holder's right to vote stock, whether certain other stockholders, who voted by proxy at meeting at which restraining order was allegedly violated, should be purged of contempt charge by reason of their asserted attempt to comply with restraining order in instructions to their proxies was for trial court. Id.

Where injunctive relief against obstruction of right of way was ancillary to suit to quiet title, until merits of case were finally adjudicated, defendants should not, pending appeal, be forced to surrender position which they held prior to commencement of suit, and order adjudging defendants guilty of contempt for violating mandatory injunction pending appeal was annulled. Pomin v. Superior Court in and for El Dorado County (1941) 112 P.2d 17, 44 C.A.2d 206.

Petitioners filing notice of appeal from order of injunction pendente lite thereby transferred to supreme court jurisdiction to determine validity of order relating to contempt. Weber v. Superior Court (1930) 292 P. 650, 109 C.A. 259.

On certiorari to review adjudication of contempt for violation of injunction, regardless of affirmative defenses and questions of fact raised by petitioners, if affidavit of contempt was sufficient and there was sufficient evidence to support its allegations, judgment must be affirmed and petition denied. McFarland v. Superior Court of Merced County (1924) 228 P. 1033, 194 C. 407.

Whether or not defendant violated an injunction was a question for the court on all the evidence in the contempt proceeding, and where the evidence is such that it cannot be said that the trial court abused its discretion in deciding that defendant was not guilty, such decision will not be disturbed. Theodore v. Williams (1919) 185 P. 1014, 44 C.A. 34.

Where beneficiary of injunction brings contempt proceedings against person violating injunction, court's order, dismissing proceedings without grounds being shown for such dismissal, should be annulled on writ of review. Goodall v. Superior Court in and for Santa Barbara County (1918) 174 P. 924, 37 C.A. 723.

That restraining order is too broad is not ground for sustaining certiorari to review order adjudging defendant in contempt for violation of it, no question of jurisdiction being involved. Armstrong v. Superior Court of California, in and for City and County of San Francisco (1916) 159 P. 1176, 173 C. 341.

649. Punishment for violations

Punishment of defendant for contempt could be imposed only for violation of injunction rendered in action for dissolution of partnership and not for violation of other duties imposed on him by partnership agreement or by law. Sorensen v. Superior Court of Santa Barbara County (1969) 74 Cal.Rptr. 597, 269 C.A.2d 73, amended in other respects, 80 Cal.Rptr. 481, 276 C.A.2d 131.

Court could order return of contempt fine paid by defendant pursuant to injunction order which was reversed on appeal without making county treasurer, to whom fine had been turned over, a party. Elysium, Inc. v. Superior Court for Los Angeles County (1968) 72 Cal.Rptr. 355, 266 C.A.2d 763.

Where defendant was preliminarily enjoined from utilizing word "Look" as part of title of its magazine "Nude Look", and defendant, pending his appeal, was held in contempt for violations of injunction and paid a fine, and on appeal the injunction order was reversed, defendant was entitled to return of fine. Id.

Where councilmen of municipality were found to be in contempt of court for failure to comply with mandatory injunction, and councilmen subsequently complied, and failure to comply within time limited was result of action of councilmen in pursuing in good faith what they were advised by counsel and believed were legal remedies available to councilmen and to their municipality, trial court abused discretion in refusing to remit punishment of such councilmen on their motion. City of Vernon v. Superior Court of State, in and for Los Angeles County (1953) 250 P.2d 241, 39 C.2d 839, followed 250 P.2d 246, 39 C.2d 891.

§ 526a. Actions against officers; scope of section; municipal bonds

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 is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided, that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.

An action brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(Added by Stats.1909, c. 348, p. 578, § 1. Amended by Stats.1911, c. 71, p. 87, § 1; Stats.1967, c. 706, p. 2080, § 1.)

Historical Note

The proviso in the second sentence of the first paragraph was added in 1911.

The second paragraph was added in 1967.

Forms

See West's California Code Forms, Civil Procedure.

Law Review Commentaries

California welfare exemption. (1968) 41 So.Cal.L.Rev. 844.

Constitutionality of California trustee's sale. (1973) 61 C.L.R. 1282.

Legal aspects of the closure and sale of surplus public schools. (1976) 16 Santa Clara L.Rev. 595.

Power of courts to enjoin legislative proceedings. (1925) 14 C.L.R. 37.

Public school financing and equal protection: Serrano v. Priest. (1972) 5 Loyola L.Rev. (Calif.) 162.

Right of taxpayer to maintain action to restrain police chief from expending funds to conduct police surveillance by concealed microphones. (1975) 9 Hast.L.J. 109.

Library References

Injunction ⚷74 et seq.
Municipal Corporations ⚷323, 992 et seq.
C.J.C. Injunctions § 114.
C.J.S. Municipal Corporations §§ 1137, 2139 et seq.
California Pleading, Civil Actions—Chadbourne, Grossman and Van Alstyne, § 579.

Notes of Decisions

Enjoining public officers, boards, and municipalities, see, also, Notes of Decisions under § 526.

1. Validity

The constitutionality of this section could not be raised by one who merely showed that he was a resident, but who did not show that he was not an alien, or that he belonged to the class of persons entitled to sue. Thomas v. Joplin (1910) 112 P. 729, 14 C.A. 662.

2. Construction and application

Under Pol.C. § 51 (repealed; see Gov. C. § 241), defining citizens as persons born in the state and residing within it, and all persons born out of the state who are citizens of the United States and residing within the state, one suing to restrain an illegal payment of county funds, who described himself as a "resident" of the county, did not show that he was entitled to sue, within this section, since the words "resident" and "citizen" are not synonymous. Thomas v. Joplin (1910) 112 P. 729, 14 C.A. 662.

3. Purpose of section

Purpose of this section in providing that an action to prevent any illegal expenditure of funds of a county or city may be maintained against any officer thereof either by citizen-residents or a corporation which has paid a tax therein is to enable a citizen-resident taxpayer to question public expenditures of local governments that might otherwise pass unchallenged. Bledsoe v. Watson (1973) 106 Cal.Rptr. 197, 30 C.A.3d 105.

The primary purpose of this section is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirements: this section is liberally construed to achieve this remedial purpose. Blair v. Pitchess (1971) 96 Cal.Rptr. 42, 486 P.2d 1242, 5 C.3d 258, 45 A.L.R.3d 1206.

4. Right to injunction in general

In order to obtain injunctive relief in actions brought under this section allowing a taxpayer's action to enjoin the illegal use of public funds taxpayer must establish that the expenditure of public funds which he is seeking to enjoin is illegal. Los Angeles County v. Superior Court for Los Angeles County (1967) 62 Cal.Rptr. 435, 253 C.A.2d 670.

