



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

November 15, 2002

The Honorable Sid Snyder
Washington State Senate
PO Box 40019
Olympia, WA 98504-0019

The Honorable Jim West
Washington State Senate
PO Box 40006
Olympia, WA 98504-0006

The Honorable Clyde Ballard
House of Representatives
PO Box 40600
Olympia, WA 98504-0600

The Honorable Frank Chopp
House of Representatives
PO Box 40600
Olympia, WA 98504-0600

Re: Initiative 776

Dear Senators Snyder and West and Representatives Ballard and Chopp:

This letter is to provide you with background information on issues involving the implementation of Initiative 776 with respect to local option transportation taxes. On its effective date of December 5, 2002, Initiative 776 will have the immediate effect of repealing the authority to impose any new local option motor vehicle excise taxes and license fees. It will also have the immediate effect of discontinuing license fees in some counties.

However, the fact that Sound Transit and King County have pledged certain local taxes and fees to bondholders to repay bonds has created contractual obligations that will limit its application to those taxes and fees during the time those bonds are outstanding. Under well established constitutional law, governments cannot breach their contracts by refusing to collect taxes or fees to the detriment of bond purchasers who relied on those revenues in making their financial investments. We are still reviewing the nature and scope of those contractual obligations, the length of time and extent to which the constitutional law prohibiting the impairment of contracts requires these taxes and fees to be collected, and how the revenues are to be applied by the local agencies.

At this point in our review, we are able to provide the following information:

Initiative 776 will have these immediate impacts on local option vehicle excise taxes and fees:

- transit authorities will be prevented from imposing new motor vehicle excise taxes;
- all counties will be prevented from imposing new license fees on vehicles registered in the county; and



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- existing local license fees on vehicles in certain counties, including Snohomish County, Pierce County and Douglas County, will be discontinued.¹

However, both the federal and state constitutions contain provisions that are intended to prevent governments from refusing to meet legitimate financial obligations that are embodied in contractual promises. The Washington Supreme Court has specifically held that the authority to collect a pledged tax cannot be retracted, even by a duly enacted state law, so long as there are bondholders who have outstanding bonds and any failure to collect the tax would diminish the value of those bonds by any degree. The Court noted that to refuse to collect the tax in these circumstances would violate the constitutional provisions prohibiting the states from passing any law that impairs the obligation of contract. See Article I, § 10 of the United States Constitution and Article I, § 23 of the Washington State Constitution.

In the Voters' Pamphlet explanatory statement describing the effects of Initiative 776 if it were enacted into law, we informed the voters that the repeal of the authority to impose these local taxes and fees would be subject to these constitutional provisions, noting:

[S]tate and federal constitutional provisions may require repealed taxes or fees to continue to be collected, to the extent bonds have been issued pursuant to law pledging collection of specific taxes or fees, and to the extent that the value of those bonds would be diminished by the new law.

We are aware that in two instances the revenues from existing local motor vehicle excise taxes and local license fees were pledged to the repayment of bonds. A statute in effect before the enactment of Initiative 776 authorized Sound Transit to submit to their voters a ballot proposition to impose an excise tax on the value of motor vehicles. See RCW 81.104.160. Another statute specifically authorized Sound Transit to pledge those revenues to retire bonds. See RCW 81.104.180. According to information from Sound Transit, bonds were issued in 1999 with the pledge that, so long as the bonds were outstanding, the pledged taxes would be collected and the revenues would not be redirected to any other purpose.

The second instance involves King County. Before the enactment of Initiative 776, RCW 82.80.020 permitted counties to impose a license fee of up to \$15 per vehicle registered in the county. The legislature provided authority for these fees to be pledged to the repayment of local government general obligation and revenue bonds. We understand the Department of Licensing has been advised that King County sold just over \$38 million in such bonds backed by the local vehicle license fee imposed by King County.

The basic constitutional principle that applies to taxes and fees that are lawfully pledged to the repayment of bonds is clear. See *Municipality of Metro. Seattle v. O'Brien*, 86 Wn.2d 339 (1976) (where METRO issued bonds that pledged its local motor vehicle excise tax revenue for repayment, and the legislature subsequently repealed the local taxes, the Court held the local taxes had to continue to be remitted to METRO); and *Ruano v. Spellman*, 81 Wn.2d 820 (1973) (holding an initiative could not terminate the public Kingdome stadium project when bonds had

¹ We have read press reports that some of these counties are looking at whether there is a legal basis for continued collection; we are not aware of any basis for these counties to continue to collect. According to information received by the Department of Licensing, the revenues in these counties were not pledged to the repayment of bonds.

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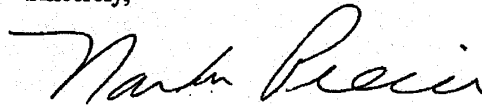
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already been issued and the initiative would impair the obligation of contract with the bondholders).

However, broad principles rarely address all of the issues in such complex matters. Therefore, we will be working with the appropriate officials to look at the details of the bond obligations and local governments' use of these revenues. After that review, we will be in a better position to determine the best way to assure that Initiative 776 is implemented to its full extent that is consistent with the contractual obligations to the bondholders.

Please feel free to contact me if you have any questions or would like additional information.

Sincerely,



NARDA PIERCE
Solicitor General
(360) 664-9018

NP/bw

cc: Senator Lisa Brown
Elaine Rose, Sr. Asst. Attorney General