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October 17, 1988

The Honorable S. H. "Hal" Runyan
State Senator, District 15
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: 188-108 (R87-123)

Dear Senator Runyan:

You have asked for our opinion of the effectiveness of a political subdivision's alternative expenditure limitation when the subdivision failed to follow statutory procedural requirements. You also asked whether any remedial actions or sanctions may be required or authorized by law against such a subdivision.

The Arizona Constitution provides for an expenditure limitation applicable to counties, cities and towns. Ariz. Const. art. IX § 20. Subsection 9 of section 20 authorizes cities and towns to adopt an alternative expenditure limitation. Subsection 9 provides in part:

Subsection (1) of this section does not apply to a city or town which at a regularly scheduled election for the nomination or election of members of the governing board of the city or town adopts an expenditure limitation pursuant to this subsection different from the expenditure limitation prescribed by subsection (1) of this section. The governing board of a city or town may by a two-thirds vote provide for referral of an alternative expenditure limitation or the qualified electors may by initiative, in the manner provided by law, propose an alternative

expenditure limitation. In a manner provided by law, the impact of the alternative expenditure limitation shall be compared to the impact of the expenditure limitation prescribed by subsection (1) of this section, and the comparison shall appear on the ballot and in the publicity pamphlets. If a majority of the qualified electors voting on such issue vote in favor of the alternative expenditure limitation, such limitation shall apply to the city or town. . . .

(Emphasis added.)

To implement subsection 9, the Legislature enacted A.R.S. § 41-563.03, setting forth the information to be contained in the publicity pamphlet. That section also provides for a review by the legislative council of the information to be included in the publicity pamphlet. A.R.S. § 41-563.03(C) provides:

In addition to the provisions for publicity pamphlets prescribed in § 19-123, for the purpose of article, IX, § 20, subsection (9), Constitution of Arizona, such pamphlets shall also contain the following:

1. The date of the election.
2. Polling places and the time such polling places are open.
3. A summary of the estimated total expenditures under any proposed expenditure limitation, including the expenditure limitation proposed by the state pursuant to article IX, § 20, Constitution of Arizona, for a period of four consecutive fiscal years, as reviewed by the legislative council.
4. A summary of the estimated amount of revenues from all sources from which any proposed expenditure limitation, including the expenditure limitation proposed by the state pursuant to article IX, § 20, Constitution of Arizona, shall be funded, for a period of four consecutive fiscal years, as reviewed by the legislative council.

5. A statement that if no alternative expenditure limitation is approved by a majority of the qualified electors voting at such election, the expenditure limitation prescribed by article IX, § 20, Constitution of Arizona, shall apply to the political subdivision.

A.R.S. § 41-563.03(E) further provides, in part:

For the purposes of subsection C of this section, the person, group or organization filing an initiative petition shall submit to the legislative council prior to printing and at least sixty days prior to the election, a detailed analysis of the alternative expenditure limitation proposed in the petition, showing specific amounts estimated to be expended in specific areas, for a period of four consecutive fiscal years. The analysis shall also contain specific amounts of estimated revenue from each and any source, and any assumptions used in estimating such revenue, for a period of four consecutive fiscal years. A summary of the analysis shall also be prepared to be included in the publicity pamphlet prescribed in subsection C of this section. The legislative council shall review the analysis and summary, correcting any error or deficiency, and resubmit the analysis and summary to the governing board of the applicable political subdivision within fifteen working days. . . . For any alternative expenditure limitations proposed by the governing board of the applicable political subdivision, such governing board shall cause to be submitted to the legislative council for review an analysis and summary as is described in this section. An analysis and summary of the expenditure limitation prescribed in article IX, § 20, Constitution of Arizona, as it applies to the applicable political subdivision, shall be submitted to the governing board of such political subdivision, by the legislative council.

Finally, A.R.S. § 41-563.03(F) provides that the Auditor General and the Economic Estimates Commission shall cooperate with the legislative council in performing the duties prescribed in subsections D and E of that section.

The general rule is that if the constitutional and statutory rules regarding initiative and referendum petitions have been so far violated that there has been no substantial compliance therewith, the courts will enjoin the election at the suit of an interested citizen. Iman v. Boland, 98 Ariz. 358, 366, 404 P.2d 705 (1965), Kerby v. Griffin, 48 Ariz. 434, 445, 62 P.2d 1131 (1936).

As the court stated in Kerby v. Griffin,

Reducing the whole matter to its simplest terms, the Constitution has made the legislature the sole judge of how the publicity absolutely required, in order that the initiative and referendum provisions of that instrument may be workable and not a trap for the voters, shall be given. If we sustain the answer of the defendant, we are transferring that power to the Secretary of State by what is, in effect, judicial legislation in defiance of the constitutional mandate and the expressed will of the legislature, for if he may substitute one method repudiated by the legislature for that prescribed by that body, he may with equal right use any other one which suggests itself to him as being sufficient. The trial court did only its duty when it refused to permit an expensive and futile thing.

48 Ariz. at 456, 62 P.2d at 1140.

In Kerby one of the questions presented was whether distributing the publicity pamphlets through the United States mails would be sufficient to comply with a statute which required distribution directly to the voters at a primary election. The court held that because the legislature specifically required a certain method of distribution, the secretary of state did not have the authority to use a different method of distribution.

The constitution specifically directed the legislature to enact the rules governing the conduct of an election for the adoption of an alternative expenditure limitation, including the rules pursuant to which the impact of the alternative expenditure limitation is to be compared to the impact of the constitutional limitation. The legislature enacted a statute setting forth the information required to be included in the pamphlet, and, presumably in order to assure that the information in the

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pamphlet is accurate, specifically required a city or town to submit the information to the legislative council for review. A city or town's failure substantially to follow these statutorily required steps, in our opinion, renders any purported alternative expenditure limitation adopted in the absence of such compliance a nullity.

We further conclude that a city or town's lack of substantial compliance with the mandated requirements for the adoption of an alternative expenditure limitation would authorize the Auditor General to disregard the improperly adopted alternative expenditure limitation and to invoke the provisions of A.R.S. § 41-1279.07(H) to determine whether the city or town had exceeded the expenditure limitations prescribed in article IX, § 20, Constitution of Arizona, in the absence of any alternative expenditure limitation.

Sincerely,



BOB CORBIN
Attorney General

RBC/FLM/FWS/lmp/it