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MEMORANDUM

To: Seth Fleetwood  
Councilmember

From: Randall J. Watts  
Chief Civil Deputy  
Prosecuting Attorney

Re: Mini Initiative put forth by Brett Bonner

Date: May 27, 2009

RECEIVED

MAY 27 2009

WHATCOM COUNTY  
COUNCIL

*Fleetwood*

DISTRIBUTED TO

MAY 28 2009

ALL COUNCIL MEMBERS  
WHATCOM COUNTY COUNCIL

QUESTION: Is the mini initiative proposed by Brett Bonner a proper subject matter for an initiative?

ANSWER: No.

REASONING:

The initiative power is found in the Whatcom County Charter Article 5. Section 5.10 is a very broad statement reserving to the people the initiative power. It covers any act, bill or ordinance, see Section 5.20. At first blush it would appear to cover our situation and thus allow for an initiative.

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**May 27, 2009**

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However, this facet of Constitutional law has been addressed in our courts on several different occasions. A seminal case is Save Our Park vs. Clallum County, 74 Wn.App. 637, 875 P.2d 673 (Jan. 1994). On page 644 the court ruled:

The presence of board initiative power in a County Home Rule Charter does not however justify unlimited application of that power. Initiative powers under a county charter must be consistent with the Constitution and laws of the State of Washington. Const. Art. 11, Section 4. ("any county may form a 'home rule charter for its own government subject to the Constitution and laws of this state' "). (Citations omitted). Therefore, the ordinance proposed by initiative in this case must comply with any limitations placed on the initiative power by the state. (Emphasis mine).

QUESTION:

What are the limitations placed on initiatives by the state?

1. The power to adopt legislation through initiative is limited to legislative acts as opposed to administrative. See Bidwell vs. Bellevue, 65 Wn.App. 43, 827 P.2d 339 rev. den. 119 Wn.2d 1023, 838 P.2d 690 (1972).

2. If the legislature statutorily delegates a particular power to the legislative body or legislative authority of a city or county government, initiative and referendum are precluded. See Whatcom County vs. Brisbane, 125 Wn.2d 345, 884 P.2d 1326 on page 350 the Court ruled: "Referendum rights do not exist when power has been statutorily delegated to the legislative authority." See also Citizens for a Financially Responsible Government vs. Spokane, 99 Wn.2d 339, 345, 662 P.2d 845 (1983).

So the question is, where is the authority to act delegated by the State? And is that act legislative or administrative?

RCW 84.55.120 clearly places the authority into the hands of the County's legislative authority or the taxing district's governing body. That being said, it comes under the second limitation mentioned under the initiative in that since it is given to a governing body it is not subject to an initiative or a referendum.

In fact RCW 8.4.55.100 places the responsibility for calculating the levy in the hands of the assessor. Thus, it is not a legislative act. It is an administrative act. This is an administrative act which is captured in an ordinance. The limits of the act are established in state law. Whether the County wishes to capture and retain the excess levy is set out in state law and the authority is granted to the legislative authority.

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SUMMARY:

The initiative power while broad is not unlimited. The act must be legislative in nature and the authority to act must be placed in the County itself and not in county's legislative body. The statute in play here puts the act in the hands of the legislative authority. And the act of establishing the levy in the first instance is an administrative act of the assessor. Thus, it is not legislative. Based on either of these basis, an initiative would not be a proper avenue.

I think there is another independent avenue which is the fact that this is an area which has been occupied by the State. They have adopted very specific regulations with regards to it and thus the County is prohibited from adopting ordinances which are inconsistent with that. You can find that type of reasoning in the area of clean air act. It is a field which has been preempted by the State. Thus, not an avenue for local legislation.

I hope this answers your question. If not, please do not hesitate to contact me

RJW:tz