

First Supplement to Memorandum 2001-32

Municipal Bankruptcy (Letter)

Attached to this supplement is a letter from Robert A. Ryan, Jr., Sacramento County Counsel. Mr. Ryan argues against the gatekeeper concept, with particular reference to the possibility of the Governor as gatekeeper to municipal bankruptcy filings. He writes:

With all due respect to the Governor or any other persons or group established for this function, local conditions and needs are best known at the local level and by ...those governing an affected municipality. Municipal bankruptcy affords an effective means, at the local level, to deal with financial crises. It is not entered lightly.

While Professor Tung posits that bankruptcy affects the State and its other component subdivisions, so, too, would outright default without bankruptcy protection. Indeed, the latter may have a more profound affect.

The staff suspects this viewpoint would be shared by most, if not all, local public entities. Unless the state government, acting through the Legislature and the Governor, wants to exercise its power to control access to Chapter 9 by its political subdivisions and can agree on how best to do it, there is no effective countervailing argument against the local government position in favor of relatively unrestricted access.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



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March 26, 2001

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California Law Revision Commission
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MAR 26 2001

Re: **Municipal Bankruptcy**

File: _____

Dear Commissioners:

As noted in Memorandum 2001-32, to be considered by the Commission on March 30, 2001, the California County Counsels' Association (CCA) has been following consideration of revisions to state statutes regarding municipal bankruptcy. At this time, the CCA supports the staff recommendation that: "In light of the political factors and the lack of a consensus, **the staff does not believe it is profitable to attempt a revision beyond the technical cleanup — at least for now.**"

The CCA would have significant concerns should any more be attempted. We are particularly concerned with a gatekeeper concept which could delay municipal filings. As your staff notes: "The fundamental purpose is to give municipal debtors a breathing spell through the automatic stay of collection efforts and to restructure municipal debt through formulation of a repayment plan with creditors." A gatekeeper would thwart this fundamental purpose for at least a time and perhaps entirely.

With all due respect to the Governor or any other persons or group established for this function, local conditions and needs are best known at the local level and by those governing an affected municipality. Municipal bankruptcy affords an effective means, at the local level, to deal with financial crises. It is not entered lightly.

While Professor Tung posits that bankruptcy affects the State and its other component subdivisions, so, too, would outright default without bankruptcy protection. Indeed, the latter may have a more profound affect.

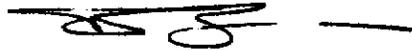
Finally, Professor Tung hypothesizes that the Governor as gatekeeper will provide a mechanism requiring quick, decisive action by focusing the decision in one office.

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"That political clarity will encourage the full attention of the governor's office to the crisis. Any inclination to head for the sidelines, to try to sidestep the likely political fallout from the crisis, would be untenable. As the sole gatekeeper regarding any possible bankruptcy strategy, the governor and his office would have no choice but to become involved."
(Tung Study, page 27)

Again, with due respect to the Governor, this position may be naïve.

Sincerely,



ROBERT A. RYAN, JR.
County Counsel

cc: Ms. Ruth Sorensen