



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 97-012

COUNTIES:

Use of Proceeds from the
Special County Occupation
Tax for Public Safety Law

Honorable Laura Kent Donahue
Illinois State Senator
Majority Caucus Chairman
620 Maine Street
Quincy, Illinois 62301

Honorable Art Tenhouse
State Representative - 96th District
Post Office Box 1161
640 Maine Street
Quincy, Illinois 62306

Dear Senator Donahue and Representative Tenhouse:

I have your letter wherein you inquire whether monies generated pursuant to the Special County Occupation Tax For Public Safety Law (55 ILCS 5/5-1006.5 (West 1996)) may be used for the provision of ambulance and fire protection services. For the reasons hereinafter stated, it is my opinion that the provision of ambulance and fire protection services is not a permissible use for monies derived from the special county retailers' occupation tax for public safety.

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Section 5-1006.5 of the Counties Code (55 ILCS 5/5-1006.5 (West 1996)) provides, in pertinent part:

"(a) The 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 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. If imposed, this tax shall be imposed only in one-quarter percent increments. By resolution, the county board may order the proposition to be submitted at any election. The county clerk may order the proposition to be submitted at any election. The county clerk shall certify the question to the proper election authority, who shall submit the proposition at an election in accordance with the general election law.

The proposition shall be in substantially the following form:

'Shall (name of county) be authorized to impose a public safety tax at the rate of * * * upon all persons engaged in the business of selling tangible personal property at retail in the county on gross receipts from the sales made in the course of their business to be used for crime prevention, detention, and other public safety purposes?'

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(h) This section may be cited as
the 'Special County Occupation Tax
For Public Safety Law'.

* * *

"

(Emphasis added.)

Under the language quoted above, upon referendum approval, a county board is authorized to impose a tax upon "* * * all persons engaged in the business of selling tangible personal property * * * at retail in the county * * *", excluding those retailers selling property titled or registered with the State. All proceeds of the tax are "* * * to be used exclusively for public safety purposes in that county * * *."

The phrase "public safety", however, is not defined in the Special County Occupation Tax For Public Safety Law. Moreover, it is not a phrase which admits of a precise, commonly-recognized definition. Where the language of the statute is ambiguous, resort may be had to extrinsic aids of construction. (Antunes v. Sookhakitch (1992), 146 Ill. 2d 477, 484.) Thus, it has been held that the legislative history of the statute is relevant (West v. Kirkham (1992), 147 Ill. 2d 1, 7-8; Dietz v. Property Tax Appeal Bd. (1989), 191 Ill. App. 3d 468, 476, appeal denied, 131 Ill. 2d 558 (1990)), as are remarks made in the course of legislative debate. With respect to the latter, statements of a sponsor of a bill are especially significant.

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Spinelli v. Immanuel Lutheran Evangelical Congregation (1986),
144 Ill. App. 3d 325, 330, aff'd, 118 Ill. 2d 389 (1987).

The Special County Occupation Tax For Public Safety Law was added to the Counties Code (55 ILCS 5/1-1001 et seq. (West 1996)). During the House debate on Senate Bill 169 (enacted as Public Act 89-107), the following colloquies between Representative Winters, its sponsor in the House of Representatives, and other legislators provide guidance on the meaning of the phrase "public safety" in this context:

" * * *

Hoffman:

'Who decides how this money is going to be spent?'

* * *

Winters:

'That would be determined by the county board as the money would flow into the county funds for public safety. They can not [sic] divert it to additional uses, but only for construction of a jail, for hiring sheriffs police, that type of public safety work.'

* * *

Hoffman:

'Is there a definition contained in the Bill, as to what public safety is? I mean we don't mean that you could use this for animal control. We mean that you're going to use it either [to] put bad guys in jail, to prosecute them, to investigate

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them, to ensure that the jails are not overcrowded, to add additional jails, or whatever the county board decides. The question is, is there anything in this Bill, that limits or defines what public safety means?'

* * *

Winters:

'The intent of the legislation is that * * * proceeds would be dedicated to crime prevention, detention and other public safety purposes.'

* * *

Hoffman:

'Well, is there a definition or just for legislative intent, what do you mean by other public safety? I mean, the question is, some people would think that a pothole in the road is not safe. You don't intend this to be used to fix roads and bridges or anything like that. Is that right?'

* * *

Winters:

'For legislative intent, we are talking about criminal behavior. Anything that can reduce criminal behavior is the definition that I would like to use for public safety.'

* * *

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(Emphasis added.) (Remarks of Rep. Hoffman and Rep. Winters, May 20, 1995, House Debate on Senate Bill No. 169 at 130-31.)

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" * * *

Black:

'Representative, * * * the proceeds of this tax can only be used for what? The construction of a ... correctional facility or could it be used to hire personnel?'

Winters:

'It may be used for any public safety purpose. It could be construction of a jail, it could be hiring of additional patrol officers and the sheriffs police. It could be used for a juvenile detention center, anything that is working to prevent additional criminal behavior.'

* * *

Black:

'Let me ask you this. Could it be used to hire guard dogs? Big vicious guard dogs?'

* * *

Winters:

'If the county board would so desire. I believe it could be used for that purpose.'

* * *

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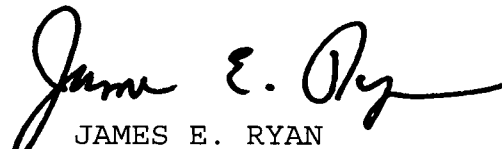
(Emphasis added.) (Remarks of Rep. Black and Rep. Winters, May 20, 1995, House Debate on Senate Bill No. 169 at 133-34.)

These comments clearly demonstrate that the General Assembly intended for the monies generated from the special

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county retailers' occupation tax for public safety to be used for goods, services and programs to reduce or prevent criminal activity. While the provision of ambulance and fire protection services undoubtedly fulfills an important public purpose, those services are not related to the reduction or prevention of criminal behavior, and hence, are not within the intention of this tax. Consequently, it is my opinion that monies generated pursuant to the Special County Occupation Tax For Public Safety Law may not be used for the provision of ambulance and fire protection services.

Sincerely,



JAMES E. RYAN
Attorney General