STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

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The Honorable Phil Childers
Representative, District 15
3440 Quail Place
Boise, Idaho 83704

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION, AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Auditorium Districts

Dear Representative Childers:

Your letter poses several questions concerning the powers and duties of auditorium districts generally and the Greater Boise Auditorium District in particular.

1. Is it constitutional to bind current electors of the district (many of whom were not even born in 1959) to current projects of the district which are entirely different from the objective of the original district's petitioners and the cost for which is entirely different from that for which the original petitioners gave their approval? [emphasis in original]

2. The original legislation did not authorize the auditorium district to fund a Visitor's Bureau such as the Greater Boise Auditorium District has done. * * * Is this activity constitutional?

3. [paraphrasing] May other properly formed auditorium districts conduct similar activities?

4. The Greater Boise Auditorium District is presently seeking a pledge of "full faith and credit and discharge of bond elections." * * * Did the original petition authorize this?

5. Do current residents of the district have the right to request a new petition to authorize all the new activities this district has now become involved in?

Short Answer

1. The authority of special purpose taxing districts is granted by the legislature, not by petition. It is that body that establishes their powers and duties and may change them from time to time. The sole purpose of a petition under the auditorium district law is to request an election to decide whether a district shall be formed according to law.

2. It is arguable that the support of a "Convention and Visitor's Bureau" is a lawful expenditure since, in the judgment of the Board, it serves to "promote" the functions and purposes of the district. However, we are unsure whether the management, ownership or construction of a facility is a prerequisite to such promotional activity. A determination, based on the particular facts of a given case, would have to be made by a court of law.

3. Districts formed according to law would have identical powers.

4. As stated in answer to question No. 1, petitions do not authorize activity on the part of taxing districts; the legislature does. If the legislature amends the law, the district would be bound thereby, regardless of prior petition language.

5. Once formed, the district may carry on any statutorily authorized activity until it is dissolved by the legislature or by election. A "new" petition is not authorized by law for any purposes other than calling for a dissolution election or seeking the annexation or severance of real property.

Analysis

The statutes providing for the formation and operation of auditorium districts are found in chapter 49, title 67, Idaho Code. Originally adopted in 1959 (1959 Session Laws, ch. 137, p. 299) and amended some 11 times since, the chapter provides a fairly detailed framework for the conduct of auditorium district business. To date, the only district formed under the chapter is the Greater Boise Auditorium District. It was formed after a vote of the electorate in 1959.

The questions propounded in your correspondence deal with the district's formation and its present funding of a "Visitor's and Convention Bureau" operated jointly with the Greater Boise Chamber of Commerce. Generally, you ask whether the district's activities are "constitutional." This opinion will address both the constitutional and the statutory authorizaion for the district's present activities.

The Petition

Question Nos. 1, 4, and 5 deal with formation petitions generally, and the 1959 Greater Boise Auditorium District petition in particular. Each revolves around the question of whether the language contained in a petition to form a special purpose taxing district somehow binds the district *in futuro*. Such is not the case. The petition does not create the district and thus does not provide the organic basis for its subsequent activities.

Special purpose taxing districts are quasi-municipal corporations whose formation and function are authorized by the legislature. As such, they are subject to the same rules that govern cities and counties. *Strickfaden v. Greencreek Highway District*, 42 Idaho 738, 248 P. 456 (1926). 1 McQuillin on Municipal Corporations §§ 302a-305. As such, they exercise only those powers granted by the legislature or necessarily implied therefrom. Limitations on those powers may only come by way of legislative enactment, statewide initiative, or constitutional amendment. Formation petitions do not accomplish this.

A petition is a formalized request or application made in writing to a person or body of authority to beget some action or thing. *Ballantine's Law Dictionary* (3rd Ed., 1969). Its purpose is to generally set forth the matters upon which the petitioners desire some action be taken.

Petitions are commonly used in the governing process to provide a means whereby the citizenry may invoke some legal process or otherwise make their wishes known. Examples include nominating petitions (which are non-binding in that a vote is not required for the candidate whose petition is signed); city incorporation petitions, Idaho Code § 50-101, (which requires a legal description of the proposed city, but which may be altered after incorporation by annexation, dissolution, etc.); junior college districts, Idaho Code § 33-2104; herd districts, Idaho Code § 25-2402; local improvement districts, Idaho Code

§ 50-1706; and numerous other special purpose taxing districts. They all have two things in common: First, the formation petition does not create the district, it merely invokes the process by which the district is formed. Second, the powers of the district derive not from the formation petition, but from the enabling legislation. Once created, the district is governed by the specific statutes enacted and amended from time to time by the legislature.