It would be violative of equal protection clause of Fourteenth Amendment to give nonresident corporate taxpayer right to maintain suit to enjoin illegal expenditure of municipal funds while denying same right to nonresident taxpayer who was natural person. Irwin v. City of Manhattan Beach (1966) 51 Cal.Rptr. 881, 415 P.2d 769, 65 C.2d 13.

5. Nature and scope of relief

Seeking relief in personam and seeking relief in rem as well are not mutually exclusive remedies. Card v. Community Redevelopment Agency of South Pasadena (1976) 131 Cal.Rptr. 153, 61 C.A.3d 570.

Injunction by trial court will not be disturbed where issuance of injunction grows out of factual situation. Genser v. McElvy (1969) 82 Cal.Rptr. 521, 276 C.A.2d 709.

The courts will entertain only those taxpayer suits that seek to measure governmental performance against a legal standard; the courts cannot formulate decrees that involve the exercise of indefinable discretion, nor will the courts invalidate a transaction which is for municipal purposes even though there is incidental private benefit. Rathbun v. Salinas (1973) 106 Cal.Rptr. 154, 30 C.A.3d 199.

Equity may enjoin municipal corporation's act exceeding jurisdiction, but not legislative or governmental acts within scope of authority. Muchenberger v. City of Santa Monica (1929) 275 P. 803, 206 C. 635.

Where, under ordinances accepting gift to erect buildings in city park, part of property of city was to be used in erection, plaintiffs, citizens, taxpayers, and members of board of park commissioners could enjoin defendant commissioners appointed under such ordinance to supervise erection and maintenance from carrying out provisions of ordinances, and from interfering with duties of plaintiffs as park commissioners. O'Melveney v. Griffith (1918) 171 P. 934, 178 C. 1.

Where a plaintiff, in a suit brought in behalf of a municipal corporation, is a taxpayer, and has a direct and substantial interest in the controversy, the fact that he may also have ulterior motives in bringing the suit does not disqualify him. Mock v. City of Santa Rosa (1899) 58 P. 826, 126 C. 330.

Representatives of municipal corporations as trustees of corporation's property whether acquired by taxation or otherwise, come peculiarly within province of court of equity. Smith v. City of Sacramento (1857) 1 Lab. 342.

Individual taxpayer can complain separately of injury common to him and all other taxpayers living under one municipal government. Id.

6. Grounds of relief in general

Resident taxpayer under appropriate circumstances may maintain action against officer where there has been an illegal expenditure, waste or injury to public funds. Malone v. Superior Court, in and for City and County of San Francisco (1953) 254 P.2d 517, 40 C.2d 546.

Organization of Spanish War veterans using veterans' memorial building erected under Pol.C. § 4041f, subds. b, d, as amended by Stats.1927, p. 207, § 1, was not entitled to injunction against supervisors to prohibit use of building or rooms therein by other organizations than those composed of veterans, where there was no showing of any illegal expenditure of money or waste or injury to property under this section, or that plaintiff had status of citizen or taxpayer, or that incidental use of building by other organizations interfered with use thereof by veterans' organizations. Captain Charles v. Gridley Camp, No. 104, United Spanish War Veterans v. Board of Sup'rs of Butte County (1929) 277 P. 500, 98 C.A. 585.

Order of the county board of supervisors granting railroad right to construct a double track upon a public bridge was not shown to be invalid or that the board abused its discretion so as to authorize a granting of an injunction by a taxpayer. Meetz v. County of Alameda (1880) 6 P.C.L.J. 290.

7. Court policy

In view of fact that validity of challenged court policy with respect to petitions to proceed in propria persona is a potential issue in every criminal case in which a defendant elects to represent himself and in view of fact that such a defendant not only has standing but is already before court and has open to him immediate and plenary recourse within judicial system with respect to any claimed violation of his constitutional rights, court policy could not be challenged by way of taxpayer's action. Di Suvero v. Los Angeles County (1977) 140 Cal.Rptr. 895, 73 C.A.3d 718.

Even though county was source of funds for operation of superior court, it was court and not county that was responsible for court policy with respect to petitions to proceed in propria persona and use of funds in implementation of such policy, so that taxpayer's action against county could not constitutionally be used as means of challenging court policy when court policy could not be challenged directly in a taxpayer's action. Id.

8. Interference with contracts

Citizen-resident taxpayers and their attorney could not be held liable for damages for wrongful interference with a contract a city official had entered into with an attorney for merely writing to the city official to persuade him not to make an expenditure of funds which they thought might be illegal, this section providing for an action challenging such expenditure by citizen-resident taxpayers providing a complete defense to damage action. Bledsoe v. Watson (1973) 106 Cal.Rptr. 197, 30 C.A.3d 105.

Conduct of citizen-resident taxpayers of a municipality and of their attorney, in communicating with a public officer to prevent his asserted illegal expenditure of public funds was justifiable under general right of a citizen to protest a public expenditure by petition and instruction, and citizen-residents and their attorney could not be found liable in damages for exercising such right on theory it amounted to wrongfully inducing breach of contract. Id.

9. Community redevelopment

Expectation of economic improvement and prospect of speculative gains by themselves furnish insufficient basis for use of powers of redevelopment under community redevelopment law. Regus v. City of Baldwin Park (1977) 139 Cal. Rptr. 196, 70 C.A.3d 968.

Without evidence of blight there is no justification for community redevelopment, since it compels taxpayers in one section of community to subsidize cost of development of another section by carrying disproportionate share of cost of local government and since unrestricted redevelopment fosters speculative competition between municipalities in their attempts to attract private enterprise, speculation which they can finance in part with other people's money. Id.

10. Illegal or unauthorized acts—In general

For a city to give assistance to an individual or to a private corporation, even by an outright subsidy, might be advantageous to the city itself, particularly in encouraging a respected banking institution to construct an attractive building, but because of reasons of public policy, direct assistance, as distinguished from that which is incidental to exercise of city's governmental functions, cannot be sustained. Rathbun v. Salinas (1973) 106 Cal.Rptr. 154, 30 C.A.3d 199.

Where petitioners filed petition for writ of mandate against state architect, seeking order compelling him to revoke change order which permitted substitution of plastic pipe for metal pipe in certain facets of construction of high school on July 3, plastic pipe had been installed and encased in walls and floors by July 20, and school district was not joined as indispensable party until August 8, proceeding had become moot, notwithstanding contention that portion of plastic pipe installation cost, which had not been paid, could be retained if architect were required to revoke order. Gensen v. McElvy (1969) 82 Cal.Rptr. 420, 276 A.C.A. 857.

