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October 26, 1987

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

A.G. REFERENCE NO. 7614

Re: Use of Initiative and Referendum to Affect City Budgets

Dear Mr. Legler:

In your letter of October 2, 1987, you ask whether initiative and referendum can be used within a city in Idaho to disapprove, alter, or make a city budget. We believe the Idaho Supreme Court would hold that a city budget cannot be disapproved, altered or changed by initiative or referendum. There are a number of reasons for this opinion.

The budget and appropriation procedure for cities is set out in the law and is mandatory. Graves v. Berry, 35 Idaho 498, 207 P. 718 (1922); Idaho Code §§ 50-1002 and 50-1003. The legislature has provided a particular procedure that must be used to prepare a budget, appropriation bill and tax levy, including preparation of the budget by the city, publication of the budget, notice and hearing, and then passage of the appropriation bill. Idaho Code §§ 50-1002 to 50-1007.

As to the city referendum law, Idaho Code § 50-501 provides that a referendum cannot be commenced until an ordinance has been in effect for sixty (60) days. Because of the time schedule involving taxing districts, cities must submit their budget requests to the county commissioners before the second Monday in September. Idaho Code § 63-624. The county tax levies also must be set by the second Monday in September. Idaho Code § 63-901. Certified copies of the tax levies then are sent to the state by the third Monday in September, Idaho Code § 63-915.

City budgets ordinarily are prepared and with hearings held in June, July and August. The city appropriation bills often are passed in August or late in July. There is not sufficient time to wait sixty (60) days after passage of the appropriation bill, complete a petition for referendum, gain the necessary signatures, file the petition with the city, have the signatures checked, hold an election, and then go back and advertise, pass a budget and appropriation bill within the time limited by law for budget, appropriation and levy of taxes. Thus, the referendum process is not available to affect the city budget process.

The case of Gumprecht v. City of Coeur d'Alene, 104 Idaho 615, 661 P.2d 1214 (1983), provides guidance on whether an initiative can be used to affect the budget process. There, it was held that building restrictions which were part of the local planning and zoning ordinance could not be amended by initiative. The planning and zoning law provides that these powers are to be exercised by the city council and/or planning and zoning commission. The law provides specific procedures for exercise of these powers, including notice, hearing and specific findings. These procedures must be followed if the powers are to be exercised. The procedures cannot be bypassed through the use of initiative.

This same reasoning would be applicable in the case of setting budgets. The law gives budgetary power to city officials and a particular procedure is required to use the power. Initiative and referendum could not be used to replace this procedure unless the legislature specifically provides that this can be done.

In the New Jersey case of Cuprowski v. City of Jersey City, 242 A.2d 873, 101 N.J. S.15 (1968), a referendum was attempted by the populace of the city to disapprove the city budget. The court, among other things, made the following statements in regard to the use of initiative and referendum for the purpose of disapproving, changing, or making a city budget:

. . . action relating to subjects of permanent and general character are usually regarded as legislative, and those providing for subjects of temporary and special character are regarded as administrative.

. . . .

Obviously, details which are essentially of a fluctuating sort, due to economic or other conditions, cannot be set up in and by an ordinance to be submitted to vote of the people under initiative and referendum statutes, which restricts submission to

people to measures of permanent operation. 5
McQuillin, Municipal Corporations, (3d ed.), § 16.55,
p.255.

. . . .

To say that administrative determinations are subject to referendum could defeat the very purpose of local government. To give a small group of the electorate the right to demand a vote of the people upon every administrative act of the governing body would place municipal governments in a straightjacket and make it impossible for the city's officers to carry out the public's business.

. . . .

The mandatory provisions of N.J.S.A. 40A:1-1 et seq. (Local Budget Law) relative to itemizing and estimating appropriations, along with the requirement of holding a public hearing by which the public can examine and voice objections, all emphasize the paramount importance which the Legislature attributed to the budget.

A survey of the cases dealing with the question of whether a city budget is a legislative or administrative function shows that such action has been uniformly held to be administrative. Denman v. Quin, supra; State ex rel. Keefe v. St. Petersburg, 106 Fla. 742, 144 So. 313, 145 So. 175 (Fla. Sup.Ct. 1933); Keigley v. Bench City Recorder, supra; 122 A.L.R. 769 (1939).

. . . .

When the resolution here in question is tested by the rules stated above, it becomes obvious that it is not subject to a referendum vote by the people. Moreover, a city's budget can only be fixed at a certain amount for a comparatively short length of time; hence, the resolution in question does not connote permanency and the conclusion is evident that a city budget is an administrative rather than a legislative act.

. . . .

The consensus of judicial opinions throughout the land is that the preparation, approval and adoption of a municipal budget is administrative in character.

. . . .
[W]here the Legislature speaks in clear, positive and unambiguous language it can provide for initiative and referendum in budgetary matters. Spencer v. Alhambra, 44 Cal.App.2d 75, 111 P.2d 910 (Cal.D.Ct.App.1941). But in the absence of such clear, positive and unambiguous mandate by the Legislature, the majority view is that appropriations and budgetary ordinances or resolutions are not subject to initiative and referendum. . . .

Many other cases have held similarly. Among them are West Hartford Taxpayers Association v. Streeter, 462 A.2d 379, 190 Conn. 736 (1983); State ex rel. Keefe v. City of St. Petersburg, 145 So. 175, 196 Fla. 742 (1933); Denman v. Quin, 116 SW2d 783 (Tex.Civ.App.1938); Keivley v. Bench City Recorder, 89 P.2d 480, 97 Utah 69, 122 A.L.R. 756 (1939); Gilet, et al. v. City Clerk of Lowell, 27 NE2d 748, 306 Mass. 170 (1940); also see, 5 McQuillin on Municipal Corporations, §§ 16.55 to 16.58.

In Idaho, one additional problem could arise if a budget could be changed by initiative, and that is the possibility of an increase in the budget. If the budget was increased and there were not sufficient tax levies made at the time, art. 8, § 3 of the Idaho Constitution on debt limitation might well be contravened by such action.

For these reasons, it is likely that the courts will not allow initiative or referendum to be used in a city to disapprove, alter or make a city budget unless the law specifically provides for it.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,



WARREN FELTON
Deputy Attorney General
Intergovernmental Affairs

WE/mkf

cc: Jim Weatherby, Association of Idaho Cities
Chuck Holden, Idaho Association of Counties