



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION

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Salem, Oregon 97310
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November 14, 1985

Wesley A. Doak
Oregon State Librarian
State Library Building
Salem, Oregon 97310-0640

Re: Opinion Request OP-5903

Dear Mr. Doak:

You ask whether there are circumstances in which a unit of local government can appropriate funds from a dedicated library levy for other purposes. The example you give involves a voter approved two-year serial levy that "would be used entirely to fund the Tillamook County Library system." In this example, the ballot title and explanation clearly designate the levy funds for library purposes. For the reasons developed below, we conclude that the county commissioners cannot appropriate funds from such a dedicated library levy for other county purposes.

We have previously addressed the use of levy funds approved by the voters for specific purposes, in the context of "A" ballot and "B" ballot measures. We concluded that where a ballot title for a levy measure specifies the purpose for which the money raised will be spent, the taxing unit is legally bound by that limitation and the money cannot be spent for other purposes. 43 Op Atty Gen 183 (1983). Underlying this conclusion is the premise that when the legislature requires a request for levy authorization to be accompanied by a ballot title, it must intend that the voters be informed of the purpose for which the money would be used. Having done so, it must have intended that such purpose be subsequently adhered to if the measure is approved. "We are certain that the legislature did not intend the ballot title simply to afford the taxing unit an opportunity to engage in nonbinding rhetoric." 43 Op Atty Gen 183, 185 (1983).¹

The conclusion that officials are bound by the purposes stated in a voter-approved levy, is consistent with ORS 294.100(1), which provides:

(1) It is unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by law.

A violation of the above provision renders the local government official subject to civil liability at the suit of the local district attorney or a taxpayer.

In *Tuttle v. Beem*, 144 Or 145, 2 P2d 12 (1933), the Oregon Supreme Court found that:

This statute and this constitutional provision [Oregon Constitution Article IX, section 3] promulgate a public policy rendering it unlawful for public officials to use any money exacted by tax laws for a specific purpose for any other purpose.

144 Or at 15

The court in the *Tuttle* case held that a school district could not spend money for a project not included in its budget as approved by voters in accordance with the financing procedure then applicable. Such a levy constitutes a voter-enacted appropriation.

A dedicated library levy, like the voter-approved budget in *Tuttle* and the “A” and “B” ballot measures construed in the above-referenced Attorney General opinion, constitutes an appropriation enacted by the voters. The reference to Oregon Constitution Article IX, section 3 in both the *Tuttle* case and the opinion bolsters the argument that public policy requires adherence to the purposes stated in a ballot title. Oregon Constitution Article IX, section 3 provides:

No tax shall be levied except in accordance with law. Every law imposing a tax shall state distinctly the purpose to which the revenue shall be applied.

Although the Oregon Supreme Court in *Miller v. Henry*, 62 Or 4, 10, 124 P 197 (1912), declined to apply Article IX, section 3 to local taxes, the provision was quoted in *Tuttle v. Beem*, *supra* at 154, in support of the public policy rendering it unlawful for public officials to use moneys exacted for other purposes. As recognized by the court in *Tuttle*, an appropriation is made by the voters’ favorable response to the proposition submitted to them by the taxing unit officials. 144 Or at 153.

An additional reason for finding that a unit of local government cannot appropriate funds from a dedicated library levy is found in the definition and treatment of “special revenue funds.” ORS 294.311(30) defines “special revenue fund” as:

. . . [A] fund properly authorized and used to finance particular activities from the receipts of specific taxes or other revenues.

According to ORS 294.450(4), “[I]t shall be unlawful to transfer appropriations from any special revenue fund to the general fund or any other special revenue fund.” Thus, it would be unlawful for a county, or any other unit of local government, to transfer funds dedicated to library purposes from a special revenue fund into the county general operating fund or any other special county fund. Also, see ORS 311.350, which provides:

Money collected or received by any officer for a distinct and specified object shall be kept as a separate fund for the specified object and no portion shall be paid or applied to any other object or purpose without due authority.

We conclude that where a ballot title for a levy measure clearly specifies the use of the appropriated funds for library purposes the funds must be used for those purposes.

Wesley A. Doak
November 1, 1985
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Very truly yours,

Larry D. Thomson
Chief Counsel
General Counsel Division

LDT:MJH:mc
Enclosure

¹ We reached a similar conclusion regarding a county tax measure in our recent letter of advice dated September 25, 1985, addressed to James W. O'Leary.