemnation of promotional activities, however, should not be expanded to regulate nonspending activities of public officials. Such an expansion would inhibit traditionally accepted political advocacy to the possible detriment of the present informal system of voter education. For example, if a public official uses tax revenues to promote a bond issue, he would be enlisting the involuntary support of taxpayers who do not support that position. His expenditures for promotional assistance—media spots, purchase of ads in publications, and other campaign tools—are justifiably prohibited by Stanson's nonpromotional rule. But where an official publicly promotes a position on a bond issue without spending taxpayers' money,\textsuperscript{21} it is less clear that such activity is unethical, unfair, or even undesirable. Given the often complex and controversial nature of California's ballot issues, it is at least arguable that a public official's recommendation would contribute to voter understanding.

Fears that partisan activity by public officials will unduly influence the voters tend to underestimate the regulatory effects of political accountability on official behavior. Concern of public officials for job security and effectiveness, for example, acts as a check on partisan ad-

\textsuperscript{18} 17 Cal. 3d at 222, 551 P.2d at 12, 130 Cal. Rptr. at 708. The court derived these standards from 51 Op. ATT'Y GEN. 190 (1968) and 35 Op. ATT'Y GEN. 112 (1960).

\textsuperscript{19} 17 Cal. 3d at 222, 551 P.2d at 12, 130 Cal. Rptr. at 708.

\textsuperscript{20} See text accompanying notes 25-35 infra.

\textsuperscript{21} It can be argued, of course, that the mere payment of the official's salary during the time of his promotional activity constitutes a public expenditure for partisan advocacy. Cf. Wirin v. Horral, 85 Cal. App. 2d 497, 504-05, 193 P.2d 470, 474 (2d Dist. 1948) (expending of time of paid police officers in performing illegal and unauthorized acts constitutes unlawful use of funds that can be enjoined by taxpayer action). Because such a broad interpretation of Stanson would significantly stifle the present political activities of public officials, it is doubtful that the court intended this reading.
vocacy. Similarly, the counterbalancing effect of the opposing opinions of other elected and administrative officials lessens the likelihood of voter manipulation. An extension of the Stanson rule into the non-spending area would undervalue partisan give-and-take by discouraging public officials from expressing their opinions on ballot issues in any but the most formal forums for debate.

II. The Question of Liability

a. A “Due Care” Standard Replaces Strict Liability

No specific statutory provision governs the liability of public officials for the type of improper expenditures alleged in this action against Director Mott. In the absence of a statutory standard, the court in its 1927 Mines opinion created a rule of strict liability where public officials had misspent public funds to promote the passage of a bond issue. There the court held that the good faith and honest intentions of public officials were insufficient to mitigate personal liability for improperly spent public moneys.

The Stanson court acknowledged that Mines called for strict liability but overruled that portion of the earlier decision and replaced it with a standard of “due care”:

We conclude instead that such public officials must use “due care,” i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care.

The court’s choice of the due care standard represents a compromise between the harshness of strict liability and the more lenient and permissive standards normally applied to official behavior. Under the California Tort Claims Act, for example, a public employee generally is held financially accountable for his official actions only in cases of “fraud, corruption or actual malice.” But under the Stanson rule a public official may now be held liable, in the absence of fraud, corruption, or actual malice, as long as it can be shown that he acted without due care.

22. 17 Cal. 3d at 225, 551 P.2d at 14, 130 Cal. Rptr. at 710. See Or. Rev. Stat. § 294.100(2) (1975):

Any public official who expends any public money in excess of the amounts, or for any other or different purpose or purposes than authorized by law, shall be civilly liable for the return of the money by suit of the district attorney . . .


24. 17 Cal. 3d at 226, 551 P.2d at 15, 130 Cal. Rptr. at 711.

25. Id. at 226-27, 551 P.2d at 15, 130 Cal. Rptr. at 711 (footnote omitted).

26. Cal. Gov’t Code § 825.6 (West Supp. 1976). The court also rejected a “good faith” test utilized by courts in other states. 17 Cal. 3d at 226 n.11, 551 P.2d at 15 n.11, 130 Cal. Rptr. at 711 n.11.
The decision to end the rule of strict liability should be applauded. That inflexible and shallow view underestimates the subtlety of questions of legal expenditures and overestimates the wisdom of legal guidance on these issues. As indicated earlier in this discussion, it is far from easy to determine just what an improper expenditure is. In overruling the strict liability portion of Mines, the Stanson opinion appreciates this complexity and so eases the burden of potential liability on well-intentioned public officials.

