



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

March 24, 1994

FILE NO. 94-007

SPECIAL DISTRICTS:
Tax Rate Ordinance in
Fire Protection Districts

Honorable Paul A. Logli
State's Attorney, Winnebago County
400 West State Street
Courthouse Building
Rockford, Illinois 61101

Dear Mr. Logli:

I have your letter wherein you request clarification of opinion No. 92-002, issued February 4, 1992. Specifically, you have asked whether a fire protection district which has, for several years, adopted an annual ordinance authorizing the levy of taxes at a rate in excess of .125 per cent but not in excess of .30 per cent of the value of taxable property within the district is now subject to a "back door" referendum on the tax rate with respect to its most recently enacted ordinance. For the reasons hereinafter stated, it is my opinion that a "back door" referendum on the question may not now be initiated.

In opinion No. 92-002, I concluded that a fire protection district which had adopted an ordinance to levy taxes at a

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rate in excess of .125 per cent but not in excess of .30 per cent, had filed a certified copy of the ordinance with appropriate county clerk(s) and had complied with the requisite publication requirements, all as provided in section 14 of the Fire Protection District Act (Ill. Rev. Stat. 1991, ch. 127 1/2, par. 34; 70 ILCS 705/14 (West 1992)), could then levy annually within the stated rates. It is not necessary for the rate ordinance to be adopted, and subjected to a possible referendum challenge, each year; rather, the ordinance remains in effect until further action of the board of trustees.

Notwithstanding the issuance of this opinion, the fire protection district in question reenacted its previously-adopted rate ordinance in May, 1993. Petitions have been filed seeking a referendum in accordance with section 14 of the Fire Protection District Act, which provides, in pertinent part:

" * * *

The board of trustees shall proceed in like manner prior to the adoption of an ordinance providing for the levy of taxes at a rate not in excess of 0.30% as if the board of trustees had followed the procedures to adopt an ordinance not in excess of 0.125% of the value of all taxable property within the district as equalized or assessed by the Department of Revenue.

The board of trustees shall provide by ordinance for the levy and collection of taxes at a rate not in excess of 0.30% of the value of all taxable property within the district as equalized or assessed by the Department of Revenue. A certified copy of

such ordinance shall be filed in the office of the county clerk of each county in which any portion of the territory of such fire protection district is situated, which certified copy constitutes authority for the clerk or clerks in each case to extend taxes annually at the rate so provided against all of the taxable property contained in the fire protection district.

After such ordinance has been passed, it shall be published once within 30 days after its passage in one or more newspapers published in the fire protection district or, if no newspaper is published therein, it shall be published in a newspaper published in the county in which such district is located and having general circulation within such district. If no newspaper is published in the county having general circulation in the district, publication may be made instead by posting copies of such ordinance in 10 public places within the fire protection district. The publication or posting of the ordinance shall include a notice of (1) the specific number of voters required to sign a petition requesting that the question of the adoption of the tax levy be submitted to the voters of the district; (2) the time within which the petition must be filed; and (3) the date of the prospective referendum. The district secretary shall provide a petition form to any individual requesting one. The ordinance shall not become effective until 30 days after its publication or the date of such posting of such copies.

Whenever a petition signed by the electors of the fire protection district equal in number to 10% or more of the registered voters in the fire protection district is filed with the Board of Trustees thereof which has adopted an ordinance providing for such increase in the rate of taxes and such petition has been filed with the Board of Trustees within 30 days after the publication or the date of the posting of the copies which petition seeks the submission of such increase in

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the rate of taxes to an election, the Board of Trustees shall certify the question to the proper election officials who shall submit the question at an election in accordance with the general election law.

* * *

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It is my understanding that the rate ordinance adopted by the fire protection district in May simply repeated the provisions of the ordinance which had formerly been adopted, with the exception of dates. Where an amendatory ordinance reenacts the provisions of a previous ordinance, such portions as are repeated or retained, either literally or substantially, are regarded as a continuation of the old ordinance and not as the enactment of a new ordinance, and the amendatory ordinance will not affect rights, duties or liabilities accrued under the former portions of the ordinance which have been reenacted. (Village of Park Forest v. Wojciechowski (1963), 29 Ill. 2d 432.) Consequently, the reenacted ordinance should be regarded as a continuation of the old law, not as a new enactment. Further, rights, duties and liabilities which had accrued under the old ordinance, including the right to challenge by referendum, have not been affected by the new enactment.

In opinion No. 92-002, I discussed the policy upon which section 14 is based, and concluded that, when a fire protection district initially determines to increase its rate of levy to an amount in excess of .125 per cent, it was the intent

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of the General Assembly that the decision be subject to a "back door" referendum. Once the initial determination to increase the levy has been made, and either has not been challenged or has been approved by the electorate, however, it would be absurd to subject the district to a possible referendum on its levy each year, even though its rate remains within the limits adopted. The fact that the district in question needlessly reenacted the same rate ordinance should not subject the district to a second opportunity to challenge the rate ordinance.

It is my understanding that when the increased rate ordinance was originally enacted, it was not challenged by the electorate. Clearly, the ordinance would not thereafter have been subject to a "back door" referendum if it had not been reenacted. The subsequent reenactment of the ordinance is merely a continuation of the old ordinance, both in law and in fact. Therefore, it is my opinion that the ordinance is not now subject to challenge by referendum.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL