

as to those instances a lien will arise in an amount which will not even be determined until a later date!

If this measure merely provided, after appropriate notice and an opportunity to be heard, for the retroapplication of a tax, once the amount thereof was determined, and for the prospective application of a lien we would envision no constitutional objection to it. However, here there is a lien which arises immediately and in an undetermined amount, thereby leaving the property owner wholly unable to dispose of his property pending the ultimate determination of the amount of the lien. Clearly, such a scheme constitutes a taking of property without due process of law under the teachings of both Wolf and Barry Properties.

Finally, we do not believe that this defective provision is severable so as not to affect the validity of the remaining portions of the statute. The Court of Appeals has held that "[t]he true test of separability is the effectiveness of an act to carry out, without its invalid portions, the original legislative intent in enacting it...." Barry Properties v. Fick Brothers, *supra*, at 35-36. The dominant aim of the bill is the creation of a lien on land upon the occurrence of certain events that characterize the land use as nonagricultural. As a result, the severance of this provision would render the remaining portions of the bill incomplete and ineffectual.

Accordingly, for the reasons herein stated, we advise you that Senate Bill 680 is unconstitutional.

Very truly yours,
Francis Bill Burch
Attorney General

1 We are advised, however, that it is unlikely an assessment hearing would occur before the date of finality of the assessment which is when the lien would arise under this provision of the bill.

Senate Bill No. 682 - Community Colleges - Annual
Operating Budget

AN ACT concerning

Community Colleges - Annual Operating Budget