



MEMORANDUM

DATE: December 22, 2016
TO: Eric Holmes
CC: Peggy Sheehan
FROM: Bronson Potter
RE: Proposition 1 - Spending Outside City Limits

Issue: May revenue from the voter approved Proposition 1 measure be used to fund the acquisition, construction or operation of a homeless shelter outside of the city?

Consideration is being given to the development of a homeless family shelter in the Hazel Dell area in unincorporated Clark County. The site is approximately two miles outside of the city limits. Several government and nonprofit entities may partner in the acquisition, construction and operation of the shelter.

In 2016, the city council approved the placement of Proposition 1 on the November ballot. The purpose of Proposition 1 was to seek voter approval of an excess property tax levy that would fund very low income housing.

Article VII, § 5 of the Washington Constitution requires that “every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.” “When voters approve taxes for a public project, major deviations to the project are not within the government’s lawful power.” *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 765, 131 P.3d 892 (2006); *Ley v. C-TRAN*, 2016 Wash. App. Lexis 2956 (Div.II, 2016). An action is unconstitutional if it diverts taxes assessed for purposes stated in the enabling law into some “wholly unrelated project or fund.” *Id.*

The determination of the purpose of voter-approved taxes is made by reference to the authorizing resolution. *Ley; Sane Transit v. Sound Transit*, 151 Wn.2d 60, 68, 85 P.3d 346 (2004). The resolution authorizing the Proposition 1 ballot measure described its purpose as follows:

The City of Vancouver submits to the qualified electors of the City a proposition authorizing an excess property tax levy for very low-income housing...The proposition would raise \$6 million per year totaling \$42 million in aggregate over a period of up to seven years.

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The proposition would authorize the City to impose an excess property tax levy of up to \$0.36 per \$1,000 as assessed valuation for very low-income housing...*All levy proceeds shall be used for the purposes specified in the Affordable Housing Finance Plan approved by City Council.* (Italics added.)

The Affordable Housing Finance Plan addresses the geographic area where the projects and services will be delivered. It states:

Geographic Focus

The program is not targeted to specific neighborhoods. Funds will be available to housing projects located within the city limits of Vancouver and to programs serving Vancouver residents.

While Peggy explains that a shelter is not considered “housing” because it only provides emergency short-term accommodations, the plan’s only description of where projects or services will be provided is the language quoted above.¹

Deviations in “minor details” of a plan or project are not prohibited. However, “major” deviation is unconstitutional and “substantial” deviations are prohibited unless authorized by the enabling resolution. *Ley*. In this regard, the Affordable Housing Finance Plan does provide that it will be updated and changed periodically. The issue of whether funding a shelter in the county is a major, substantial or minor deviation is one that would be subject to judicial interpretation.

If there is the desire to provide funding to a shelter outside of the city, I believe there are a number of ways that this issue can be resolved. First, the issue could be avoided entirely by amending the plan to include projects in the county that provide benefits to the city and its residents. Second, the Proposition 1 funds could be limited to programs provided at the shelter that serve Vancouver residents. Third, the city could use recording fee revenue for the shelter and use Proposition 1 revenue to fund programs that are currently supported by the recording fees.

As a general matter, I believe that the city has the authority to participate in the acquisition, construction and operation of a shelter outside of its corporate limits if it can be shown that the shelter provides a direct benefit to a significant part of its public. The city charter provides:

Charter Section 1.04 Powers of City: The city shall have all the powers granted to cities of the first class by the constitution and general laws of the state and all powers implied thereby and shall exercise all municipal functions and have all municipal rights, privileges, and immunities except as prohibited by law or by this charter. The enumeration of particular powers by this charter shall not be deemed

¹ The ballot measure uses the same language as the resolution to describe the purpose of the tax. I also reviewed the voter pamphlet explanatory statement and the “for” and “against” statements in the voters’ pamphlet. They do not provide any explanation of the geographic focus of the plan.

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to be exclusive. The city shall provide for police, fire and public safety services and for public works and improvements.

Further, RCW 35.21.685 provides that a city may assist in the development or preservation of publicly or privately owned housing for persons of low income by providing loans or grants of general municipal funds to the owners or developers of the housing.

A city has the authority to purchase property within or without its corporate limits for its corporate uses. RCW 35.22.280. In *State ex rel. Walla Walla v. Clausen*, 157 Wash. 457, 460, 289 P. 61, 63, (Wash. 1930), the court held while a city cannot exercise governmental authority outside its corporate limits, the municipality may exercise its right to own and use property outside its boundaries if it is for legitimate city purposes.

The provision of low income housing, or a shelter, is a legitimate public or municipal purpose.² An ordinance was designed for preserving low-income housing units served a legitimate public purpose. *Girton v. City of Seattle*, 97 Wn. App. 360, 367, 983 P.2d 1135, 1139 (Wash. Ct. App. 1999). The contours of a municipal purpose was described in *United States v. N. Bonneville*, 94 Wn.2d 827, 833-834, 621 P.2d 127, 130-131 (Wash. 1980) as:

Moreover, the public purposes for which cities may incur liabilities are not restricted to those for which precedent can be found, but the test is whether the work is required for the general good of all the inhabitants of the city. But it is not essential that the entire community, or even a considerable portion of it, should directly enjoy or participate in an improvement in order to make it a public one. . . . [T]he test of a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit. (Emphasis added.)

Citing, *Anderson v. O'Brien*, *supra* at 70. See also *Miller v. Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963). As noted in 15 [*834] E. McQuillin, *Municipal Corporations* § 39.19, at 31-32 (3d ed. 1970).

In conclusion, my suggestion is that, if there is a desire to participate in the provision of a homeless shelter outside of the city, we should either amend the Affordable Housing Finance Plan to include projects in the county that provide benefits to the city and its residents or use recording fee revenue for the shelter and use Proposition 1 revenue to fund programs that are currently supported by the recording fees.

² Cases use “municipal” and “public” purpose interchangeably.