



KATHY KARPAN
Secretary of State
Cheyenne, Wyoming 82002-0020

April 25, 1990

Ms. Debbie Brammer
Executive Director
Wyoming Association of Conservation Districts
1750 Westland Road
Cheyenne, Wyoming 82001

Dear ^{Debbie} Debbie:

This letter confirms our recent conversations regarding the time and frequency of mill levy elections for conservation districts.

Although W.S. 11-16-134(b) states that the proposition to impose the tax may be submitted at any general election, it is the opinion of this office, as well as the Attorney General's Office, that the election does not have to be submitted at a general election, and may be submitted at a primary election.

A February 5, 1990, opinion from our elections counsel, Senior Assistant Attorney General Rowena Heckert, addressed similar wording in the sales and lodging tax statutes. Ms. Heckert concluded that the legislature was presumed to have chosen the statutory language carefully, and because only general or special elections were named, the legislature may have intended to limit the sales and lodging tax elections to the two situations. However, because the language is permissive rather than mandatory, Ms. Heckert concluded that the election could be held on primary election day.

It also appears from W.S. 11-16-134 that there is no prohibition from submitting the mill levy tax question to the voters at the 1990 general election should they turn down the question at the 1990 primary election. Although most ballot proposition statutes require a one year waiting period before submitting the proposition to the voters again, this particular provision is absent in W.S. 11-16-134.

Yours,

Margy White
Deputy Secretary of State

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Deputy

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February 5, 1990

The Honorable Kathy Karpan
Secretary of State
Capitol Building
Cheyenne, Wyoming 82002



Re: W.S.39-6-412(e), Local Imposition of Sales and Use
Tax or Lodging Tax

Dear Kathy:

Some time ago you wrote asking clarification of two parts of W.S. 39-6-412(e). The first question was whether either kind of tax could be submitted initially at a primary election. As you know, the statute states:

"The proposition may be submitted at any general election or at a special election called for that purpose."

The legislature is presumed to have chosen the statutory language carefully, and because only general and special elections are named, it may have intended to limit these tax approval elections to those two situations.

However, the language is permissive rather than mandatory, and a special election could be called for this purpose and set for the same date as the primary election. This appears permissible from the statutory language, would reduced the cost of the election, and would increase the number of voters otherwise present at the polls who could then vote on the tax question as well.

Thus the statutory language can be interpreted as meaning what it says without also prohibiting the setting of special elections on primary election day.

The second question concerned reapproval of the same excise questions when initial approval occurred before 1 July 1989. After approval at the 1990 general election, must they be presented to the voters again in 1992 or 1994?

Kathy Karpan
February 5, 1990
Page 2

The language of W.S. 39-6-412(e) which stated these taxes must be reapproved "at each subsequent general election" has been changed to state they must be reapproved at "subsequent general elections as provided in this subsection [e]." This suggests that reapproval is required less often than at each general election, because "each" was deleted. Its repeal also means that no reapprovals are required at each general election unless specifically required by language remaining in the statute. The subsection goes on to confuse the issue, but I interpret it as follows:

1. Unless otherwise stated on the ballot, approvals and reapprovals of these taxes are valid for four years now.

2. For counties initially imposing a sales/use tax, approval is valid for only two years if so stated on the ballot in accordance with the decision of the county commissioners, otherwise it is valid for what is now the usual four year period.

For counties approving existing sales/use taxes at the 1990 general election, "the same proposition shall be submitted at subsequent general elections as provided in this subsection." W.S. 39-6-412(e). The subsection then requires reapproval every four years or at every other general election in all cases but one. This was set out in number 2 above. It does not apply for reapprovals of taxes passed before 1 July 1989.

Therefore, I conclude future reapprovals in all other cases are required only every four years.

Sincerely,



Rowena L. Heckert
Senior Assistant Attorney General

RLH:bkm



GS.
KATHY KARPAN
Secretary of State
Cheyenne, Wyoming 82002-0020

January 5, 1993

Mr. A. L. Kongable
District Clerk
Shoshone Conservation District
359 Nevada Avenue
Lovell, WY 82431

Dear Mr. Kongable:

Thank you for your letter of December 9th, 1992. As I understand the situation, the Shoshone Conservation District got a $\frac{1}{2}$ mill levy passed in a special election in February of 1992. This levy will be placed on the 1994 General Election ballot for renewal. As I understand it, this is your question: if the 1994 General Election voters vote not to renew the mill levy, can the District bring the proposition to impose the tax in a special election?

First of all, I would think that if the mill levy renewal is rejected in 1994, then the tax which was first passed in February, 1992 expires. In this case, you're back to square one and a new tax would have to be approved. The question then becomes: can a new tax question be put on a special election ballot?

I enclose an opinion from the Attorney General's Office concerning the word "may" in a statute on sales/lodging tax questions and a copy of a letter from this office applying that opinion to the phrase "may be submitted at any general election" found in W.S. 11-16-134. From these writings, my office has advised that a conservation district mill levy question may be brought at a special election. However, you know there may be serious political ramifications if you try to sneak through a tax increase in an obscure special election when the majority of people in a general election just rejected it.

In all honesty, there are many who think the language "may be submitted at any general election" means that the mill levy can only be placed on the general election ballot. Others argue that unless the legislature makes it completely clear that it is restricted to a general election, then allow the question to be on primary or special election ballots.

Margy White
Deputy

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Page Two
Kongable

These sorts of ambiguities are found in all the special district laws. Because of these problems, I am forming a brain trust to review all the laws to develop a uniform special district election law for introduction in the 1994 session. One of the burning issues for the Legislature is whether any special district tax question should be placed only on a general election ballot. The brain trust is in its infancy and I would welcome your interest. Do you want to serve on it? Please let me know.

Because I plan to introduce some major improvements in the special district area, I can't tell you what the law might be in 1994.

I have discussed the contents of this letter with Rowena Heckert, Senior Assistant Attorney General who serves as my election counsel, and she concurs.

Yours,



Kathy Karpan
Secretary of State

KK/wan

enclosures

cc: Rowena Heckert

Grant Stumbough
Department of Agriculture