City of Peoria • 8401 West Monroe Street • Peoria, Arizona 85345

OFFICE OF THE CITY ATTORNEY

| | |
|---|---|
| CIVIL | 602-412-7330 |
| PROSECUTOR | 602-412-7335 |
| FACSIMILE | 602-412-7043 |


**OPINION NO. 95-08**

**TO:** David Pearson, Council Member, Mesquite District

**FROM:** Stephen M. Kemp, City Attorney

**DATE:** May 15, 1995

**SUBJECT:** Application of Proposition 100 amending the City Charter pertaining to spending

---

**QUESTION:**

What is the application of the recently approved Proposition 100, spending initiative to a proposed intergovernmental project between the City of Peoria and the Peoria Unified School District to construct a joint use library.

**OPINION:**

For purposes of this opinion the following background is provided. The Peoria Unified School District is planning to construct a new high school in the vicinity of Deer Valley Road and 83rd Avenue in Northern Peoria. Concurrently, the city has voter approval for bonds and library impact fees to construct a branch library in the Northern Peoria Area. Therefore the City and the School District have been discussing the concept of a joint use high school-public library.

The proposed joint use library concept involves the school district constructing the building and having full and complete ownership of the building after the fact. The building will be

built at its current site regardless of city participation. The City will fund movable fixtures, books and other multimedia resources that could be used in any location.

In March 1995, the qualified electors of the City approved Proposition 100. The initiative provides as follows:

Article VI of the Peoria City Charter shall be amended by adding Section 8 which shall read as follows:

Sec. 8.

Not withstanding any other provision of the charter of the City of Peoria, the City shall not:

expend public funds, incur debt, or grant concessions of taxes or fees, or transfer city property in aid thereof, in excess of $500,000 for the construction, or to aid in the construction of any arena, stadium, convention facility, sports complex, or city office building, without approval of the majority of the voters voting at the next city general or special election.

As one can note, no definitions are provided for any of the types of facilities in the initiative. In providing for an interpretation of an initiative, the provisions are to be given a construction based on their general, ordinary meaning, the same manner as other legislation. Hernandez v. Frohmiller., 68 Ariz. 242, 204 P.2d 854 (1949).

In this case, the only applicable provision is whether this facility falls within the definition of a city office building. Implicit in the definition of a city office building is the city's right to control and use the facility. Assuming the terms of the Intergovernmental Agreement between the city and the school district are as outlined above, the City would have no ownership or right to control the building.

Further, assuming that the provision in the heading naming amphitheaters is applicable[1] to this transaction and this facility contains an amphitheater, the question arises as to whether the primary purpose is to aid in the construction of an amphitheater or to equip a library. One could assume that a secondary purpose of many projects would result in the project falling within the confines of the initiative. However, that would ignore the primary and intended purpose of the agreement and could lead to absurd results.

[1]The authors of the Initiative indicated in the heading of the proposed initiative that it applied to amphitheaters, however no such language was incorporated in the text of the amendment. We do not reach whether amphitheaters fall within the provision of this initiative.

Generally constitutional provisions and statutes are to be interpreted to give the provisions their fair and sensible meaning. State v. Garza Rodriguez, 164 Ariz. 107, 791 P.2d 633 (1990). Applying this rule to this matter results in the following conclusion. The City may enter an intergovernmental agreement with the Peoria Unified School District for operation of a joint use library in which the City is providing only movable fixtures, books, multimedia materials and other personal property, without restriction as to the cost of these items.

As no city contribution to the construction of a building is planned, we reach no opinion as to the application of the provisions of Proposition 100 to construction of an actual building. I trust that this answers your questions regarding this matter. If you should have any questions, please do not hesitate to contact me.

cc: Honorable Mayor and Council

SMK\OPINION\95-08