



Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

September 17, 1990

Mr. Paul Waddell, Director
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Re: I90-079 (R90-115)

Dear Mr. Waddell:

You have asked numerous questions relating to the impact of referendum petition 7-R-90, which seeks the referral of all but two sections of Laws 1990 (3rd Spec. Sess.) Ch. 3 (House Bill 2028, hereinafter "Ch. 3").^{1/} Ch. 3 was enacted without an emergency clause. Since the legislature adjourned sine die on June 28, 1990, the act would normally become effective on September 27, 1990. However, if the referendum petition is filed on or before September 26, 1990, Ch. 3 will not go into effect on September 27th, and could be repealed by a vote of the electorate in either November of 1990 or November of 1992.^{2/}

^{1/} The two non-referred sections are sections 10 (imposition of tax; rates; distribution base) and 54 (1990 state property tax rates).

^{2/} Under A.R.S. § 16-545, absentee ballots must be delivered to the recorder no later than the thirtieth day preceding the Saturday before the election, i.e., October 4, 1990. If the Secretary of State is unable to verify that there are sufficient signatures to place petition 7-R-90 on the ballot prior to that date, the petition cannot be included on the absentee ballots. Consequently, the petition could not be placed on the ballot until the 1992 general election. In addition, A.R.S. § 19-123(B) requires the secretary of state to deliver the publicity pamphlets to the board of supervisors not

(Continued Next Page)

As pointed out in your opinion request, many of the procedures necessary to assess property taxes and set the tax rates must be performed prior to us knowing whether Ch. 3 will be referred. It is our understanding that assessed values were computed, and the levy limits and property tax rates were set under the assumption that Ch. 3 would become effective on September 27th.^{3/} Consequently, if the referendum petitions are filed and Ch. 3 does not go into effect, then these duties were performed in a manner not provided for by law. Your questions relate to how such a contingency should be handled.

Most of your questions relate to whether there is authority for resetting the tax rates and sending out new tax bills after the statutory date for the setting of tax rates has expired. An issue similar to the one you raise was addressed in both County of Maricopa v. Garfield, 109 Ariz. 503, 513 P.2d 932 (1973) and Ariz. Att'y. Gen. Op. 180-130. In Garfield, the original tax rate was set as required by A.R.S. § 42-304 on the third Monday of August (i.e., August 20, 1973). Thereafter, the county discovered that over \$33 million in property value had been erroneously omitted from the tax rate calculation. Consequently, the board of supervisors reset the tax rate on September 4, 1973. The State Treasurer refused to accept the amended tax rate, arguing that the county did not have the jurisdiction to reset the tax rate after the third Monday in August.

The Arizona Supreme Court rejected the State Treasurer's argument that the board of supervisors lacked jurisdiction to act after the statutory date and held that the provisions of A.R.S. § 42-304 regarding the setting of tax rates were directory rather than mandatory. In analyzing the purpose of the statute, the court stated:

2/ (Continued)

later than the tenth day before the primary election, which was already held on September 11, 1990. The intention is to distribute the publicity pamphlets to the voters at the primary election. Failure to comply with this requirement may also preclude placing petition 7-R-90 on the 1990 ballot. See Kerby v. Griffin, 48 Ariz. 434, 62 P.2d. 1131 (1936); Ariz. Att'y Gen. Op. 186-082.

3/ Since many statutory duties had to be performed during this interim period, a choice had to be made between assuming that Ch. 3 will become effective on September 27th, or assuming that sufficient petitions would be filed to prevent Ch. 3 from becoming effective on September 27th. The assumption that Ch. 3 would become effective is consistent with prior practice.

. . . If the provisions are for the protection or benefit of the taxpayer the statute is generally construed to be mandatory in nature. If the purpose of the statute does not involve the protection of the taxpayer but is to set forth an administrative system and guide for the tax officials as to the time within which certain acts are to be performed by the officials, the statute is generally construed to be directory. People v. Hively, 139 Colo. 49, 336 P.2d 721 at 738 (1959). See also cases annotated in 151 A.L.R. 248.

