

Statutory Considerations for the Drafting of Bond Election Propositions

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Drafting Propositions Before 2019

Prior to certain statutory changes brought by the 86th Legislative Session, a municipality could draft a bond proposition to include as few or as many projects as it deemed appropriate.

The 2019 Legislature was intent on limiting the power of local governments to issue debt and took several different measures to do this. One of them was to pass legislation that set parameters for what types of projects could go under a single proposition. These parameters are still in effect and will apply to an upcoming November 2023 election.

Proposition Drafting Under the 2019 Legislation

As a result of the changes brought on by the 2019 bills, a proposition may include the financing of multiple facilities if the facilities serve the same “single specific purpose.” The term “single specific purpose,” here refers to multiple facilities that serve “*substantially the same purpose*”. As such, for multiple facilities to come under the same proposition, those facilities must serve substantially the same purpose.

“Substantially the Same Purpose”

There is no statutory definition for “substantially the same purpose.” The Attorney General has advised however that a local government may look to the statute that authorizes the use of bonds for the facility type in question to make that determination. Moreover, if two facilities are under two different statutes as regards bond financing, then it probably can be assumed that the facilities serve two different purposes.

For municipalities, it is not always useful to look at the financing statutes for guidance. This is because some purposes are treated under separate statutes, e.g. utilities and airports, and then there are also statutes that lump facilities that would seem to have different purposes together, e.g., entertainment venues and “other municipal building[s]”. That is, the financing statutes are not always consistent with what common sense might suggest.

In these cases, it is also useful to look at the statutes that grant municipalities the authority to carry out different functions, apart from the ability to finance those functions. Examples of this include:

1. Civic centers
2. Parks and cultural resources
3. Public safety facilities
4. Public health facilities
5. Water and other utilities and
6. Transportation.

There is a potential for ambiguity, for example, in categories 2 and 5 above. Where there is ambiguity, it is always advisable to ask the Attorney General's Public Finance Division for guidance on specific questions.

A Building Serving Multiple Functions May be Under a Single Ballot

The Attorney General has advised that “political subdivisions [except for certain school districts] are not required to use separate bond propositions when seeking to construct one facility that serves multiple functions. Generally, construction of one facility serving multiple functions may constitute a single specific purpose.” As such, there can be a single proposition for a building serving as a City Hall and a library, for example.

Economic Development Bonds

If the Charter's authorization for the issuance of debt extends to the issuance of bonds for economic development purposes, bonds may be issued to finance Chapter 380 programs. These bonds must be approved at an election however, and most likely would need to be under a separate proposition.