If city proposed to install permanent sewer lines in adjoining disputed unincorporated territory, not in a good faith attempt to serve residents but to thwart local area formation commission and defeat annexation by another city, this would not only constitute waste but would be an illegal expenditure which can also be enjoined by a citizen resident. City of Ceres v. City of Modesto (1969) 79 Cal.Rptr. 168, 274 C.A.2d 545.

Where deed conveyed strip of land to city exclusively for street purposes and reserved to grantor owning property on both sides of strip right to use land for any public utility, and city council accepted deed by resolution stating that land was received for street purposes, city taxpayer was entitled to restrain city and its lessee from drilling for oil on such land which had been used as a street for many years. Marshall v. Standard Oil Co. of California (1936) 61 P.2d 520, 17 C.A.2d 19.

In action against officers to recover the salaries paid to them where both the auditor and treasurer of the city who were disbursing officers were members of the appointing council fact that the auditor drew his warrant for salary did not divest him of knowledge which as councilman he possessed as to the ineligibility of the officers to appointments given them by the council. Briare v. Matthews (1929) 2 Rag. 64.

Transfer of moneys in treasury from one special fund to another by city's council will be restrained by injunction. Smith v. City of Sacramento (1857) 1 Lab. 70.

11. —— Appropriations, illegal or unauthorized acts

An injunction will issue against the fraudulent or unlawful appropriation of public moneys. Andrews v. Pratt (1872) 44 C. 309; Foster v. Coleman (1858) 10 C. 278.

If an appropriation is made illegally or for an unlawful purpose by county board of supervisors, any taxpayer can maintain action for recovery into county treasury of public funds so expended, after making demand on proper public officials to commence action, unless it be made to appear that demand would be unavailing. Citizens' Committee for Old Age Pensions v. Board of Sup'rs of Los Angeles County (1949) 205 P.2d 761, 91 C.A.2d 658.

12. —— Contracts, illegal or unauthorized acts

Where void contracts with county had expired and had been completely performed in all respects by the parties and county board would have had general power to execute them and in fact appropriated funds with which to pay and permit fulfillment of the agreements, and patent injustice and hardship would result to suppliers if they were forced to return 3.4 million dollars collected on contracts which were void only because executed by purchasing agent rather than county board, it was matter for trial judge, sitting as chancellor in equity, whether county would be estopped to seek restitution. Advance Medical Diagnostic Laboratories v. Los Angeles County (1976) 129 Cal. Rptr. 723, 58 C.A.3d 263.

A taxpayer's complaint alleging that San Francisco redevelopment agency and its executive director and commissioners disposed of public property at a price far below the "fair value" requirement, and contrary to public hearing requirements of Health & S.C. § 33431 and federal statutes and hence were ultra vires stated cause of action under this section authorizing actions by resident taxpayer against officers of a county, town, city, or city and county to restrain illegal expenditure of public funds since state officials may be sued under such statute. Duskin v. San Francisco Redevelopment Agency (1973) 107 Cal.Rptr. 667, 31 C.A.3d 769.

Where contracts had already been executed by city they could not be enjoined in taxpayer's action. Hodgeman v. City of San Diego (1942) 128 P.2d 412, 53 C.A.2d 610.

In taxpayer's suit to enjoin execution of contracts for installation of parking meters or to enjoin their performance, injunction would be denied where contracts had been executed and installed and meters would soon be paid for out of earnings. Id.

A taxpayer may maintain an action to restrain a city from carrying out an ultra vires contract between the city and county, wherein the county unlawfully agreed to furnish cement to the city. Riverside Portland Cement Co. v. City of Los Angeles (1918) 174 P. 31, 178 C. 609.

A taxpayer interested in an unsuccessful bidder for contract for public improvement, whose bid was lowest, suing to enjoin award to a higher bidder, could not claim that, because the specifications did not provide for comparison of devices to be offered, the council had no authority to investigate their merits in awarding the contract, where such unsuccessful bidder co-operated with the counsel in making such comparisons. West v. City of Oakland (1916) 159 P. 202, 30 C.A. 556.

Where the acceptance by a county board of supervisors of the higher of two bids for the furnishings of a building is tainted with fraud or favoritism, relief by injunction against use of public money may be had, but, in the absence of such fraud, the discretion of the board in making the purchase will not be disturbed. People ex rel. Merrill v. Nellis (1910) 111 P. 631, 14 C.A. 250.

Injunction would not issue to restrain the board of supervisors of San Francisco from letting a contract in direct contravention of the charter, since the court was bound to presume that the board would do its duty, and there was no irreparable injury in any event, since a contract let in violation of the charter would be void. Barto v. Board of Sup'rs of City and County of San Francisco (1902) 67 P. 758, 135 C. 494.

A taxpayer of a city can sue to enjoin the execution of an illegal contract by the city with a bank for the deposit with it of the public moneys. Yarnell v. City of Los Angeles (1891) 25 P. 767, 87 C. 603.

An injunction would not be granted to restrain a board of supervisors from incurring liabilities which would not be a legal charge against the county, since such act could not in any way injure plaintiff as a taxpayer. Linden v. Case (1873) 46 C. 171.

Where city council attempted to contract under a void contract so that any payment made pursuant thereto would likewise be void, taxpayer could maintain an action to restrain such illegal expenditure. Casper v. City of Los Angeles (1929) 2 Rag. 30.

Where contract for materials for completion of city hall building was void because of ultra vires requirement inserted by board of commissioners in its advertisements for bids, board would be enjoined, in suit by taxpayer, from paying out money pursuant to contract terms. Mulrein v. Kalloch (1882) 9 P.C.L.J. 476.

13. —— Expenditures generally, illegal or unauthorized acts

Under this section it is immaterial that amount of illegal expenditure is small or that illegal procedures actually permit saving of tax funds. Wirin v. Parker (1957) 313 P.2d 844, 48 C.2d 890.

Where a city council failed to declare void certain transactions with a special attorney whose services it had engaged by contract, and showed a willingness to compensate him after being informed of his violations of the city charter and his derelictions of duty, a city taxpayer had the capacity to maintain an action to enjoin disbursements of city funds to such attorney. Terry v. Bender (1956) 300 P. 2d 119, 143 C.A.2d 198.

Resident taxpayers of city were entitled to sue to enjoin alleged illegal expenditures of municipal funds in the enforcement of city ordinance providing for surrender of unclaimed impounded animals for purposes of medical research. Simpson v. City of Los Angeles (1953) 253 P. 2d 464, 40 C.2d 271, appeal dismissed 74 S.Ct. 37, 346 U.S. 802, 98 L.Ed. 333, rehearing denied 74 S.Ct. 118, 346 U.S. 880, 98 L.Ed. 387.

If a city council and county board of supervisors may determine what improvements are calculated to advance the public interest, subject to interference by the courts only when it is plainly apparent that such improvements are not so calculated, it must necessarily be true that they may determine what price should be paid for the improvements, subject to no greater right in the courts to interfere. Los Angeles County v. Dodge (1921) 197 P. 403, 51 C.A. 492.