The formation petition requirements for auditorium districts are found in Idaho Code § 67-4904. It provides the information which must be placed in the petition in order to put the signatories on notice as to what they are signing. The requirements are general in nature. For example, the statute merely requires "a general description of the facilities", "the estimated cost," and "a general description of the boundaries." The use of those kinds of terms indicates the general notice nature of the petition. Nothing in the statute prohibits the district or the legislature from amending those statements once the district is formed. Such a result would be both unconstitutional and illogical. First, no legislature may bind future legislatures by enacting laws which may not be changed, art. I, § 2, Idaho Constitution. In addition, the legislature may not delegate its discretionary authority to make subsequent changes in the law to another body or group, art. II, § 1, Idaho Constitution. Making formation petitions binding would violate both these constitutional principles. Secondly, logic dictates that special districts, once formed, must be able to change with changing needs and conditions. An example is contained within the act itself: the authority to include or exclude property within the bounds of the district, Idaho Code §§ 67-4918 and 4919. If the district was forever bound by the legal description contained in the original petition, it could not expand or contract, irrespective of subsequent requests. However, the act specifically authorizes such conduct. Thus, the legislature has recognized the informational nature of the formation petition. See also, 1 McQuillin on Municipal Corporations §§ 3.27 et seq.

In direct response to your petition questions, it is our opinion that the district is not forever bound by the statements made in the original formation petition. The purpose of those statements was to inform potential signatories of what they were signing. The purposes announced in the original formation petition for which the district was formed may be altered over time; by the distict in accordance with the law or by the

legislature through statutory amendment. Once created, the district is bound solely by the statutes as they existed at the time of formation or as they may be amended from time to time.

Subsequent requests for statutory amendments are not governed by the original petitions. Proposed changes in the laws may be advanced by anyone, citizens, legislators, or members of the district board. Such is the normal political process. No law prohibits local governments, acting through their elected officials, from seeking changes in laws which affect their operations.

Finally, once formed, the only petitions authorized in connection with the district are those for the inclusion or exclusion of property, Idaho Code §§ 67-4918 and 4919, and petitions calling for an election to dissolve the district, Idaho Code § 67-4930. No provision is made in the law for new formation petitions for an existing district. Persons who wish to participate in or influence the district may do so by using the normal processes available for that purpose. They include: seeking district office, attending meetings, seeking changes in state law, influencing public opinion and any other lawful means of participation in the affairs of government.

Convention and Visitor's Bureau

You have also asked whether an auditorium district is authorized to expend monies for the operation of a "Visitor's Bureau" since such "was not authorized in the original legislation." The activity you inquire after is known as the "Boise Convention and Visitors' Bureau." It is operated by the district in conjunction with the Greater Boise Chamber of Commerce. To the best of our knowledge, its purpose is to promote Boise to tourists and conventions in order to attract them to the area.

In order to answer your question, we must first ascertain whether public funds may be expended for the purposes of advertising or promotion:

> All appropriations or expenditures of public money by municipalities and indebtedness created by them, must be for a public and corporate purpose as distinguished from a private purpose . . .

14 McQuillin on Muni. Corp. § 39.19. The same rule prevails in Idaho:

> It is a fundamental constitutional limitation upon the powers of government that activities engaged in by the state, funded by tax revenues, must have primarily a public rather than a private purpose. A public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government.

Idaho Water Resources Bd. v. Kramer, 97 Idaho 535, 559, 548 P.2d 35 (1976). See also Gem Irrigation Dist. v. Van Deusen, 31 Idaho 779, 176 P. 887 (1918).

Also of note is the corollary proposition that while public funds must be expended for public purposes, it is immaterial that some of the benefits from the expenditure of public funds may fall to private entities so long as the overriding purpose of the expenditure is public in nature. Board of Commissioners of Twin Falls County v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1974); Engelking v. Investment Board, 93 Idaho 217, 458 P.2d 213 (1969).

A thorough review of Idaho Supreme Court cases reveals no decisions concerning the expenditure of district funds to advertise and promote the district. However, the question has been considered in other contexts and other jurisdictions. Cases have held that expenditures for advertising or promoting a city, its resources, and other attributes are expenditures for a public purpose. City of Tucson v. Sunshine Climate Club, 64 Ariz. 1, 164 P.2d 598 (1946); Sacramento Chamber of Commerce v. Stephens, 299 P. 728 (Cal. 1931); San Antonio v. Paul Anderson Co., 41 S.W.2d 108 (Texas 1931); see Jarvill v. City of Eugene, 40 Ore. App. 185, 594 P.2d 1261 (1979); 15 McQuillin on Muni. Corp. § 39.21, n. 56.

Although the Idaho Supreme Court has not directly considered this exact question it has had occasion to consider closely related issues. In the case of State v. Enking, 59 Idaho 321, 82 P.2d 649 (1938), the Supreme Court had to decide whether a tax on produce levied for the purpose of providing a fund for advertising was lawful. In upholding the tax, the court stated that:

> [T]he tax having been levied for the purpose of providing an advertising fund for advertising such fruits and vegetables is valid and for a public purpose in that the protection of the apple, prune, potato, and onion industry is as much a matter of public concern to Idaho as the citrus fruit industry is to Florida. . . .

