



State of Arkansas
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LEGAL RESEARCH and DRAFTING

MEMORANDUM

TO: Senator John Paul Capps
FROM: Janelle Evyan
DATE: August 11, 2010
SUBJECT: Sales Tax / Bond Referral Issue

Requested information: A full legal brief should be prepared on the issue of referring a sunset sales tax and/or bond issue to the electorate.

I. CONSTITUTIONAL ISSUES REGARDING REFERRING A SALES TAX TO THE PEOPLE.

A. Can the General Assembly refer a sales tax bill to the people for a vote? The simple answer is no, not in the form of a referred bill.

Article 5, § 1 of the Arkansas Constitution prohibits the General Assembly from referring measures to the people, except for proposed constitutional amendments as provided under the Constitution or other exceptions explicitly stated in the Constitution¹.

"This section shall not be construed to deprive any member of the General Assembly of the right to introduce any measure, but no measure shall be submitted to the people by the General Assembly, except a proposed constitutional amendment or amendments as provided for in this Constitution."

See also Attorney General Opinion Nos. 2000-327, 2004-076, 2004-131.

¹ The exceptions are found in Article 5, § 38 of the Arkansas Constitution: "None of the rates for property, excise, privilege or personal taxes, now levied shall be increased by the General Assembly except after the approval of the qualified electors voting thereon at an election, or in case of emergency, by the votes of three-fourths of the members elected to each House of the General Assembly." [As added to Art. 5 by Const. Amend. 19.] Amendment 19 was adopted on November 6, 1934. The "standard list" of taxes that require a 3/4 vote and that could be referred as bills/acts by the General Assembly to the people for a vote without a 3/4 vote are (1) Property Tax; (2) Individual Income Tax; (3) Corporate Income Tax; (4) Motor Fuel Tax; (5) Diesel Tax; (6) Cigarette and Cigar Tax; (7) Severance Taxes on oil, gas, minerals, timber, and other natural resources; (8) Beer Tax; and (9) Motor vehicle registration and licensing fees. There likely are some other more obscure taxes that were in effect at this time, and arguments could be made for and against including some of the taxes on this list. For example, the estate tax was adopted in 1941, but an inheritance tax was in effect in 1934. If the current estate tax is treated as a continuation of the old inheritance tax, an increase in the estate tax could be referred to the people. However, if the current estate tax is treated as a new tax, it could not be referred to the people. However, Mary Cameron at our office would be in a better position to discuss this issue further because taxation is her area, and she has researched this issue.

B. Can the General Assembly refer a sales tax in any form to the people for a vote?

Yes, in the form of a proposed constitutional amendment, which would be in the form of a House Joint Resolution or Senate Joint Resolution as provided under Arkansas Code § 7-9-201 et seq. There is a specific procedure for the handling of Joint Resolutions that propose amendments to the Arkansas Constitution in the Joint Rules of the House and Senate that are filed for each General Assembly. For the 2009 Regular Session, See H.C.R. 1001, § 21.

As far as an example where this was done, see Amendment 75 which levied an additional excise tax of one-eighth of one percent (1/8 of 1%) upon all taxable sales of property and services subject to the tax levied by the gross receipts and compensating use tax for the benefit of the Arkansas Game and Fish Commission and the Department of Parks and Tourism.

II. CONSTITUTIONAL ISSUES REGARDING BONDS.

A. Bond law generally. Under Amendment 20 and Amendment 65 of the Arkansas Constitution, if bonds are going to be secured with taxes, the bonds must be approved by the voters. See also Attorney General Opinion No. 2008-152.

B. Can a bond issue be combined with a sales tax issue in a joint resolution in a proposed constitutional amendment so that both are referred to the people in one measure? I did not find any authority that prohibited both measures from being combined, but it would be unusual to have such a measure in the Arkansas Constitution and not the preferred method of handling the issue.² If there is a way that is suitable for your purposes to separate the two issues and have the bond issue voted on separately, to not have it in the constitution, and instead have it contingent upon the tax being enacted, that would be the preferred way to proceed. If the combination of the issues in one measure is the preferred way to proceed, care should be given to concisely state each issue so that the electorate can have a clear understanding of the issues on which it is voting.

III. SUNSET CLAUSE.

If a sales tax and bond issue are combined in a joint resolution in a proposed constitutional amendment, can the measure have a "sunset clause" that provides for the expiration of the tax after a certain period of time?

I did not find any authority that prohibited a sunset provision for the tax and bond provisions, but, again, having such a provision in the constitution would be a novel situation.

Please let me know if you need additional information or assistance with this matter.

² An issue could be raised that the tax and bond are different subjects and should not be in the same document, but actually, the purpose of the tax and bond would be to maximize the purchasing power for highway improvements and the tax and bond are interrelated. Furthermore, the limitation for proposed legislation to embrace but one subject is found in Article 5, § 30 of the Arkansas Constitution, but that limitation only applies to bills, not proposed constitutional amendments in resolutions.