Expenditure by city and county of Los Angeles of $950,000, one half from each, in payment for a stadium on land of an agricultural association leased by it to the city, and by the city and county to a development association, ownership of the building to vest finally in the agricultural association, possession in the city and county was not so great a price on the part of the county for the public benefits to it as to subject the transaction to the interference of the courts. Id.

It being presumed that a city council acted in good faith, its action in purchasing land for a fire-engine house is not subject to attack by a city officer or taxpayer on the ground that there was no intention ever to erect such a building on the site purchased. City of Santa Barbara v. Davis (1904) 76 P. 495, 142 C. 669.

Taxpayer could maintain a suit to enjoin the drawing of a warrant for the price of land purchased under County Government Act, § 25, subd. 8, without the publication of prescribed notice. Winn v. Shaw (1891) 25 P. 968, 87 C. 631.

To warrant the granting of an injunction restraining the drawing of a warrant on a county treasurer to pay for land bought by the county in violation of the county government act, it was not necessary that it be alleged or shown that the county or plaintiff would be damaged if the purchase was completed or that the value of the land was less than the price to be paid. Id.

An injunction would not be granted at the suit of a taxpayer to restrain the county auditor from issuing a warrant for the payment of an alleged illegal claim allowed against the county by the board of supervisors, as the county might compel the auditor to refund the money in an action at law if the warrant was in fact illegally issued. Winn v. Shaw (Sup.1891) 25 P. 244.

An injunction to restrain the anticipated action of the board of supervisors of a county, in paying certain alleged illegal claims, would not be granted, it being hardly claimed that there was an excess of jurisdiction on the part of the board. Merriam v. Board of Yuba County Sup'rs (1887) 14 P. 137, 72 C. 517.

A court of equity, on the complaint of a taxpayer, would enjoin the payment of and cancel county warrants illegally drawn on the treasurer by order of the board of supervisors. Andrews v. Pratt (1872) 44 C. 309.

Where police officers were illegally appointed and they performed their duties at a time when no action was pending to contest their title to their positions, taxpayer could maintain an action to recover moneys paid out to such officers as salaries. Briare v. Matthews (1929) 2 Rag. 64.

14. —— Expenditures under invalid law or ordinance, illegal or unauthorized acts

Taxpayer's interest in expenditure of public funds and method of raising those funds established her standing to seek both equitable and legal relief against city's allegedly wrongful disposition of vacated city streets by selling streets for 50% of their unencumbered fee value. Harman v. City and County of San Francisco (1972) 101 Cal.Rptr. 880, 496 P.2d 1248, 7 C.3d 150.

Under this section authorizing actions by resident taxpayer against officers of a county, town, city, or city and county to obtain an injunction restraining and preventing illegal expenditure of public funds, if county, town or city officials implement a state statute or even provisions of state constitution an injunction will issue to restrain such enforcement if provision is unconstitutional. Blair v. Pitchess (1971) 96 Cal.Rptr. 42, 486 P.2d 1242, 5 C.3d 258, 45 A.L.R.3d 1206.

Under this section authorizing actions by resident taxpayer against officers of county, town, city, or city and county to obtain injunction restraining and preventing illegal expenditure of public funds, residents and taxpayers of county of Los Angeles had standing to bring action to enjoin county and its sheriff, marshal and deputy sheriff, and justice court constable from executing provisions of claim and delivery law on ground of unconstitutionality of law and that, by expending time of county officials in executing its provisions, defendants were illegally expending county funds. Id.

Taxpayer who alleged that public money had been appropriated and would continue to be appropriated and spent in the future to establish a system for enforcement of loitering and housing ordinances of city could maintain action to have ordinances declared void even though ordinances were penal in nature. Ames v. City of Hermosa Beach (1971) 93 Cal.Rptr. 786, 16 C.A.3d 146.

In absence of proof by affidavits or otherwise that there was any urgency requiring temporary relief while taxpayer's action challenging loitering and housing ordinances was pending, taxpayer was not entitled to a preliminary injunction. Id.

Where ways were open for resolution of problem of probable insufficiency of funds for payment of fire department salaries according to salary schedule adopted by council and total expenditure of money for salaries of firemen was limited to amount set forth in budget as adopted until taking of such appropriate action, there was no illegal expenditure of funds of the city and no basis for judicial intervention at behest of taxpayer. Silver v. City of Los Angeles (1967) 65 Cal.Rptr. 227, 257 C.A.2d 557.

15. —— Expenditures for corrupt or illegal purposes, illegal or unauthorized acts

In taxpayer's action to restrain police chief from expending funds to conduct police surveillance by means of concealed microphones, since trial court found that such surveillance was conducted in places of occupancy without consent, since such violated constitution and since injunction restraining expenditure to defray entry upon private premises without consent for purpose of secreting microphones could be easily obeyed, court erred in entering judgment for police chief and if he wished to show that there was no threat of future illegal expenditures, plaintiff was to be entitled to meet issue. Wirin v. Parker (1957) 313 P.2d 844, 48 C.2d 890.

A municipality whose funds are about to be expended pursuant to a corrupt agreement to inject the personal influence of a public officer in the procurement of action by the governmental body may be enjoined in an action brought by a taxpayer. Terry v. Bender (1956) 300 P.2d 119, 143 C.A.2d 198.

An action to obtain a judgment restraining and preventing illegal expenditure or waste of funds of a city may be maintained against any officer, agent, or other person acting in its behalf by a citizen resident therein who has within one year before the commencement of the action paid a tax to the city. Wirin v. Horrall (1948) 193 P.2d 470, 85 C.A.2d 497.

Citizen resident of city who had paid a tax to city within one year prior to filing of complaint could maintain an action against police officers to restrain officers from expending funds of city in blocking off areas of city and conducting illegal searches and seizures by searching all persons and automobiles entering or leaving such area without a search warrant and without reasonable cause to believe that searched citizens had violated any law or that searched automobiles contained contraband. Id.

Allowance of exorbitant sums for appraisal of taxable property was constructive fraud, for which taxpayer had ample remedy. Storke v. City of Santa Barbara (1926) 244 P. 158, 76 C.A. 40.

If a contract between the city and county of San Francisco and a construction company for the construction of an aqueduct was illegal, taxpayers had a right to prevent such illegal expenditure under the contract, legally constituting a loss to the city, though injunction might result in the abandonment of the whole project and consequent business losses. Crowe v. Boyle (1920) 193 P. 111, 184 C. 117.