Without the clarifying effects of ensuing litigation, Stanson's alternative to strict liability is difficult to evaluate. Unavoidably, the use of this more subjective standard decreases the predictability of personal liability. The court, however, made only a slight attempt to enumerate considerations helpful in defining the due care standard. Beyond sanctions for "fraud, corruption or actual malice," the dimensions of liability for lack of "reasonable diligence" and "due care" must await development in future actions against public officials.

b. Indemnification of Public Employees

A public employee found personally liable for lack of due care might raise the claim that he should be indemnified by his governmental employer to the full extent of his liability. Under the California Tort Claims Act, for example, a public employee is eligible for indemnification arising out of an act or omission occurring within the scope of his public employment unless he acted or failed to act because of "actual fraud, corruption or actual malice." After Stanson an employee may be held personally liable for improper expenditures even though no fraud, corruption, or actual malice was involved. Thus one could argue that where an employee has failed to exercise due care but where fraud, corruption, or malice are not involved, indemnification is appropriate.

In its discussion of available standards of liability, the court casually dismissed the concept of indemnification as "not directly appli-
cable” to actions to recover misspent public funds. This ambiguous reference leaves open the potential for such a claim by public officials liable for repayment. Yet indemnification by public bodies that are the beneficiaries of the recovered funds defeats the very purpose of suits for repayment; taxpayer actions to recover misspent moneys lose their force if the public entity must in turn indemnify those liable employees who showed no fraud, corruption, or actual malice. Thus to infer from the court’s silence that officials found liable under the new due care standard are entitled to indemnification is inconsistent with the policy behind the court’s imposition of liability.

Several alternative means of excusing the public entity from the indemnification statutes are available to the court. First, the court could construe the party’s improper behavior as “outside the scope of employment” and therefore not deserving of indemnification. If the spending was within the “proper” scope of employment, personal liability would not have been imposed. Second, the court could construe the finding of personal liability as “punitive” in nature. The indemnification statutes do not authorize a public entity to pay the part of a claim or judgment that represents punitive or exemplary damages.

Third, the court could declare that officials who are liable to the public treasury for repayment are ineligible for indemnification. This last alternative would distinguish cases demanding repayment to the public treasury from the more common situation in which the public official is held liable to a private party.

Each alternative provides an avenue for avoiding the inconsistency between Stanson’s protective policy toward the public treasury and the statutory policy calling for the reimbursement of liable public employees. Without such exemptions from the indemnification requirement, liability of a public official to a public entity would twist the result to allow “Paul to pay Peter to rob Paul.”

III. A Comment on Taxpayer Actions Against State Officials

Although Stanson is the first case in which a taxpayer-plaintiff has been accorded standing to seek both injunctive relief and the return of the misspent funds to the state treasury, neither the court nor the real parties in interest questioned the plaintiff’s right to pursue this full

32. 17 Cal. 3d at 225, 551 P.2d at 14, 130 Cal. Rptr. at 710.
34. Id.
35. A generous reading of the court’s dicta concerning indemnification might lead one to conclude that the court intended such an exemption in Stanson. See text accompanying note 32 supra.
range of remedies against a state official. By its silence on the issue of taxpayer standing, Stanson signals a continuation of the court's willingness to allow taxpayers to oversee and challenge official actions at all levels of state and local government.

A taxpayer has statutory authority to seek injunctive relief against local officials who have allegedly misspent public funds. The legislature, however, has neither authorized a taxpayer to recover misspent funds for the public treasury nor provided statutory authority for challenges to improper expenditures by state, as opposed to local, officials. Instead, expansion of the remedies available against local officials and extension of these remedies to actions against state officials have gradually evolved in the California courts. Stanson continues this judicially sponsored evolution of taxpayer rights.

The initial evidence of this judicial readiness to expand taxpayer standing came shortly after the enactment of section 526a of the Code of Civil Procedure. In Osborn v. Stone the court construed the statute to authorize a taxpayer to recover illegally spent public funds for the city treasury. The taxpayer was permitted to seek recovery of the allegedly illegal expenditures from the mayor and city council members. The court held that section 526a "does not in letter or in spirit" forbid a taxpayer from seeking to recover illegal expenditures on behalf of his municipality.

Extension of this permissive judicial position to taxpayer actions against state officials has evolved more slowly. Arguments against taxpayer standing to sue state officials have generally followed two main tracks. The first argument stresses the nature of local government as a municipal corporation in contrast to that of the state as a sovereign body. By analogy to the rights of stockholders in a private corporation, taxpayers in a municipal corporation possess a right to protect their interest in the corporation's spending policy. The same right is not

36. CAL. CIV. PROC. CODE § 526a (West Supp. 1976):
An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and liable to pay, or, within one year before the commencement of the action, has paid, a tax therein.


38. 170 Cal. 480, 150 P. 367 (1915).
39. Id. at 482-83, 150 P. at 368.
40. Id. at 482, 150 P. at 368.
available against the sovereignty; the state, it is argued, must be free to protect its sovereign power and maintain the state organization.\textsuperscript{42} The second argument relies on a literal interpretation of the statute creating the right of taxpayers to sue local officials.\textsuperscript{43} If the legislature wanted to expose state officials to taxpayer suits, the argument goes, it could have done so. Failure to amend the current taxpayer action statute might thus be interpreted as legislative satisfaction with the present provision.

