



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
 1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

November 30, 2012

The Honorable Kirk Pearson
 State Representative, District 39
 PO Box 40600
 Olympia, WA 98504

Dear Representative Pearson:

By letter previously acknowledged, you requested an informal opinion from this office on two questions which I have paraphrased as follows:

1. **If a taxing district receives voter approval to continue an emergency medical service levy for an additional multi-year term as permitted by RCW 84.52.069(2), is the district's tax collection in the first year of the renewed multi-year term limited by the one-percent growth rule set forth in RCW 84.55.010?**
2. **Where a taxing district seeks to continue a previously-approved multi-year emergency medical service levy, does the portion of votes required to approve the continuation levy depend on voter turnout?**

BRIEF ANSWER

I conclude that an emergency medical service (EMS) levy approved by voters under RCW 84.52.069(2) qualifies for an exception from the one-percent growth rule in the first year it is levied by the taxing district, regardless of whether it is an initial multi-year levy or the uninterrupted continuation of a previously-approved levy. A taxing district thus may increase the tax actually collected up to the full amount authorized by the voters without submitting a separate levy lid lift measure for voter approval, even if the amount actually collected thereby constitutes an annual property tax growth rate in excess of the district's normal levy lid. Additionally, when a continuation EMS levy is brought to a public vote at a general or special election, the measure need only pass by a simple majority regardless of voter turnout.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Kirk Pearson
November 30, 2012
Page 2

BACKGROUND

State law allows the voters of various taxing districts¹ to impose a property tax levy for the specific purpose of providing emergency medical care or emergency medical services. RCW 84.52.069(2), (5). Such EMS levies are limited to a maximum rate of fifty cents per thousand dollars of the total assessed value of property in the district. RCW 84.52.069(2). The levy may be imposed indefinitely, or limited to a term of six or ten consecutive years. RCW 84.52.069(2).

In the 2012 regular session, the legislature amended the EMS levy statute by enacting Substitute Senate Bill 5381 (Laws of 2012, ch. 115). That bill made changes to subsection (2), which now reads as follows:

Except [in the case of a city located in two counties], a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax is imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. *A permanent tax levy under this section, or the initial imposition of a six-year or ten-year levy under this section, must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election.* Ballot propositions must conform with RCW 29A.36.210. A taxing district may not submit to the voters at the same election multiple propositions to impose a levy under this section.

RCW 84.52.069(2) (relevant new language from SSB 5381 italicized).²

¹ A "taxing district" for the purposes of EMS levies means "a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district." RCW 84.52.069(1).

² For ease of reference, a copy of RCW 84.52.069 is attached.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Kirk Pearson
November 30, 2012
Page 3

SSB 5381 thus created a distinction in state law between imposing a new EMS levy and continuing a previously-approved levy in effect for longer than the six or ten years initially approved by the voters. “Initial” levies must be approved by a supermajority of registered voters, while the “uninterrupted continuation” of an existing levy requires only a simple majority.

The statute elsewhere provides a mechanism for the taxing district to increase the amount of an existing EMS levy:

If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

RCW 84.52.069(8). A taxing district that initially requests voter approval of a levy for less than the maximum rate of fifty cents may thus later increase the levy amount, but only with separate voter authorization. As the Department of Revenue describes it, “a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval.” WAC 458-19-060.

In addition to the rate limitations in RCW 84.52, regular property taxes—including EMS levies—are generally subject to the legal provisions in RCW 84.55 defining and limiting the extent to which taxing districts may increase the total dollar amount of regular property tax levies over the amounts collected in previous years. Taxing districts generally are limited each year to collecting no more than one percent above the amount of regular property taxes lawfully levied in the highest of the three most recent years. RCW 84.55.005(2), .010.³ The maximum dollar amount that a district may levy in a particular year is commonly known as a “levy lid.”

The assessed dollar value of existing property in a taxing district may rise faster than one percent per year. When that happens, the levy lid restricts the total dollar amount the taxing district can collect, resulting in a reduction to the rate per thousand dollars of assessed property value. Thus, over time the levy lid can result in the district collecting less than the full voter-approved EMS levy rate. *See* RCW 84.55.010 (limiting the amount of tax payable).