16. —— Expenditures wasting public funds, illegal or unauthorized acts

City's proposed plan to construct permanent sewer lines in area which it might never be able to annex would constitute an unconscionable waste of city's tax funds and it might entitle taxpayer to injunctive relief. City of Ceres v. City of Modesto (1969) 79 Cal.Rptr. 168, 274 C.A.2d 545.

Where municipal taxpayers alleged, in petition for mandamus and certiorari to review proceedings in which a subdivision map was approved and property described therein was annexed, that city, if not ordered to desist, would expend municipal funds for public improvements and other purposes in the area and thereby waste funds of the city, but no facts were alleged to support such general charge, taxpayers failed to make a showing sufficient to maintain a representative suit under this section, authorizing suits by resident taxpayers to restrain or prevent any illegal expenditure of property of a city or county. Wine v. Council of City of Los Angeles (1960) 2 Cal.Rptr. 94, 177 C.A.2d 157.

The mere fact that a method of paying for municipal work which is contrary to the statute might be expensive and wasteful, and might preclude responsible contractors from securing it, gives a citizen of the municipality a sufficient standing to maintain an action for an injunction to prevent the illegal expenditure. Clouse v. City of San Diego (1911) 114 P. 573, 159 C. 434.

Mere fact that unlawful method of payment might be expensive and wasteful, gives citizen standing to maintain action for injunction. Id.

17. —— Indebtedness, incurring for illegal or unauthorized purposes

Where advancement of funds by citizens' committee to defray expenses of municipal officials in making trip to present municipality's position on particular matter to Congress was not intended to promote individual interests of committeemen or influence delegation and municipality was not prejudiced, circumstance that officials were not personally out of pocket was not a reason for enjoining disbursement of public funds to repay advances. Powell v. City and County of San Francisco (1944) 144 P.2d 617, 62 C.A.2d 291.

Where a claim against the county has been allowed in full by the board of supervisors, if within the jurisdiction of the tribunal, it can be attacked only by a suit in equity on the ground of fraud. Thiel Detective Co. v. Tuolumne County (1918) 173 P. 1120, 37 C.A. 423.

Injunction will lie, at suit of a taxpayer, to restrain a county from incurring expense for equipping a ferry partly without the county, it having no authority to establish or operate such a one. Johnston v. Sacramento County (1902) 69 P. 962, 137 C. 204.

The county board of supervisors was authorized to pass on claims against the county and in doing so acted in a judicial capacity, and injunction would not lie at the instance of a taxpayer to prevent the allowance of a claim, or its payment when allowed. McBride v. Newlin (1900) 61 P. 577, 129 C. 36.

In a proper case, where it is shown that the municipal officers are about to create an illegal indebtedness against the corporation, and to levy and collect a tax for the payment thereof, such acts may be restrained at the suit of a taxpayer. Bradford v. City and County of San Francisco (1896) 44 P. 912, 112 C. 537.

18. —— Misapplication of funds, illegal or unauthorized acts

In California, taxpayer of city may enjoin misapplication of city's funds, before illegal expenditure thereof, or may sue the officers guilty of misapplication to recover such sums on behalf of municipality but cannot sue city for such misapplication. Fox v. City of Pasadena (C.C.A.1935) 78 F.2d 948.

Action to obtain judgment restraining and preventing any illegal expenditure of funds of city may be maintained against officer, agent, or other person acting in its behalf by any citizen residing therein who has within one year before the commencement of action paid taxes to such city. Trickey v. City of Long Beach (1951) 226 P.2d 694, 101 C.A.2d 871.

A taxpayer showing that San Francisco ordinances purporting to create three new positions of police captains were void could maintain action to restrain payment of salaries attached to such offices under this section. Brown v. Boyd (1939) 91 P.2d 926, 33 C.A.2d 416.

Allowing a warrant based on claim for detective services which wholly failed to comply with municipal requirements was void. Chapman v. City of Fullerton (1928) 265 P. 1035, 90 C.A. 463.

Action to enjoin payment of void warrant for services in detection of liquor law violators were properly maintained by taxpayer and resident within city. Id.

Illegal expenditure of public funds may be enjoined or recovered, though taxpayer cannot show special damage. Mines v. Del Valle (1927) 257 P. 530, 201 C. 273.

A taxpayer of a city could not maintain action to enjoin payments under a contract for construction work based on the mere informality of the bond in that there was only one surety where two were required by the charter, in the absence of showing of injury either to the public or the taxpayer. Crowe v. Boyle (1920) 193 P. 111, 184 C. 117.

19. —— Election upon illegal or inoperative measure, illegal or unauthorized acts

Where it is proposed to hold an election for submission of a measure to popular vote and that measure will be wholly void even if adopted, courts may, at instance of resident taxpayer, enjoin holding of election on ground that it will be a useless expenditure and waste of public funds.

Holman v. Santa Cruz County (1949) 205 P.2d 767, 91 C.A.2d 502.

Where plan of building dam and raising funds therefor adopted by fire district commissioners was illegal, election within district in an attempt to approve the illegal and inoperative project would be enjoined at instance of resident taxpayers. Id.

In view of this section, where it was proposed to hold election for submission of measure to popular vote, which would be inoperative if adopted, court might, in suit by resident taxpayer, enjoin election because it would be useless expenditure and waste of public money. Harnett v. Sacramento County (1925) 235 P. 445, 195 C. 676.

20. —— Issuance or delivery of bonds, illegal or unauthorized acts

In a suit to enjoin a city treasurer from issuing bonds, where the trial court denied an injunction and refused a temporary restraining order pending appeal, the appeal would be dismissed; it being presumed that the city treasurer had issued the bonds as required by Stats.1911, p. 1202, § 4, and the complaint alleging that he would do so unless enjoined. Bernard v. Weaber (1913) 138 P. 941, 23 C.A. 532.

An appeal from a judgment denying an injunction to restrain a city treasurer from issuing bonds would be dismissed where the bonds were issued pending the appeal. Id.

A taxpayer was a sufficiently interested party to maintain an action to contest the official declaration of the result of an election to determine the issuance of bonds. Gibson v. Board of Sup'rs of Trinity County (1889) 22 P. 225, 80 C. 359.

Injunction would be granted at suit of any taxpayer to restrain issuance of street improvement bonds authorized by unconstitutional act. Schumacker v. Toberman (1880) 56 C. 508, 6 P.C.L.J. 997.

Bonds of a municipal corporation that were void in the hands of an innocent holder were not a charge against the public, and their circulation would not be enjoined at the suit of a taxpayer. McCoy v. Briant (1878) 53 C. 247, 2 C.Leg.Rec. 52, 2 P.C.L.J. 213.

21. —— Tax exemptions, illegal or unauthorized acts

Resident taxpayer of county had right to bring suit against county to challenge the legality of a tax exemption. Lundberg v. Alameda County (1956) 298 P.2d 1, 46 C.2d 644, appeal dismissed 77 S.Ct. 224, 352 U.S. 921, 1 L.Ed.2d 157.

