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ARIZONA ATTORNEY GENERAL

DEPARTMENT OF LAW LETTER OPINION NO. 72-11-L (R-33)

REQUESTED BY: THE HONORABLE JAMES COOPER
Arizona State Representative

QUESTION: Is it necessary to amend the Arizona
Constitution because House Bill 2032 (30th
Arizona Legislature, Second Regular Session)
provides that bond issues require a 60% vote?

ANSWER: No.

The United States Supreme Court in the case of Gordon v. Lance, 403 U.S. 1, 91 S.Ct. 1889, 29 L.Ed.2d 273, decided June 7, 1971, upheld the West Virginia constitutional and statutory requirements that political subdivisions could not incur bonded indebtedness without the approval of 60% of the voters in a referendum election.

Article 7, Section 13, and Article 9, Section 8, of the Constitution of Arizona provide as follows:

Section 13. Questions upon bond issues or special assessments shall be submitted to the vote of real property tax payers, who shall also in all respects be qualified electors of this State, and of the political subdivisions thereof affected by such question.

Section 8. No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding four per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of a majority of the property taxpayers, who must also in all respects be qualified electors, therein voting at an election provided by law to be held for that purpose, the value of the taxable property therein to be ascertained by the last assessment for State and county purposes, previous to incurring such indebtedness; except, that in incorporated cities and towns assessments

shall be taken from the last assessment for city or town purposes; Provided, that under no circumstances shall any county or school district become indebted to an amount exceeding ten per centum of such taxable property, as shown by the last assessment roll thereof; and Provided further, that any incorporated city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding fifteen per centum additional, for supplying such city or town with water, artificial light, or sewers, when the works for supplying such water, light, or sewers are or shall be owned and controlled by the municipality. (Emphasis added.)

The Supreme Court of the United States, in the case of City of Phoenix v. Kolodziejcki, 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970), determined that the above constitutional provisions violated the equal protection clause of the United States Constitution insofar as they restricted the right of voting in bond elections to real property owners. As a result of that opinion, there does not exist any constitutional yardstick for voting in bond elections, as the phrase "majority of the property taxpayers" contained in Article 9, Section 8, supra, is no longer in full force and effect.

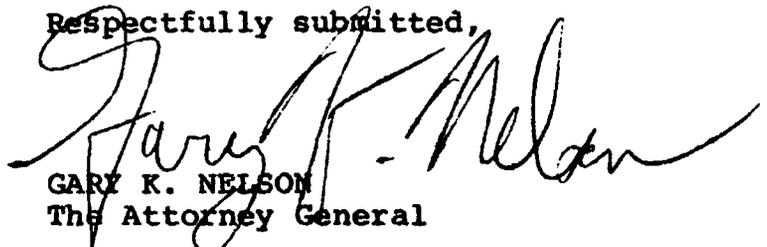
Obviously, historically the framers of the Constitution intended to restrict the right to vote in bond elections to the majority of real property taxpayers. Since they restricted the suffrage to real property taxpayers, they permitted passage of bond issues by a majority vote.

As the Arizona Constitution is not a grant, but a limitation on legislative power, our Legislature may enact any law not expressly or by inference prohibited by our Constitution. State v. Osborne, 14 Ariz. 185, 125 P. 84 (1912).

The Legislature has all powers not specifically precluded by the Constitution. Hart v. Bayless Investment and Trading Company, 86 Ariz. 379, 346 P.2d 1101 (1960).

It is our opinion that as a result of the case of City of Phoenix v. Kolodziejcki, supra, there are no constitutional requirements as to voting and, therefore, our Legislature may enact House Bill 2032 without amending our Constitution.

Respectfully submitted,



GARY K. NELSON
The Attorney General