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OPINION NO. 93-10

TO: Jorge Cruz-Aedo, Management Services Director
FROM: Stephen M. Kemp, City Attorney
DATE: November 18, 1993
SUBJECT: Accounting for Municipal Development Authority Revenues

QUESTION:

Should the MDA Debt be accounted for in a separate debt service fund consisting of all revenues from a 1/2% sales tax.

OPINION:

This opinion requires a discussion of the background of the City Peoria sales tax rate. 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.

This purpose would be achieved by entry into a lease with the City's municipal property corporation (MPC) for the City to construct and lease the facility from the MPC and the MPC issue the debt. The debt service payments would be less than the revenues raised by an increase in the sales tax. However, the ordinance imposing the tax does not contain any restriction on the use of the funds or their accounting.

The other area where background is necessary for this opinion is the concept of governmental fund accounting. The City of Peoria maintains a general fund, enterprise funds¹, internal service funds², debt service funds and other types of restricted funds. The general fund consists of all revenues received by the City that are not restricted in their use.

Conversely, the city's debt service funds consist of revenues received by the City that are restricted to the payment of debt service. Generally, the City may have several debt service funds.³ The common characteristic of these funds is that the use of the revenues flowing into the fund is restricted by law to the payment of debt service and incidental related costs.

The issue then becomes: Is the one half cent increase imposed by the City Council in December, 1988 restricted by law to be used for debt service. The answer is No. With all legislative acts, including city ordinances the interpretation is found 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. In this case, no restriction limiting the use of the revenues raised by the increase in the sales tax to payment of debt service is contained in the enacting ordinance.

Reviewing 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. There appears 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

¹Enterprise funds are derived from city proprietary enterprises and must be returned to the enterprise.

²Internal Service Funds are charges for municipal services that the city desire to be self supporting or fully accounted for in their revenues and expenditures.

³Cities may issue various types of debt services payable from different sources of revenues. For example, general obligation bonds from property tax, sales tax revenue bonds from sales taxes, improvement district bonds from special assessments, utility revenue bonds from utility revenues and others.

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ambiguous. Laws v. Lee, 471 NE.2d 1229 (Ind. Ct. App. 1984).

Finally, a review of the city/MDA leases indicates that the lien granted to the MPC is a lien against all city sales and excise tax revenues, unless their use is restricted by law. [emphasis added]

It is absolutely clear that the City is securing the debt issued by the MPC with a senior lien on all city sales and excise tax revenues.

I am concerned about any attempt to account for the one-half percent sales tax as a separate debt service fund. Such a practice could appear to be misrepresenting the nature of this debt, resulting in a party assuming that the debt service and lien is limited to the revenues from a one half percent sales tax. That assumption is totally incorrect.

Therefore it is the opinion of this office that all city sales and excise tax revenues not restricted by law should be shown as general fund revenues. The city should clearly indicate that the first and senior lien on such general fund revenues is all senior lien debt service supported by the MPC. After senior lien debt service liens are indicted, the city should indicate all junior lien debt service liens on the general fund. The remaining general fund revenues should be accounted in the manner provided by law and in accordance with the Governmental Accounting Standards Board and Generally Accepted Accounting Principles.

If you should have any questions, please do not hesitate to contact me.

SMK:ei

cc: Honorable Mayor and Council