22. —— Waste or other injury to property, illegal or unauthorized acts

The possible interference with recreational uses of park property for duration of emergency as result of use of the park property for temporary housing purposes to help meet the emergency housing shortage caused by necessities of war having retarded construction of sufficient housing would be too inconsequential to justify interference therewith by the courts by issuance of an injunction upon a taxpayer's application. Griffith v. City of Los Angeles (1947) 178 P.2d 793, 78 C.A.2d 796.

City will not be restrained from using property purchased for waterworks for location of hospital. Jardine v. City of Pasadena (1926) 248 P. 225, 199 C. 64, 48 A.L.R. 509.

23. Actions—In general

Nonprofit corporation alleged to be assignee of causes of action of certain named county taxpayers, which brought action against county and county tax assessor, alleging generally that county was wasting money because it was not collecting all that it could in revenues, failed to state cause of action for relief under provision of this section authorizing action by taxpayer against county officers to restrain and prevent waste of county funds. Trim, Inc. v. Monterey County (1978) 150 Cal.Rptr. 351, 86 C.A.3d 539.

Taxpayer's demand that city institute proceedings to recover salaries illegally paid should be made upon council, not city attorney. Briare v. Mathews (1927) 258 P. 939, 202 C. 1.

Taxpayer's demand upon council to institute proceedings was not prerequisite, where useless. Id.

Where a demand that municipal officers sue for funds illegally expended would clearly be unavailing, such demand is not a condition precedent to a taxpayer's right to sue on behalf of the city. Osburn v. Stone (1915) 150 P. 367, 170 C. 480.

In an action by a taxpayer to set aside a contract made by a city, and to have returned to it certain bonds, where the complaint shows that a demand upon the city to bring suit or demand the return of the bonds would have been useless, the omission to make such demands is not ground for reversal of judgment for plaintiff. Mock v. City of Santa Rosa (1899) 58 P. 826, 126 C. 330.

Since § 21 of the charter of Santa Rosa, Stats.1875–76, p. 262, prescribing the duties of the city attorney, and stating when he may commence actions on his own motion, does not authorize him to bring suit against the city to set aside a contract for the construction of waterworks, it is not necessary for a taxpayer before bringing such a suit to obtain the city attorney's consent. Id.

The legal action available to citizen or taxpayer to prevent improper use of legislative committee funds is through state controller, who has duty to audit all claims against state, by making complaint of improper use to which funds are put. 22 Ops.Atty.Gen. 93.

24. —— Suing or defending on behalf of municipality, actions

Where district attorney with adequate knowledge of illegal expenditure of county funds by county officers refuses to institute action to recover money, citizen taxpayer may institute such action in name of county for benefit of county, but cannot maintain suit in name of any one other than county and cannot properly join county as party defendant. Gray v. White (1935) 43 P.2d 318, 5 C.A.2d 463.

An action cannot be maintained by a citizen to set aside a judgment against a city, quieting the title of a claimant to land alleged to have been dedicated to the public for street purposes, which judgment was rendered in pursuance of an agreement with the city authorities by which the city acquired other property in consideration of its making default; there being no offer to restore such property, and no allegation that the use of the alleged street by the public has been interfered with. Dunn v. Long Beach Land & Water Co. (1896) 46 P. 607, 114 C. 605.

A citizen and taxpayer of a city cannot maintain an action in behalf of the city against third persons unless the bringing of such action is a duty devolving on the authorities of the city, as to which they have no discretion, and which they have refused to perform. Id.

A bill to have declared void a contract by the supervisors of a county should be brought in the name of the county as a corporation, and not by the people of the county. People of Stanislaus County ex rel. Smith v. Myers (1860) 15 C. 33.

25. Pleadings—In general

In suit by the state to enjoin the wastage of natural gas under Pub.Res.C. §§ 3310, 3312, where neither the Public Resources Code nor the injunction provisions of C.C.P. § 525 et seq. to which it referred expressly prohibited the use of a cross-complaint, cross-complaint by operator against other operators in such proceeding was authorized. Tide Water Associated Oil Co. v. Superior Court of Los Angeles County (1955) 279 P.2d 35, 43 C.2d 815.

A pending suit by a nonresident taxpayer, in behalf of himself and all other nonresident taxpayers to annul a contract made by a city, may be pleaded in abatement of a suit for the same purpose afterwards brought in the same court by other nonresident taxpayers. Gamble v. City of San Diego (C.C.1897) 79 F. 487.

Taxpayer's suit to enforce trust for erection of buildings in park could not be maintained in absence of allegation of fraud, collusion, ultra vires, or failure to perform duties specifically enjoined upon board of park commissioners, since board has exclusive right to deal for city with reference to park affairs. Pratt v. Security Trust & Savings Bank (1936) 59 P.2d 862, 15 C.A.2d 630.

In city residents' action to enforce trust for erection of buildings in city park, allegation that attorney general and park commissioners neglected and refused to proceed against trustee, or require an accounting for its alleged breach of trust, was not allegation of knowledge of trustee's breach of trust or of nonaction on part of attorney general and park commissioners so as to authorize suit to enforce trust by residents rather than by attorney general or park commissioners. Id.

Taxpayer's complaint to compel municipal officers to repay funds illegally expended was not required to show plaintiff to be resident of city. Mines v. Del Valle (1927) 257 P. 530, 201 C. 273.

Cross-complaint, in a taxpayer's suit to annul an order of a town board of trustees declaring that a franchise ordinance had been rejected was demurrable as seeking relief foreign to the subject-matter of the suit. Reed v. Wing (1914) 144 P. 964, 168 C. 706.

A petition to enjoin a board of county supervisors from allowing, and the treasurer from paying, a certain claim, was fatally defective, where it did not allege that such bill had been made out or filed, or that it would be presented. McBride v. Newlin (1900) 61 P. 577, 129 C. 36.

In taxpayer's action to recover salaries paid to patrolmen, defendants had burden to answer to merits of the charges contained in the complaint unless they wish to admit them and having answered it, they had the burden to offer some evidence in support of the answer. Briare v. Matthews (1929) 2 Rag. 64.

26. —— Sufficiency of pleadings

Taxpayers stated statutory cause of action for waste on basis that school district's consolidation plan would cost a great deal more than alternative plans considered, without finding of any additional public benefit. Los Altos Property Owners Ass'n v. Hutcheon (1977) 137 Cal.Rptr. 775, 69 C.A.3d 22.