The statute authorizing EMS levies allows the taxing district to impose the full voter-approved EMS levy rate for the “first levy imposed” following a qualifying public vote, even if

³ The limit factor also takes into account increased valuation within the district due to new construction, the construction of certain wind turbines, property improvements, and the increased value of state-assessed property. RCW 84.55.010.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Kirk Pearson
November 30, 2012
Page 6

initial levies did not yet exist as a separate category from continuation levies. Rather, the reference in subsection (9) to “the approval of such levy by the voters pursuant to subsection (2)” clearly incorporated all of the voter approval methods described in subsection (2).

In fact, the language of subsection (9) has remained essentially unchanged since the EMS levy statute was created in 1979. *See* Laws of 1979, Ex. Sess., ch. 200, § 1 (“The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.”).⁵ At that time, subsection (2) included only one method for voter approval of an EMS levy: a three-fifths majority vote to approve a six-year levy. Over the years the legislature has amended subsection (2) in a number of ways, including by allowing voters to authorize a ten-year levy or a permanent levy. Laws of 1999, ch. 224, § 1. Like SSB 5381, the 1999 amendment to RCW 84.52.069 left subsection (9) unchanged. In the absence of any substantive change to subsection (9) since the original 1979 EMS levy legislation, it is reasonable to assume that the legislature has not intended to restrict the application of subsection (9) only to a subset of the voter approval procedures described in subsection (2), even as the list of acceptable voter approval procedures has been expanded over time. That history reinforces that the plain meaning of subsection (9) controls.

In posing your question, you suggest the possibility that a taxing district, having previously received voter authorization to impose an initial multi-year levy for less than the statutory maximum rate, might simultaneously seek to continue that levy and to raise the authorized levy rate.⁶ As you note, if the taxing district could do so as a continuation levy based upon a simple majority vote, and if RCW 84.52.069(9) excluded the first imposition of such a levy from the levy lid, then the result would be an increase of the EMS levy rate upon less than a three-fifths vote. You suggest that this result might be a basis for concluding that RCW 84.52.069(9) does not apply to continuation levies, but only to initial levies, which require a two-thirds vote. This suggestion, however, assumes that a measure proposing not only to authorize an EMS levy for an additional six-year or ten-year period but to simultaneously increase the rate of the levy would constitute an “uninterrupted continuation” of the initial levy. Only if it did would such a levy qualify for approval based on a simple majority. RCW 84.52.069(2).

⁵ What is now subsection (9) was originally enumerated as subsection (6) in the 1979 legislation. In 2011, the legislature amended subsection (9) to replace the phrase “shall not” with the phrase “does not” with no apparent change in meaning. Laws of 2011, ch. 365, § 2.

⁶ For example, in the August 2012 primary election, Skagit County voters were asked to approve Proposition 1, which asked voters to continue Skagit County’s EMS levy for six additional years, and simultaneously to increase the levy amount from \$0.25 to \$0.375 per \$1,000 of assessed valuation. According to the website of the Skagit County Assessor, Proposition 1 passed with 79.48 percent of the vote. There may be similar examples from other taxing districts. The purpose of this opinion is to assist you in your legislative capacity by providing our analysis of the applicable law so that you can determine whether further legislation on the topic may be desirable. The purpose is not to resolve any particular dispute regarding any specific local tax levy.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Kirk Pearson
November 30, 2012
Page 7

A ballot measure that asks the voters to approve an EMS levy at a higher rate is not simply an “uninterrupted continuation” of the prior levy. Where two levies are authorized at different rates the second cannot be considered a “continuation” of the first, even if they are “uninterrupted” in time.⁷ To qualify as a “continuation” of the first levy, the second levy must prolong the same levy rate previously approved by a three-fifths majority of the voters in the initial multi-year levy. A levy authorization that is uninterrupted in time, but discontinuous in effect, is a new “initial” levy rather than a continuation levy qualifying for voter approval by a simple majority vote.⁸

I therefore conclude that RCW 84.52.069(9) excludes the first imposition of a continuation levy from the levy lid of RCW 84.55.010. Because SSB 5381 did not amend subsection (9), that subsection retains its historic and plain meaning, excluding the first year of a voter-authorized EMS levy from the district’s generally applicable levy lid regardless of which of the subsection (2) voter approval methods the district relies upon to impose that levy.