An earlier case, Bevis v. Wright, 31 Idaho 676, 125 P. 815 (1918), held the levying of a tax to provide a fund for exhibition of the products and industries of the county at domestic and foreign expositions for the purpose of encouraging immigration and increasing trade in the products of the State of Idaho was for a public purpose and therefore constitutional.

Advertising and promotion have also been found to be public purposes by the Idaho Legislature. The Idaho Code contains several authorizations for public entities to promote themselves and their commodities. For example, Idaho Code § 22-2918 authorizes the Idaho Bean Commission to advertise commodities; Idaho Code § 67-4703 authorizes the state Division of Economic and Community Affairs:

> . . . [T]o engage in advertising the State of Idaho, its resources, both developed and undeveloped, its tourist resources and attractions, its agricultural, mining, lumbering and manufacturing resources, its health conditions and advantages, its scenic beauty and its other attractions and advantages; and in general either directly, indirectly or by contract do anything and take any action which will promote and advertise the resources and products of the state of Idaho, develop its resources and industries, promote tourist travel to and within the state of Idaho, and further the welfare and prosperity of its citizens.

Other examples can also be found within the code.

Based upon the foregoing it is our opinion that auditorium districts may lawfully expend public funds for the purposes of advertising and promoting themselves, their citizens and their industry since such advertising and promotion has been found to

be a public purpose both by the courts and by the legislature. Furthermore, the courts have found such practices to be in harmony with constitutional prohibitions against public aid in support of private endeavors.

Authorization for the creation and operation of auditorium districts is contained in title 67, ch. 49, Idaho Code. Idaho Code § 67-4901, entitled "Purpose of Act," states that:

> It is hereby declared that the organization of auditorium or community center districts, having the purposes and powers provided in this act, will serve the public need and use and will promote the prosperity, security, and general welfare of the inhabitants of said districts.

Section 67-4902, entitled "Definitions," states that:

> An auditorium or community center district is one to build, operate, maintain and manage for public, commercial and/or industrial purposes by any available means public auditoriums, exhibition halls, convention centers, sports arenas, and facilities of a similar nature, and for that purpose any such district shall have the power to construct, maintain, manage and operate such facilities. * * *

Section 67-4912 outlines the general powers of the board. Among those powers are § 67-4912(m):

> <u>To promote any functions for said district</u>, provided that such board shall not engage in operations that are inconsistent with the purpose of said district; and it shall be the policy of the board not to compete with existing facilities and services in the district, whenever practicable; (emphasis added)

And § 67-4912(o):

> To have and exercise all rights and powers necessary or incidental or implied from the

> specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act.

The general rule is that a municipal corporation has no power to spend money for advertising or other forms of promotional activity absent legislative authorization. 56 Am. Jur. 2d Municipal Corporations § 205.

Since the board is authorized "to promote the functions of the district," (§ 67-4912(m)) and one of the functions of the district is "to build, operate, maintain, and manage . . . public auditoriums, . . . convention centers, . . . and facilities of a similar nature, . . ." (§ 67-4902), it can be argued that the board possesses the corresponding authority to promote the use of those facilities to groups most likely to use them - tourists and conventions.

The question that remains is whether the planning, construction, ownership, or management of an authorized facility is a prerequisite to the promotion thereof.

On the one hand, it can be argued that the presence of a facility is unnecessary for the reason that the construction or ownership of a facility is merely one of several purposes for which a district may exist. As previously stated, the others are the promotion of "the prosperity, security, and general welfare" of the district's citizens. Bringing business to town would seem to serve that purpose.

Moreover, since conventions are booked several years in advance, it can be argued that promotion prior to construction is necessary in order to assure facility use and income at the time of completion.

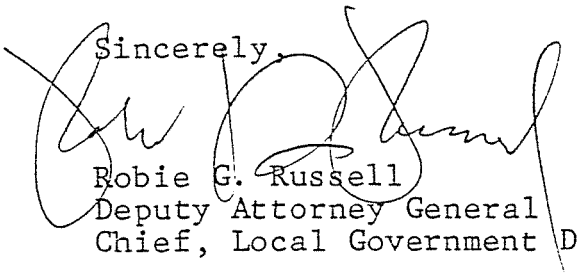
On the other hand, it can be argued that the authorization to promote and advertise goes hand in hand with the construction or ownership of an authorized facility. Simply stated, the district can't promote what it doesn't have.

A review of the case law has revealed no cases which answer this question. Additionally, any determination would depend largely upon the particular facts of each case. We do not possess such information. Thus, we are unable to offer any firm opinion on the matter.

Other Districts

You also asked whether other properly formed districts could conduct activities similar to those engaged in by the Greater Boise Auditorium District. In our opinion, the foregoing analysis would apply equally as well to any other auditorium districts.

Sincerely,



Robie G. Russell
Deputy Attorney General
Chief, Local Government Division

RGR/cjm