A taxpayer's amended complaint stating that bank building to be constructed on public parking lot would not serve any useful purpose of city for at least 50 years, that property to be leased had been used for 15 years and was still being used for public parking, that although the building would belong to city at end of 50 years it was not the proper function of city to invest in bank buildings, that transaction had some aspects of a sale which would require public bidding, that lessee would avoid tax on land upon which building rested, that at the end of 50 years lessee had first refusal against another lessee, and that reasonable ground rental for 50-year lease was a sum greatly in excess of that agreed to stated cause of action. Rathbun v. Salinas (1973) 106 Cal.Rptr. 154, 30 C.A.3d 199.

Taxpayer's allegation that by selling vacated streets for 50% of their unencumbered fee value city had violated charter provisions delineating the city's duties in its appraisal and disposition of vacated streets presented a justiciable complaint. Harman v. City and County of San Francisco (1972) 101 Cal.Rptr. 880, 496 P.2d 1248, 7 C.3d 150.

Nonresident taxpayer's complaint to enjoin construction, maintenance and use of pedestrian street overpass was insufficient for failure to allege misconduct on part of city in authorizing construction of overpass by private parties at their own expense and subject to strict municipal control as to design, maintenance and future use. Irwin v. City of Manhattan Beach (1966) 51 Cal.Rptr. 881, 415 P.2d 769, 65 C.2d 13.

Demurrer to third cause of action in taxpayer's suit to enjoin city from executing or performing contracts for installation of parking meters was properly sustained where no facts were alleged showing fraud but only innuendos and legal conclusions were relied on by plaintiff. Hodgeman v. City of San Diego (1942) 128 P.2d 412, 53 C.A.2d 610.

Complaint, in suit to restrain city from issuing improvement bonds, was insufficient, in absence of allegation that plaintiffs made objections to city council as required by statutes. Sturgeon v. City of Hawthorne (1930) 289 P. 229, 106 C.A. 352.

Taxpayer's complaint to recover expenses of city officials in attempt to secure approval of unlawful contract did not state cause of action. O'Connell v. City and County of San Francisco (1928) 284 P. 655, 204 C. 1.

The appearance of plaintiff's name upon the registry lists and the assessment books of the city not being conclusive evidence that he is either a citizen or taxpayer, an answer by the city that it has no knowledge as to plaintiff's being a citizen or taxpayer, and therefore denies that he is either, is sufficient to put such facts in issue. McConoughey v. City of San Diego (1900) 60 P. 925, 128 C. 366.

Complaint, not averring that at least two or three members of county board of supervisors were about to order purchase of property and warrant on treasury for payment, did not state facts sufficient to authorize injunction. Trinity County v. McCammon (1864) 25 C. 117.

In suit for injunction to prevent railroad from constructing a double railroad track upon a bridge across a creek under a permit granted by the county board where plaintiff sued as a taxpayer on the ground that the proposed construction would greatly depreciate his property and to prevent breach of an obligation arising from a public trust, complaint did not state a cause of action. Meetz v. County of Alameda (1880) 6 P.C.L.J. 290.

27. Parties—In general

Parties in suit under this section authorizing action by resident taxpayer against officers of a county, town, city or city and county to obtain injunction restraining and preventing illegal expenditure of public funds are not required to have a personal interest in the litigation. Blair v. Pitchess (1971) 96 Cal.Rptr. 42, 486 P.2d 1242, 5 C.3d 258, 45 A.L.R.3d 1206.

Any action against sheriff to account for fees was to be prosecuted by county as party plaintiff, and not by a taxpayer, unless county officers refused to prosecute. Keith v. Hammel (1915) 154 P. 871, 29 C.A. 131.

In an action by a citizen and taxpayer to annul an order of a town board of trustees declaring that by a referendum election an ordinance granting a franchise to a railroad company had been rejected, the railroad company was not a necessary party. Reed v. Wing (1914) 144 P. 964, 168 C. 706.

In an action to have returned to a municipality certain bonds issued by it, holders of such bonds residing beyond the jurisdiction of the court were not indispensable parties, and, where no fact was alleged which would affect their title to the bonds, their omission as parties was not ground for reversal. Mock v. City of Santa Rosa (1899) 58 P. 826, 126 C. 330.

Every taxpayer in municipality may commence proceeding to enjoin city council from doing act which may add to burdens of taxation. Schumacker v. Toberman (1880) 56 C. 508, 6 P.C.L.J. 997.

A taxpayer has a right to restrain upon the part of an officer of a municipality a violation of a public trust where such violation would result in injury to himself. Meetz v. County of Alameda (1880) 6 P.C.L.J. 290.

28. —— **Standing to sue, parties**

Taxpayers have standing to sue school district under this section. Los Altos Property Owners Ass'n v. Hutcheon (1977) 137 Cal.Rptr. 775, 69 C.A.3d 22.

City citizens, residents, and taxpayers who sought to prevent alleged unlawful issuance of demolition permits by city officials had standing pursuant to this section to bring action seeking injunction against issuance of any more demolition permits. Kehoe v. City of Berkeley (1977) 135 Cal.Rptr. 700, 67 C.A.3d 666.

No special damage to particular taxpayer is necessary to action under this section dealing with illegal expenditures, and professor at state university, as resident taxpayer of city, had standing to seek injunction against police chief's expenditure of public funds in connection with allegedly illegal police investigatory activities on university campus. White v. Davis (1975) 120 Cal.Rptr. 94, 533 P.2d 222, 13 C.3d 757.

This section creates a right of action in taxpayers to challenge the illegal expenditure of public funds and does not act as a statute of limitations; the section authorizes action by taxpayer who has paid tax within one year last past and thus relates to standing of litigant to sue and not to his diligence in commencing suit. Plunkett v. City of Lakewood (1974) 116 Cal.Rptr. 885, 44 C.A.3d 344.

Association which represented school employees in classified service, including employees in cafeteria which district discontinued, had standing to sue to enjoin district from contracting for vending machines to dispense food at school, apart from any standing it may have had to maintain taxpayer's suit. California School Emp. Ass'n v. Sequoia Union High School Dist. (1969) 77 Cal.Rptr. 187, 272 C.A.2d 98.

Plaintiff alleging he was resident and taxpayer of county had capacity, under this section allowing a taxpayer's action to enjoin the illegal use of public funds, to maintain action against city and county and its law enforcement officials to prevent them from making statements or furnishing to press before arraignment more than a minimum amount of information concerning all persons arrested. Los Angeles County v. Superior Court for Los Angeles County (1967) 62 Cal.Rptr. 435, 253 C.A.2d 670.

Nonresident taxpayer had capacity to sue to enjoin construction, maintenance and use of pedestrian overpass. Irwin v. City of Manhattan Beach (1966) 51 Cal.Rptr. 881, 415 P.2d 769, 65 C.2d 13.