⁷ The EMS levy statute does not define the term “uninterrupted continuation,” and so it should be given its ordinary meaning. *State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). “[W]e may discern the plain meaning of nontechnical statutory terms from their dictionary definitions.” *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010) (alteration in original). The word “continuation” has two meanings that may be relevant here. The first definition given by *Webster’s* is “continuance in a state, existence, or activity : uninterrupted extension or succession : PROLONGATION . . . : the causing of something to continue.” *Webster’s Third New International Dictionary* 493 (2002). Alternatively, “continuation” may refer to “something that continues, extends, increases, or supplements.” *Id.* “Continuation” must mean more than merely “uninterrupted,” since that word immediately precedes “continuation” in the statute. See *G-P Gypsum Corp. v. Dep’t of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (“Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” (Internal quotation marks omitted.)). The key term from the first definition, “continuance,” has the relevant meaning of “a holding on or remaining in a particular state or course of action.” *Webster’s* at 493. In the context of this statute, the relevant “state,” “activity,” or “course of action” being extended is the voter-authorized levy rate.

⁸ One passage from the House floor debate on SSB 5381 might suggest a contrary conclusion. One opponent of the bill argued that it would allow a taxing district to increase taxes based on a simple majority vote. House Floor Debate on Substitute S.B. 5381, 62d Leg., Reg. Sess. (Wash. Feb. 29, 2012), at 44:21, *video recording* by TVW, Washington State’s Public Affairs Network, available at http://www.tvw.org/index.php?option=com_tvw_player&eventID=2012020184A (remarks of Rep. Ed Orcutt: “[U]nder the definition of ‘renewal’ in this bill there could actually be a tax increase.”). However, that statement is at best ambiguous: it may have been a reference to the interaction of SSB 5381 with subsection (9) which, as discussed above, allows a continuing levy to be imposed at the full voter-approved rate even if doing so constitutes a tax increase of more than one percent compared to the amount collected in previous years. Even if the floor statement were not ambiguous, “a legislator’s comments from the floor are not necessarily indicative of legislative intent.” *Spokane Cnty. Health Dist. v. Brockett*, 120 Wn.2d 140, 154-55, 839 P.2d 324 (1992). This is particularly so when the member spoke in opposition to the bill. 2A Norman B. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 48:16 (2007). In any case, since the language of RCW 84.52.069 is plain on its face, there is no need to resort to legislative history. “If the statute’s meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended.” *TracFone Wireless, Inc. v. Dep’t of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010).

ATTORNEY GENERAL OF WASHINGTON

The Honorable Kirk Pearson
November 30, 2012
Page 8

2. Where a taxing district seeks to continue a previously-approved multi-year emergency medical service levy, does the portion of votes required to approve the continuation levy depend on voter turnout?

Your second question relates to the voter turnout required to pass a continuation EMS levy. A three-fifths supermajority of the voters is generally required to approve a permanent levy or "the initial imposition of a six-year or ten-year levy[.]" RCW 84.52.069(2). However, that three-fifths threshold is subject to the requirement that "the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election." RCW 84.52.069(2). When the public vote on a permanent or initial multi-year EMS levy fails to attain more than forty percent turnout compared to the most recent general election, the levy will not pass unless "the number of persons voting 'yes' on the proposition . . . constitute[s] three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election[.]" RCW 84.52.069(2).

The effect of those provisions is to set a minimum floor for the number of "yes" votes required to pass an EMS levy, even if the proportion of "yes" votes constitutes a three-fifths majority of those voting on the proposition. In other words, a permanent or initial EMS levy proposition that fails to receive a minimum forty percent voter turnout compared to the preceding general election must garner an adequate number of "yes" votes to have constituted a three-fifths majority if turnout had reached the forty percent mark. In the case of low voter turnout, an EMS levy will need even more than a three-fifths supermajority to pass. The exact proportion of "yes" votes required to pass an initial or permanent EMS levy can thus vary depending on the precise number of votes cast on the proposition compared to turnout in prior elections.