Explicit rejection of efforts to distinguish local from state government for purposes of taxpayer standing came in the court of appeal decision of \textit{Ahlgren v. Carr}.\textsuperscript{44} \textit{Ahlgren} was a taxpayers' action to enjoin the State Director of Finance and the State Controller from approving specified contracts and disbursing funds for the purchase of a large volume of textbooks. The complaint alleged that the proposed contracts exceeded the legislative limitations placed on such purchases.\textsuperscript{45} The court granted the plaintiffs standing to sue believing "that the great weight of authority suggests the rule that the taxpayer does have such a right."\textsuperscript{46} No mention was made that relevant statutory authority omits state officials from the defined range of taxpayer actions.

Despite this limited authority, the California Supreme Court has gradually and implicitly adopted the conclusions reached in \textit{Ahlgren}.\textsuperscript{47}

\begin{itemize}
\item[42.] See Jones v. Reed, 3 Wash. 57, 27 P. 1067 (1891).
\item[43.] See note 36 supra.
\item[45.] \textit{Id.} at 250-51, 25 Cal. Rptr. at 888.
\item[46.] \textit{Id.} at 252, 25 Cal. Rptr. at 889. As authority, however, the court was only able to cite an annotation and a student note, which argued that state taxpayers should have the same right to sue as local taxpayers: Annot., 58 A.L.R. 588, 589 (1929); Note, \textit{Taxpayer's Suits as a Means of Controlling the Expenditure of Public Funds}, 50 Harv. L. Rev. 1276, 1283 (1937). The court bolstered this position with reports in a legal encyclopedia and a legal treatise which noted that most states do allow taxpayers to challenge state expenditures: 52 Am. Jur. Taxpayers' Actions § 6, at 4 (1944); 3 K. Davis, Administrative Law Treatise § 22.09, at 245 (1958).
\item[47.] See Blair v. Pitchess, 5 Cal. 3d 258, 267-69, 486 P.2d 1242, 1248-50, 96 Cal. Rptr. 42, 48-49 (1971); Serrano v. Priest, 5 Cal. 3d 584, 618 n.38, 487 P.2d 1241, 1266 n.38, 96 Cal. Rptr. 601, 626 n.38 (1971). See also Duskin v. San Francisco Redevelopment Agency, 31 Cal. App. 3d 769, 772-74, 107 Cal. Rptr. 667, 669-70 (1st Dist. 1973); California State Employees' Ass'n v. Williams, 7 Cal. App. 3d 390, 395, 86 Cal. Rptr. 305, 308 (3d Dist. 1970). In \textit{Blair}, an injunctive action against county officials, the supreme court noted \textit{Ahlgren}'s holding that taxpayers may sue state officials to enjoin such officials from illegally expending state funds. 5 Cal. 3d at 267, 486 P.2d at 1249, 96 Cal. Rptr. at 49. In \textit{Serrano}, an action against state as well as county officials, the court cited \textit{Blair} for the proposition that state officers may be sued under section 526a. 5 Cal. 3d at 618 n.38, 487 P.2d at 1266 n.38, 96 Cal. Rptr. at 626 n.38. Yet neither \textit{Blair} nor \textit{Serrano} discussed the general issue of standing to sue state officials or the particular merits of the \textit{Ahlgren} decision.
\end{itemize}
Stanson confirms, sub silentio, this abandonment of the older, restrictive view of taxpayer standing to sue state officials. This judicial development rightly rejects the municipal-corporation/sovereign-state distinction as a justification for denial of taxpayer-initiated remedies for illegal expenditures of public funds; full taxpayer review of state action is no less desirable than taxpayer review of similar actions by local government. Stanson also goes one step beyond Ahlgren and earlier decisions, however, by broadening the available remedies against state officials to include liability for the return of the misspent funds.

The legislature’s initial desire in section 526a—to provide taxpayers with the opportunity to enjoin improper local expenditures—has thus matured into an increasingly powerful tool for taxpayer oversight of state as well as local officials. Unlike other states where the evolution of taxpayer standing has been accomplished through statutory amendment, this gradual strengthening of the taxpayers’ supervisory role in California has been fostered in the California courts. Stanson caps this largely silent but nonetheless substantial judicial expansion of taxpayers’ rights.

Conclusion

The court in Stanson v. Mott revitalized the potential for the taxpayers’ watchdog role over the expenditure of public funds. Both injunctive relief and recovery of improperly spent funds from individual state and local officials are now within the reach of taxpayer action. The sting of such suits was softened somewhat by the court’s sensible rejection of the previous standard of strict liability in cases of misspent moneys. The court, however, offered only the outlines of an alternative standard of conduct. The definition of what constitutes an improper expenditure and the dimensions of personal liability must await the clarifying effects of future litigation.

Barry Murphy

48. For a somewhat dated list of states that permit taxpayer action against state officials, see Comment, Taxpayer Suits: A Survey and Summary, 69 Yale L.J. 895, 900 n.30 (1960).