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MEMORANDUM
September 28, 2004

TO: Surface Transportation Advisory Committee
FROM: Legal Department
SUBJECT: County Transportation Excise Tax (A.R.S. §42-6107)
CC: Fred Carpenter, Town Manager
LaRon Garret, Public Works Engineer

The Surface Transportation Advisory Committee ("Committee") has requested answers to several questions concerning the County Transportation Excise Tax. Before addressing the Committee's specific questions, this memorandum presents a brief overview of the County Transportation Excise Tax and its funding mechanism, as well as the specifics of the 1994 Gila County County Transportation Excise Tax.

Overview of the Tax -

A.R.S. §42-6107 allows county voters to approve the imposition of a County Transportation Excise Tax ("Tax"). Copy attached. The revenues from the Tax are deposited in the County's Regional Area Road Fund ("Fund"). Monies in the Fund are distributed monthly by the State Treasurer to the County and individual cities/towns "in the manner that is determined by the board of supervisors before the election and that is described in the publicity pamphlet for the election." A.R.S. §28-6392(A), copy attached.

Overview of Gila County's Tax passed at the November 8, 1994 Special Election -

At a Special Election in 1994, Gila County voters approved a Tax. Although the August 18, 1994 resolution calling the election did not explicitly state that the monies raised by the Tax were to be used exclusively for roads in the unincorporated portions of the County, that appears to be the general intent of the resolution adopted by the Board of Supervisors. There were not any specific references to

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providing incorporated cities or towns with any of the monies collected.¹ Additionally, although the County could not provide Town staff with a copy of the publicity pamphlet, the ballot language appears to confirm that the purpose of the Tax was for the improvement of county roads.² Over the past nine plus years, the County has been using the money raised by the Tax for the purposes of improving County roads. None of the monies have been distributed to the incorporated cities/towns within the County.

Committee Questions -

- 1) Could the County Board of Supervisors ("Board") change the allocation of the monies received from the Tax so that cities/towns directly receive some of the monies? No. The funds may only be distributed in the manner determined by the Board "before the election." See A.R.S. §28-6392.
- 2) Could the Board place a new Tax on a future ballot that would replace the existing Tax? Yes. There does not appear to be any statute prohibiting the Board from putting a new Tax before the voters, that if passed would replace the existing Tax. Prior to putting this potential new Tax before the voters, the Board could determine that any proceeds would be allocated differently (i.e. some directly to cities/towns) from the 1994 Tax.
- 3) Can the Town get a replacement Tax on the ballot via the initiative process (A.R.S. §19-141)? No. The Town is not an elector for the purposes of the initiative process and therefore could not file for an initiative. Additionally, the Town is prohibited from using its "personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections." See A.R.S. §9-500.14. By attempting to get a County wide initiative on the ballot, the Town would be, in fact, using its resources to influence an election.
- 4) Can an individual citizen get a replacement Tax on the ballot via the initiative process (A.R.S. §19-141)? Yes. The power of initiative reserved to the people is very broad and does not have the limitation placed upon other direct powers of the people such as referendum.³ But even if a replacement Tax is put on the ballot via initiative and passed by the voters, the funding distribution limitation of A.R.S. §28-6392 remains. As stated above, all monies collected pursuant to the Tax can only be distributed in a manner determined by the *Board* prior to the election. This gives the Board the power to effectively scuttle the replacement Tax by passing a resolution prior to the election stating that all monies collected would be spent in the same

¹ Language from the resolution includes the following "streets and roads in the unincorporated areas . . . streets and roads in the unincorporated areas."

² "A YES (Approval) vote shall have the effect of approving funds solely and only for highway, street, and road purposes, including costs of right of way acquisitions and expenses related thereto, construction, reconstruction, maintenance, repair and roadside development of *county* roads, streets, and bridges, to be provided by a transportation excise (sales) tax." (Emphasis added)

³ "The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose *any* measure . . ." Arizona Constitution Art. 4 Pt. 1 §1(2) (emphasis added).

manner as the 1994 Tax. Or, if the Board failed to take any action prior to the election, the monies would not be able to be distributed for any purpose.

- 5) Can the Town formally request that the Board pass a resolution placing a replacement Tax on the next ballot that would provide for the direct distribution of a portion of the funds to cities/towns? Yes. There is nothing that prevents the Town Council from passing a resolution asking the Board to pass a replacement Tax and to allocate a portion of funds directly to cities/towns. This resolution would be not be binding upon the Board, but would clearly set forth the Town's position.

Summary -

The only effective way to get a portion of the Tax proceeds distributed to the incorporated cities/towns within Gila County is for the Board to pass a new resolution (1) calling for a vote on a replacement Tax and (2) explicitly allocating a percentage of the Tax receipts to the cities/towns.