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OFFICE OF THE CITY ATTORNEY**

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**OPINION NO. 99-01**

**TO:** Terry Ellis, City Manager  
**FROM:** Stephen M. Kemp, City Attorney  
**DATE:** January 22, 1999  
**SUBJECT:** Application of Proposition 100

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**QUESTION:**

You have inquired as to whether the approval of a Police Administration Facility by the qualified electors in 1997 constituted approval of a project that would permit construction of a Public Safety Administration Facility.

**OPINION:**

For purposes of this Opinion, the following factual background is provided. In 1995, the qualified electors approved and the Governor of Arizona signed a charter amendment requiring voter approval of certain projects. The amendment provides:

Sec. 8. Expenditures.

Notwithstanding 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.

At a regular City election held on March 11, 1997, the qualified electors of the City approved Proposition 301. This proposition requested approval of all projects in the 1996-1997 adopted Capital Improvements Plan of the City, as amended. One of the Projects proposed is a rehabilitation and expansion of the Police Administration Building.

Subsequently, as the Police Administration Capital Improvement Project underwent further analysis, it was determined that the existing building could not be rehabilitated and expanded. Instead a new Police Administration Building would be constructed on the City complex site or adjacent thereto.

The question becomes, whether the qualified elector approval of Proposition 301, constitutes approval of the Police Administration facility project as proposed, that being a new building in place of a rehabilitation and expansion of the existing building. It is the opinion of this office that the approval has been granted by the qualified electors.

The Charter provision is similar to A.R.S. §11-269.02 that requires voter approval of certain projects in counties having a population of more than 1.5 million persons.<sup>1</sup> Absent caselaw on the statute, the starting point for a determination of the meaning of the Peoria Charter provision is an analysis of the language of the provision as written, with the intent to give the provision a fair and sensible meaning. Robinson v. Lintz, 101 Ariz. 448, 420 P.2d 923 (1966)

Although no findings were contained in the initiative creating the Charter provision, it was brought to the voters after the City started construction on a number of large projects that did not require or have approval of the qualified electors.<sup>2</sup> This fact would suggest that the qualified electors desired to retain the ability to approve such large projects and enacted the charter amendment to do so. State v. Garza Rodriguez, 164 Ariz. 107, 675 P.2d 713 (1990).

The provisions of Section 8, do not contain any definitions and do not define the extent of approval or reauthorization required. Where a statute such as Section 8, imposes mandatory requirements it should be strictly applied and literally construed. Mendelsohn v. Superior Court, 76 Ariz. 163, 261 P.2d 983 (1953) . In arriving at the meaning of this provision, one is limited by its terms.

The provision indicates that if the City were to expend any amount over \$500,000 for a City office building, the project must be submitted to the qualified electors for approval. The plain language of the provision does not require voter approval of the specific amount of the project, the actual plans of the project or the location of the project. Rather, if the project contains the designated type of facilities it must be approved by the voters.

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<sup>1</sup> This statute was passed after the construction of Bank One Ballpark was started by Maricopa County. There is currently only one and likely to be only one county of over 1.5 million persons, Maricopa County. There have been no cases on this statute.

<sup>2</sup> These projects included the Municipal Complex and the Sports Complex. Both projects were validly financed and constructed in accordance with state law and city charter and code provisions.

City Attorney Opinion

January 22, 1999

Page 3 of 3

In this case, a proposed project for rehabilitation and reconstruction of the existing Police Administration Building costing in excess of \$500,000 was part of the 1996-1997 City Capital Improvements Program. This project was submitted to the qualified electors as part of Proposition 301. The proposed project expenditure in excess of \$500,000 was approved by the voters.

Although the design and location of the project have changed, the provisions of Section 8, do not require such changes to be resubmitted to the qualified electors. If such changes are to be submitted to the qualified electors, it is a decision of the legislative body or the electors to require such be done. It is our responsibility and that of the Courts to accept the provision as it is and give effect to it as written. Ryder Truck Rental, Inc. v. City of Phoenix, 172 Ariz. 490, 880 P.2d 1083 (Tax Ct. 1992)

Therefore, it is the opinion of this office that once the qualified electors approve a project listed in Article VI, Section 8 of the Peoria City Charter, the approval is valid and binding for the project regardless of an increase or decrease in cost; change in plans, concepts, design or location or method of financing. If you should have any further questions, please contact this office.

cc: Honorable Mayor and Council  
John Wenderski, Management Services Director