



THE OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

April 11, 1990

[REDACTED]  
City Attorney  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

You have asked for an opinion as to whether an ordinance adopting a secondary property tax is subject to referendum. Since you refer to a secondary property tax, I am assuming the money raised by the tax will be used to pay the principal of and the interest and redemption charges on bonded indebtedness or other lawful long-term obligations issued or incurred for a specific purpose.

Arizona Constitution, Article 9 §19, exempts such taxes from the maximum amount that may be levied. §42-201(11) defines taxes raised for that purpose as secondary property taxes. A.R.S. §42-301(D) provides a method of determining the amount of primary property taxes that can be levied if a city has not previously had primary property taxes, and this requires an election of the voters before the amount can be determined. But I do not find any limitation on levying a secondary property tax whether there was one in the previous year or not.

It appears that the method of levying a secondary property tax, as stated in A.R.S. §42-302, subsections 4 through 13, is to place in the estimate of expenses provided for in subsection 8 of that section the amount that the city proposes to raise by the secondary property tax. The city then adopts the budget which includes the amount to be raised by the secondary property tax.

Then pursuant to A.R.S. §42-304(B), the city council fixes, levies and assesses the amount to be raised by secondary property taxation, I presume on forms submitted by the county assessor. The county assessor then levies the tax. The code does not say whether it is necessary to have an ordinance to fix, levy and assess the secondary property tax.

Therefore, it appears that the levying and assessing of the secondary property tax is a part of adoption of the budget, and if so, it should not be subject to the referendum unless the resolution adopting a budget is subject to the referendum.

With respect to the referendum, the Arizona Constitution makes any measure, or item section, or part of any measure enacted by the Legislature subject to referendum except laws immediately necessary for the preservation of the public peace, health or safety or for the support and maintenance of the departments of the state government and state institutions. The latter phrase, in my opinion, refers to the annual budget of the state itself, which is adopted by the Legislature.

In the case of Garvey v. Trew, 64 Ariz. 342, 170 P.2d 845 (1946), our Supreme Court held that the test of whether a statutory appropriation is for maintenance of a state department, within the constitutional provision exempting such appropriation from referendum, is not the earmarking of the appropriation for a specific purpose, but whether funds are appropriated for use in carrying out the department's subjectives and functions. Thus by the Constitution itself, the state budget adopted by the Legislature is not subject to the referendum.