Resident and taxpayer has sufficient qualification to bring suit to enforce duty of municipality to maintain park according to terms of its dedication. City of Hermosa Beach v. Superior Court (1965) 41 Cal.Rptr. 796, 231 C.A.2d 295.

A taxpayer may obtain preventive relief against the illegal expenditure of funds by a municipal corporation. Nathan H. Schur, Inc. v. City of Santa Monica (1956) 300 P.2d 831, 47 C.2d 11.

A taxpayer may sue in a representative capacity in cases involving the failure of a governmental body to perform a duty specifically enjoined. Terry v. Bender (1956) 300 P.2d 119, 143 C.A.2d 198.

City taxpayer may sue in representative capacity in cases involving fraud, collusion, ultra vires, or failure on part of governmental body to perform a duty specifically enjoined. Pratt v. Security Trust & Savings Bank (1936) 59 P.2d 862, 15 C.A.2d 630.

A taxpayer may sue the city authorities to compel them to pay into the city treasury money illegally expended by them. Osburn v. Stone (1915) 150 P. 367, 170 C. 480.

A single citizen and taxpayer of a town may sue to annul an order declaring that by a referendum election an ordinance granting a franchise has been rejected. Reed v. Wing (1914) 144 P. 964, 168 C. 706.

This section restricts the right to sue to resident citizens, or corporations who are liable to a tax or who have paid a tax within a year. Thomas v. Joplin (1910) 112 P. 729, 14 C.A. 662.

29. —— Impleading, parties

That a city was not formally impleaded in a taxpayer's action to compel city officers to pay into the city treasury money illegally expended did not render the complaint subject to a general demurrer. Osburn v. Stone (1915) 150 P. 367, 170 C. 480.

Where municipal officers refuse to sue for municipal funds illegally expended, the city should be impleaded as a defendant. Id.

30. Defenses generally

That a city had jurisdiction over the subject-matter of expenditures was no defense in a taxpayer's action to compel city officers to pay into the city treasury the amount of expenditures made in an illegal manner. Osburn v. Stone (1915) 150 P. 367, 170 C. 480.

31. Bar and estoppel

Act of officials estopping municipality from asserting right to rescind bond sale estopped taxpayer. Warfield v. Anglo & London Paris Nat. Bank (1927) 260 P. 881, 202 C. 345.

Municipality's delay of three years without asserting rights relative to bond sales where purchaser had changed position, barred taxpayer's suit. Id.

More than ordinary promptness is required of taxpayer seeking to rescind bond sale. Id.

Defense of laches in taxpayer's action to recover from buyer of municipal bonds difference between purchase price and par value was properly raised by demurrer. Id.

32. Immunity

Judges were immune from taxpayer's suit brought by persons being prosecuted under Pen.C. § 311 et seq. to enjoin enforcement of such laws. Gould v. People (1976) 128 Cal.Rptr. 743, 56 C.A.3d 909.

33. Sufficiency of evidence

In taxpayer's action to enjoin execution of contracts for installation of parking meters or to enjoin their performance on ground that another meter manufacturer was the lowest responsible and reliable bidder, trial court properly found that parts to be furnished and the services to be rendered by the successful bidders and by the unsuccessful bidder varied so much that there was no sufficient basis furnished upon which to prepare the bid. Hodgeman v. City of San Diego (1942) 128 P.2d 412, 53 C.A.2d 610.

Testimony was sufficient to support court's findings in action to enjoin issuance and sale of municipal bonds for sewer extension that improvements described in proceedings for issuance of bonds authorized by electors were not completed, that municipality always intended to extend sewer, that proceedings for issuance and sale of authorized bonds for such extension were valid, and that extension was necessary for protection and efficiency of sewer. Casper v. City and County of San Francisco (1936) 57 P.2d 920, 6 C.2d 376.

34. Review

On appeal from judgment of dismissal following sustaining of demurrer to plaintiff's first amended complaint, appellate court would take the allegations in complaint as true and would disregard certain defensive material which was presented to court during hearing on plaintiff's application for preliminary injunction, because defendants chose to meet the first amended complaint only by demurrer on ground that it did not state facts sufficient to constitute a cause of action. Rathbun v. Salinas (1973) 106 Cal.Rptr. 154, 30 C.A.3d 199.

§ 526b. Municipal utility bonds; restraining issuance, sale, etc.; liability for costs

Every person or corporation bringing, instigating, exciting or abetting, any suit to obtain an injunction, restraining or enjoining the issuance, sale, offering for sale, or delivery, of bonds, or other securities, or the expenditure of the proceeds of the sale of such bonds or other securities, of any city, city and county, town, county or other district organized under the laws of this state, or any other political subdivision of this state, proposed to be issued, sold, offered for sale or delivered by such city, city and county, town, county, district or other political subdivision, for the purpose of acquiring, constructing, completing, improving or extending water works, electric works, gas works or other public utility works or property, shall, if the injunction sought is finally denied, and if such person or corporation owns, controls, or is operating or interested in, a public utility business of the same nature as that for which such bonds or other securities are proposed to be issued, sold, offered for sale, or delivered, be liable to the defendant for all costs, damages and necessary expenses resulting to such defendant by reason of the filing of such suit.

(Added by Stats.1921, c. 384, p. 575, § 1.)

Library References

Counties ⚷196.
Municipal Corporations ⚷993(3).

C.J.S. Counties § 286 et seq.
C.J.S. Municipal Corporations § 2146.

Notes of Decisions

1. Validity

This section, which is applicable to suits brought in state as well as federal courts, is not unconstitutional as applied to corporation which unsuccessfully sought such an injunction in federal court, as impairing corporation's right to resort to federal courts for redress, and as invading field belonging to exclusive jurisdiction of federal courts. Sacramento Municipal Utility Dist. v. Pacific Gas & Electric Co. (1942) 128 P.2d 529, 20 C.2d 684, certiorari denied 63 S.Ct. 530, 318 U.S. 759, 89 L.Ed. 1132.

This section is not void as lacking "uniformity", within constitutional provision requiring laws of general nature to have uniform operation, or as granting "special privileges" within constitutional provisions prohibiting the granting of privileges not granted to all citizens, or passage of special laws granting special privileges, or as denying "equal protection of the laws". Id.

Where corporation brought federal court suit to enjoin issuance of bonds by municipal utility district for purpose of acquiring electric works, and injunction was denied, application of this section was not unlawful as an attempt to regulate practice and procedure in relation to "costs" in federal courts, even if subject of costs was wholly covered by federal statutes, in view of distinction between ordinary costs and counsel fees. Id.

§ 527. Grants before judgment upon verified complaint or affidavits; service; notice of preliminary injunction or temporary restraining order; certification; order to show cause; readiness for hearing; continuance; counter-affidavits; precedence of hearing and trial; domestic violence

(a) An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith.

No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall appear from facts