Opinion: EDC cheating voters out of the process

By Larry Weitzman

In my last column about financing the new sheriff facility, which the majority of the county fathers and mothers voted to initiate, I spoke of a possible prohibition against doing so without voter approval (50 percent, plus one).

The California Constitution says that any debt authorized by a legislative body greater than $300,000 shall require a vote of the people. But sharp lawyers soon found a way around this law by doing leasebacks where an entity (a straw company) builds and leases back to the government with a long term lease with ownership of the property transferring to the government at the end of the lease. Such an arrangement was up held by the courts.

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In El Dorado County, in about 1990, the county without a vote of the people, issued revenue bonds of about $22 million for the purpose of building what is now the county government center. When that wasn’t enough money there was an attempt to issue about another $10 million in bonding. However, that was met by irate citizens who knew of the constitutional provisions of Article 16 (borrowing more than $300,000 without voter approval) and decided to put a law before the voters that prohibited the use of lease-revenue bonds with respect to lease purchase or rental agreements in connection with lease-revenue bonds that would be used to finance county facilities and improvements. This description is almost the exact language from the actual ballot. It became known as Measure A and was passed by the voters in 1990 by an overwhelming majority with nearly two-thirds of the voters (65 percent) saying yes to measure A.

To understand the concept lease-revenue bond financing is quite simple. Instead of direct borrowing by the legislative body (the BOS in this case) that would be prohibited under the Constitution, a straw corporation is set up to borrow the money and it creates a bond authority to issue municipal bonds which uses as bond security a long-term lease executed by the legislative body which effectively pays, through the lease payments, the bond interest payments including amortizing the bond principle. That is what Measure A specifically prohibited. A revenue bond means it is paid not by an increase in your property taxes like a school bond but it is paid out of ongoing general county revenues, just like a long-term lease or loan payment. But the technicality of having a straw corporation (the bond authority) to do the borrowing and not the county directly avoids the state constitutional prohibition. There is a series of case law saying this.

Because of the technicality of Measure A barring use of the façade of revenue bonds wherein a straw corporation is created to borrow the money from bond buyers as they are sold in the market place with the long-term lease signed by the county as the security for the bonds, the BOS will create a straw corporation to borrow the money, not by borrowing via the issuance of municipal revenue bonds, but a direct loan from a private or government entity, in this case a U.S. Department of Agriculture, which has a program that does this. The loan will be secured same security, the long-term lease signed by the county and not by the straw corporation and that is why the USDA required a fully balanced budget for at least five years in the future from the county because that is the security for the loan.

In talking to one of the primary supporters of Measure A, it was the intent of Measure A to require that all debt entered into by the county be approved by the vote of the people of EDC with no shenanigans. The people were saying to the BOS, if the county wants to go into debt, ask the people first.

Until this proposed new sheriff’s facility, which is sorely needed, the county has been debt free for years. Currently EDC is rehabbing the county government center built about 25 years ago, spending about $12 million. The current sheriff’s offices were built almost 40 years ago and yet the first to get new offices and fancy digs will be the BOS, even before the assessor, tax collector, county clerk and more. EDC is doing it for cash out of its capital improvement fund. It was only three years ago that the county finished the year with a cash balance of $54 million of which a good portion has been spent covering the county’s annual deficit of spending more than they take in. If EDC would have remained frugal, perhaps it could have paid cash for the new sheriff’s facility.

The county is using a slight of hand to finance the new sheriff’s buildings so it can get around the intent of Measure A. This should have gone to a vote of the people even before EDC spent about $2.7 million for the 30 acres of land for the project, even if not required by the exact wording of Measure A as the BOS is skirting the intent of the law.

There are two BOS members (Michael Ranalli, 4th district and Sue Novasel, 5th district) who will be up for re-election in two years and two other candidates are vying for the vacant District 1 seat (Beth Gaines and John Hidahl) in November. Since most are long-term residents and were old enough to vote in the 1990 General election, it would be interesting to know how they voted on Measure A. Ranalli ran as a fiscal conservative and the only thing he has voted to cut is road maintenance along with Novasel and Brian Veerkamp. In the meantime our roads continue decay.

Larry Weitzman is a resident of Rescue.