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July 27, 2018

To: UCCI Membership

Re: *Combining PTELL and Sales Tax Referendum Questions*

Issue:

Whether a county board may combine a Property Tax Extension Limitation Law (PTELL) referendum question and a public safety sales tax referendum question together, with a 5-year sunset provision for both, as a single ballot referendum question.

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

PTELL limits the increases of property tax extensions and amounts levied, *i.e.*, the total taxes billed, in non-home-rule counties in which the PTELL is applicable.³ Taxing districts subject to the PTELL cannot extend taxes at a rate that exceeds the previous year's "extension limitation" without referendum approval.⁴

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 *Board of Education of Auburn Community School District No. 10 v. Department of Revenue*, 242 Ill. 2d 272, 275 (2011) (citing 35 ILCS 200/18-195; 35 ILCS 205/18-205. Currently, 39 counties in Illinois have adopted PTELL.

⁴ *Auburn Community School District No. 10*, 242 Ill. 2d at 275-76 (citing 35 ILCS 200/18-195).

At issue here is whether a PTELL referendum question may be combined with a public safety sales tax referendum question on the same ballot. Section 18-213 of the Property Tax Code, entitled, “Referenda on applicability of the Property Tax Extension Limitation Law”, states that the PTELL referendum question “shall be placed on a separate ballot” and must be worded in substantially the following form:

“Shall the Property Tax Extension Limitation Law (35 ILCS 200/18-185 through 18-245), which limits annual property tax extension increases, apply to non-home rule taxing districts with all or a portion of their equalized assessed valuation located in (name of county)?”⁵

Thus, because the referendum question must contain specific wording by statute, a PTELL referendum question may not be combined with another referendum question.

Also at issue is whether a PTELL referendum question could contain a sunset provision. However, the PTELL statute does not provide such a provision. Pursuant to Section 18-214 of the Property Tax Code, entitled “Referenda on removal of the applicability of the Property Tax Extension Limitation Law to non-home rule taxing districts”, another referendum endeavoring to remove the applicability of the enacted PTELL would need to be presented and subjected to voter approval.⁶ Such referendum questions on the removal of the applicability the PTELL shall be placed on a separate ballot and shall be in substantially the same form as cited above.

A county may also 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.⁷ “The county board of any county may impose a tax upon all persons engaged in the business

⁵ 35 ILCS 200/18-213. Note that votes on the question shall be recorded as “yes” or “no”.

⁶ 35 ILCS 205/18-214 (“The county board of a county that became subject to this Law by a referendum approved by the voters of the county under Section 18-213 may, by ordinance or resolution, in the manner set forth in this Section, submit to the voters of the county the question of whether this Law applies to all non-home rule taxing districts that have all or a portion of their equalized assessed valuation situated in the county in the manner set forth in this Section.”).

⁷ 55 ILCS 5/5-1006.5.

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 has been submitted to the electors of that county and approved by a majority of those voting on the question.”⁸ “By resolution, the county board may order the proposition to be submitted at any election.”⁹

Thereafter, the county clerk certifies the referendum question to the proper election authority, who, in turn, submits it at an election in accordance with general election law.¹⁰ The referendum question 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)?”¹¹ Note that on the ballot below the question the following additional information must also appear: “This would mean that a consumer would pay an additional (insert amount) in sales tax for every \$100 of tangible personal property bought at retail.”¹²

Unlike PTELL, the statute related to the Public Safety Tax provides for a sunset provision. A county board may also opt to establish a sunset provision at which time the additional sales tax would cease being collected, if not terminated earlier by a vote of the county board.¹³ If the county board votes to include such a sunset provision, the referendum question 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) for a period not to

⁸ 55 ILCS 5/5-1006.5(a). Note that the tax may only be imposed only in one-quarter percent increments. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*


exceed (insert number of years)?”¹⁴ The following additional information must also appear on the ballot below the question: “This would mean that a consumer would pay an additional (insert amount) in sales tax for every \$100 of tangible personal property bought at retail. If imposed, the additional tax would cease being collected at the end of (insert number of years), if not terminated earlier by a vote of the county board.”¹⁵

Conclusion:

In sum, it is the opinion of this office that a county board may not combine a PTELL referendum question and a public safety sales tax referendum question together, on a ballot. Instead, the respective referendum questions must be placed on separate ballots and worded according to their respective statutory authority. Further, while the Public Safety Tax statute provides for a sunset provision, PTELL does not. Rather, PTELL requires a subsequent referendum question to be approved by voters before PTELL’s application within a county may cease.

At the request and direction of UCCI this opinion was prepared by
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Herman G. Bodewes



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¹⁴ *Id.*

¹⁵ *Id.* Note that “public safety purposes” means crime prevention, detention, firefighting, police, medical, ambulance, or other emergency services.