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August 8, 2018

To: UCCI Membership

Re: *Public Safety Tax Increments*

Issue:

Whether a County Board may impose an increase to Public Safety Tax by more than a one-quarter percent increment.

Analysis:

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.¹ Non-home-rule units, however, possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.²

A non-home-rule county may impose a Special County Retailers' Occupation Tax for Public Safety, Public Facilities, or Transportation ("Public Safety Tax") as provided by section 5-1006.5 of the Counties Code.³ Pursuant to the Counties Code, "[t]he county board of any county may impose a tax upon all persons engaged in the business of selling tangible personal property, other than personal property titled or registered with an agency of this State's government, at retail in the county on the gross receipts from the sales made in the course of business to provide revenue to be used exclusively for public safety, public facility, or transportation purposes in that county, if a proposition for the tax

¹ Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (2nd Dist. 1994).

² *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (2nd Dist. 1997).

³ 55 ILCS 5/5-1006.5(a) as amended by P.A. 100-587, § 20-10, eff. June 4, 2018.

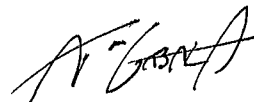
has been submitted to the electors of that county and approved by a majority of those voting on the question.”⁴ The proposition for public safety purposes shall be in substantially the following form: “To pay for public safety purposes, shall (name of county) be authorized to impose an increase on its share of local sales taxes by (insert rate)?”⁵ According to the plain language of the Counties Code, a Public Safety Tax “shall be imposed only in one-quarter percent increments”.⁶ A review of the relevant case law, reveals no statutory or judicial exception to this one-quarter percent requirement. As such, any increase to a Public Safety Tax may only be made in one-quarter percent increments. In other words, the final approved amount of the tax must be some incremental number ending with a variation of a quarter percentage, *i.e.*, 1/4 (0.25), 1/2 (0.5), or 3/4 (0.75). However, the plain language of the statute does not limit a county to a single quarter percent increase of the tax at a time.

Conclusion:

In sum, it is the opinion of this office that if a county board endeavors to impose an increase to a Public Safety Tax, it may do so only in one-quarter percent increments and not other fractional values or rates.

At the request and direction of UCCI this opinion was prepared by
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⁴ 55 ILCS 5/5-1006.5(a).

⁵ 55 ILCS 5/5-1006.5(a)(1).

⁶ 55 ILCS 5/5-1006.5(a) (emphasis added); see also section 670.101 of the Illinois Administrative Code regarding the nature of the Public Safety Tax, entitled “Authority to Impose Tax”, (86 Ill. Adm. Code 670.101(a), amended at 22 Ill. Reg. 14926, eff. August 3, 1998) (“such tax shall only be imposed in ¼ % increments”).

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.