While there may be instances when a substantial delay in fixing the tax rate may actually interfere with taxpayers' rights, such as the right to appeal the assessment, the delay in this case did not affect the rights of taxpayers, and there was substantial time left within which the administrative process provided by statute could be completed. Since the action of the Board in this case did not adversely affect the rights of anyone, we hold that the action of the Board of Supervisors in revising the tax rate was valid and lawful, and the State Treasurer is directed to accept the September 4, 1973 figures and report to the Board as the correct amount of the property tax reduction figure for Maricopa County.

Garfield, 109 Ariz. at 504, 513 P.2d at 933.

In Ariz. Att'y. Gen. Op. 180-130, we held that, under the reasoning of the Garfield case, a board of supervisors had the authority to amend the tax rate ". . . as necessary . . ." to reflect a higher rate, even though the resetting occurred after the statutory date of the third Monday in August. The facts underlying that opinion were that, in the 1980 legislative session (specifically, in S.B. 1001, 5th Special Session, 1980), the Legislature amended A.R.S. § 9-1005 (now A.R.S. § 48-807) to raise the tax levy upon volunteer fire district property from \$2.00 per \$100 of taxable valuation to a maximum of not to exceed \$2.60 per \$100 of taxable valuation. There was no emergency clause on S.B. 1001, and thus, it became law 90 days after sine die, on September 10, 1980, a date more than three weeks after the third Monday in August, 1980, when the general county tax rates were set.

The opinion noted that A.R.S. § 42-342(B)(2) provided that one-half of the taxes on all real property were due and

payable on the first day of October. Since the higher tax rate came into effect after the third Monday in August, but before the date when the first half of the higher taxes were due, the opinion concluded that, under the reasoning of Garfield, since no substantial taxpayer right would be impaired, the boards of supervisors could properly raise the rate to reflect the provisions of A.R.S. § 9-1001, as amended. Consequently, it would be permissible to amend the tax rate if Ch. 3 does not become effective so long as no substantial taxpayer right would be impaired.

Your specific questions presuppose a variety of hypothetical scenarios which may or may not occur. The specific answers to those questions will depend on what actually happens, and therefore cannot be addressed at this time. As we just stated however, whether the tax rate can be reset will depend on whether the resetting of the tax rate would impair a substantial taxpayer right. Whether such an impairment occurs can only be determined on a case by case basis. The following general guidelines are intended to assist you in your analysis.

If the referendum petitions are not timely filed, then Ch. 3 becomes effective on September 27, 1990. In that event, the actions taken in computing assessed values and setting tax rates will have been correct, and no amendments to the tax rates will be necessary.

If the referendum is timely filed, then the Secretary of State will have to verify that the petitions contain the required number of signatures. Since during this interim it is uncertain whether sufficient signatures will be verified, no action to reset the tax rate should be taken, unless it appears that such delay will impair substantial taxpayers rights.

If the Secretary of State determines that there are not enough valid signatures, then Ch. 3 becomes effective on the date intended by the legislature.

If the Secretary of State determines that there are sufficient signatures to place the referendum on the ballot, then, if it can be done consistent with the holding of Garfield, you must proceed to reset the tax rates and prepare and send out new billings.

If Ch. 3 is defeated by the vote of the people, then the current law will have been in effect. Since the tax rate would have been changed after the signatures were verified, no further changes would be required if Ch. 3 is defeated.

Paul Waddell, Director
Page 5

Finally, if Ch. 3 is affirmed by the people, it will be effective on the date the Governor signs the proclamation. Ch. 3 will be prospective only except for those provisions which were made retroactive by Ch. 3.

Sincerely,

A handwritten signature in black ink that reads "Bob Corbin". The signature is written in a cursive, slightly slanted style.

BOB CORBIN
Attorney General

BC/FM/slc