You ask whether a similar voter turnout requirement applies where a district seeks voter authorization of a continuation EMS levy rather than an initial or permanent levy. It does not.

The turnout-sensitive three-fifths supermajority requirement described above applies only to "[a] permanent tax levy . . . or the initial imposition of a six-year or ten-year levy[.]" RCW 84.52.069(2). The voter authorization requirements for "[t]he uninterrupted continuation of a six-year or ten-year tax levy" is described separately. RCW 84.52.069(2). That requirement reads in full:

The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election.

RCW 84.52.069(2). The statute thus requires a continuation levy to be "specifically authorized by a majority" vote. Additionally, the vote must take place during "a general or special

ATTORNEY GENERAL OF WASHINGTON

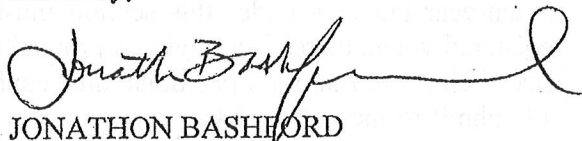
The Honorable Kirk Pearson
November 30, 2012
Page 9

election.” RCW 84.52.069(2). The plain language of the statute does not impose the kind of turnout-related conditions on continuation EMS levy approval that are imposed on the approval of an initial or permanent EMS levy.

The voter turnout requirements for initial and permanent EMS levies are imposed in the sentence immediately preceding the sentence that governs voter authorization requirements for continuation multi-year levies. Had the legislature meant to impose a similar turnout-dependent sliding scale on continuation levies as it imposes on initial and permanent levies, it could easily and clearly have done so by adopting similar language. In the absence of such language, the plain meaning of the phrase “a majority of the registered voters thereof approving a proposition” is that such a ballot proposition will pass if it garners a majority of votes, regardless of voter turnout compared to prior elections.⁹

I hope the foregoing information will prove useful. This is an informal opinion and will not be published as an official Attorney General Opinion.

Sincerely,



JONATHON BASHFORD
Assistant Attorney General
(360) 586-6535

⁹ The three-fifths majority vote requirement and the forty percent turnout requirement applicable to initial and permanent EMS levies under RCW 84.52.069(2) mirror the standard imposed by the Washington Constitution for voter approval of an aggregate annual levy amount, from all state and local sources, exceeding “one per centum of the true and fair value” on any real or personal property. Const. art. VII, § 2; *see* Const. art. VII, § 2(a). Regardless of whether the legislature meant the voting requirements for initial and permanent EMS levies to simultaneously meet the requirement for exceeding the aggregate one percent limitation—a possibility we will not analyze here—the lower vote threshold applicable to continuation levies clearly falls short of that constitutional requirement. A continuing EMS levy that results in the aggregate tax rate on some properties exceeding one percent of true and fair value would require separate and specific voter authorization under article VII, section 2.

RCW 84.52.069

Emergency medical care and service levies.

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district.

(2) Except as provided in subsection (10) of this section, a taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax is imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A permanent tax levy under this section, or the initial imposition of a six-year or ten-year levy under this section, must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. The uninterrupted continuation of a six-year or ten-year tax levy under this section must be specifically authorized by a majority of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election. Ballot propositions must conform with RCW 29A.36.210. A taxing district may not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district must maintain a statement of the accounting which must be updated at least every two years and must be available to the public upon request at no charge.

(4) (a) A taxing district imposing a permanent levy under this section must provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure must specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer must confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner has thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer must verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, must certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the

referendum petition, or at a special election to be called for that purpose in accordance with RCW 29A.04.330.

(b) The referendum procedure provided in this subsection (4) is exclusive in all instances for any taxing district imposing the tax under this section and supersedes the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

(5) Any tax imposed under this section may be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(6) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county subsequently approve a levying of this tax, then the amount of the taxing district levy within the county must be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied countywide, the service must, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no countywide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, expires concurrently with the county emergency medical service levy. A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection (6).

(7) The limitations in RCW 84.52.043 do not apply to the tax levy authorized in this section.

(8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any

future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

(9) The limitation in RCW 84.55.010 does not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include all of the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

(11) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.