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DEPARTMENT OF LAW AND PUBLIC SAFETY

ROBERT J. DEL TUFO  
ATTORNEY GENERAL

August 28, 1990

Honorable Joan M. Haberle  
Secretary of State  
315 W. State Street  
CN 300  
Trenton, New Jersey 08625

Re: FORMAL OPINION NO. 2 (1990):

**Placement on General Election Ballots  
of Non-binding Referenda Regarding  
Statewide Tax Reform Measures.**

Dear Secretary Haberle:

You have asked whether local governing bodies may place on the upcoming General Election ballot non-binding referenda regarding recent State tax reform measures and the level of State appropriations for government purposes. For the reasons set forth below, you are advised that such questions are not properly included on the ballot since they do not deal specifically with any question or policy pertaining to the internal affairs of the governmental bodies proposing the resolutions, and because the issues for which voters' sentiment are sought are not matters with respect to which the governmental bodies have the power to take direct action.

The State Constitution does not provide for any procedure to ascertain directly citizens' viewpoints on public policy issues. However, the Legislature, in furtherance of its particular responsibility over election matters, Fields v. Hoffman, 105 N.J. 262, 271-272 (1987), has adopted a statutory provision which permits non-binding referenda at the local level under certain specific and limited circumstances. That statute, N.J.S.A. 19:37-1, provides:

When the governing body of any municipality or of any county desires to ascertain the sentiment of the legal voters of the municipality or county upon any question or policy pertaining to the government or internal affairs thereof, and there is no other statute by which the sentiment can be ascertained by the submission of such question to a vote of the electors in the municipality or county at any election to be held therein, the governing body may adopt at any regular meeting an ordinance or a resolution requesting the clerk of the county to print upon the official ballots to be used at the next ensuing general election a certain proposition to be formulated and expressed in the ordinance or resolution in concise form. Such request shall be filed with the clerk of the county not later than 74 days previous to the election. (emphasis supplied)

This provision has been consistently interpreted as limiting the scope of the referenda authorized by the statute to subjects actually and specifically encompassed within the definite jurisdictional authority of the particular governmental body proposing the referenda and is designed to test voter sentiment on well-defined and concrete public issues. In capsulizing the intent of this provision, the State Supreme Court has observed that

the legislature never intended the non-binding-referendum procedure to be used to test public opinion in the abstract or to ascertain the public's views on controversial or timely issues outside the province of the governing body soliciting them. [Bd. of Chosen Freeholders v. Szaferman, 117 N.J. 94, 104 (1989)].

The parameters of N.J.S.A. 19:37-1 were most recently construed by the Supreme Court in Bd. of Chosen Freeholders v. Szaferman, supra. There, the County Freeholders enacted a resolution placing a referendum question on the General Election ballot asking voters if the Freeholders should advise the Legislature to take certain actions regarding various issues involving automobile insurance. The Court held under the statute that the referendum question did not pertain to matters involving the government or internal affairs of the county and, for that reason, the referendum question could not be included on the ballot. The Court rejected the argument that the county's expenditure of funds for automobile insurance costs and its

interest in minimizing the size of its budget expenditures were sufficient reasons to justify the referendum question. Said the Court:

By that standard, any referendum question that addressed a subject related to municipal or county budgets would be authorized, whether or not it was within the sphere of municipal or county government. If the governmental-interest test were satisfied merely by a budgetary impact, then any county could use its non-binding-referendum authority to elicit public opinion on issues related to welfare, court administration, law enforcement, and a myriad of other subjects that are statutorily committed to government at the state level and beyond the scope of county governmental responsibility. [*Id.* at 106.]

In supporting its interpretation of N.J.S.A. 19:37-1, the Court observed that matters of insurance reform are matters of statewide significance committed to State government. Permitting local governments to place non-binding referenda on the ballot for matters involving statewide issues would thus be contrary to the more limited intentions of the statute. Accord, Botkin v. Mayor and Borough Council of Westwood, 52 N.J.Super. 416 (App. Div.), appeal dismissed, 28 N.J. 218 (1958) (local government body had no authority to propose a referendum regarding affairs of independent local school district); Santoro v. Mayor and Council of South Plainfield, 57 N.J.Super. 307 (Law Div.), *aff'd*, 57 N.J.Super. 498 (App. Div. 1959) (city council had no authority to solicit voters' sentiment with respect to affairs of local sewerage authority, a distinct local government unit).

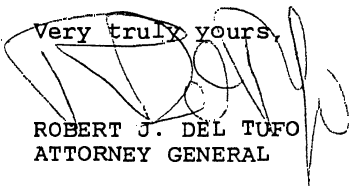
In this matter, you have advised that a number of counties and municipalities have passed resolutions authorizing referenda intended to solicit voter sentiment with respect to recently enacted State tax reform legislation and with respect to proposals to reduce State government spending. The central question to be resolved is whether these referenda involve matters in which these local governmental units have "the power to act." Botkin, 52 N.J.Super. at 433. If not, then there is no authority vested in these local government units under N.J.S.A. 19:37-1 to propose such non-binding referenda for inclusion on the General Election ballot.

Matters of State tax and budget policies, although they concededly could have a significant impact on local governments, are matters plainly "committed to government at the State level."

Bd. of Chosen Freeholders v. Szaferman, 117 N.J. at 106. Under the State Constitution, it is the Legislature and the Governor who have been constitutionally charged with the responsibility and authority to make appropriations, to establish appropriate levels of State spending and to provide for a balanced State budget. N.J.Const. (1947), Art. VIII, §11, ¶2; Camden v. Byrne, 82 N.J. 133 (1982). See also, N.J.Const. (1947), Art. V, §1, ¶15 (line-item veto power vested in the Governor). Similarly, although the Legislature has delegated to local governments the authority to tax in some cases, the underlying fundamental authority to impose taxes resides exclusively in the Legislature. Robinson v. Cahill, 62 N.J. 473, 497 (1973); Salomon v. Jersey City, 12 N.J. 379, 383-84 (1953). It is therefore self-evident that the non-binding referenda involving State taxes and State spending concern matters of State and not local authority and may not be placed on the ballot pursuant to N.J.S.A. 19:37-1. (emphasis supplied) Gloucester County Resolution. Accord, Camden County Board of Chosen Freeholders v. Camden County Clerk, 193 N.J.Super. 100 (Law Div.), aff'd, 193 N.J.Super. 100 (App. Div. 1983) (county non-binding referendum addressing budget directive of the Chief Justice of the Supreme Court of New Jersey did not implicate county's internal affairs or pertain to its governance within the meaning of N.J.S.A. 19:37-1).

In sum, local governments may not place non-binding referenda on the General Election ballot under N.J.S.A. 19:37-1 where the subject matter of the referenda does not touch on matters "pertaining to the government or internal affairs" of the proposing local government entity. Here, non-binding referenda soliciting voter sentiment with respect to recent State tax reform legislation and reductions in the level of State appropriations are clearly matters committed to the exclusive jurisdiction of State government and are not matters with which the local governments have the power to act. For these reasons, such non-binding referenda may not properly be included on the ballot for the upcoming General Election.

Very truly yours,

  
ROBERT J. DEL TUFO  
ATTORNEY GENERAL