

OFFICE OF THE CITY ATTORNEY

**OPINION 92-06**

**TO:** Peter C. Harvey, City Manager  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** September 1, 1992  
**SUBJECT:** Use of City Sales Tax Revenues

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**QUESTION:**

May City Sales Tax monies be used for Book Processing.

**OPINION:**

This opinion requires a discussion of the background of the Peoria City Sales Tax. Prior to December, 1988, the City imposed a one percent (1%) sales tax. In December, 1988 the City increased the sales tax rate to one and one-half percent (1.5%).

The purpose of the increase as expressed in the City Council minutes was to use the funds generated to construct Phase one of the City Municipal Complex. However, the ordinance imposing the tax does not contain any restriction on the use of the funds.

Therefore, the question arises as to whether the purpose expressed by the City Council in an open meeting, but not contained in the actual ordinance imposing a tax restricts the use of the funds generated by the tax in question.

As with all legislative acts, a city ordinance is construed by looking at all the words and parts of the ordinance. Consideration of parol evidence (oral statements by the Council and others contained in the minutes at the time of enactment) and a review of conditions at the time of enactment are not taken into account unless the meaning of an ordinance is not clear.

This opinion can only address the legal restrictions which may exist. No opinion is expressed as to the meaning of any moral or political commitment contained in the minutes of the Council action. Such issues are outside the resolution of the legal question involved.

In this case, no restriction on the use of the revenues raised by the increase in the City sales tax is contained in the enacting ordinance. Unless it can be shown that the ordinance is unclear, such a restriction can not be imposed. A review of the ordinance (Ordinance No. 88-30, attached as Appendix "A") clearly indicates an intent to increase the City sales tax rate. The ordinance contains no reference to restriction on the use of additional revenues generated by an increase in this rate. A review of the ordinance indicates no ambiguity in the intent to increase such revenues or any intent to restrict the use of the increased revenues. It would be improper to add or infer such an intent, even if intended by the City Council, when the ordinance is not ambiguous. Laws v. Lee, 471 NE.2d 1229 (Ind. Ct. App. 1984).

Therefore, it must be concluded that the Ordinance increasing the City Sales Tax does not restrict the use of the revenues generated from the increase. The question then is whether the processing services for the acquisition of new books is a legitimate public expense. Clearly a City is authorized to operate a public library. A.R.S. §9-411. Therefore, the expenditure of public funds for the acquisition and processing of books to be placed in that library is a legitimate public expense. A.R.S. §9-416.

Based on the foregoing, it is our opinion that there is no legal restriction against the use of revenues generated by the increase in the City sales tax for the processing of new books purchased with such revenues. Should you have any questions, please do not hesitate to contact me.