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A SUPERMAJORITY REQUIREMENT FOR WAYNE COUNTY TAX INCREASES

A question scheduled to appear in Wayne County on the August 4, 1998, primary ballot as Proposal A is the issue of whether a supermajority should be required to pass any increases in county taxes. Section 3.115(13) of the Wayne County Charter would be amended to include the following language:

> Any proposal for a tax increase must be approved by a 2/3 vote of commissioners serving to be placed on the ballot and approved by a vote of more than 60% of the qualified electors of Wayne County voting thereon in order to be adopted. Renewals of a previous tax increase or a previous increase in the total property tax limitation may be placed on the ballot by a majority vote of commissioners serving and may be adopted by a majority vote of the qualified electors of Wayne County voting thereon. This amendment will take effect on January 1, 1999.

Current Tax Increase Requirements

Creating a supermajority requirement would go beyond what is currently required for a local unit of government to levy a new tax or increase the rate of an existing tax. Pursuant to adoption of the Headlee Amendment in 1978, two things must occur for a local unit of government to levy a new tax or increase the rate of an existing tax. First, the legislative body must pass a resolution placing a question on the ballot. Second, pursuant to Article 31 of Section IX of the Michigan Constitution, the question must be submitted to the voters for their approval. Specifically, Article 31 states:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without approval of a *majority of the qualified electors* of that unit of Local Government voting thereon…. [Emphasis added]

In light of the language in Section 31, a legitimate question exists as to whether a county charter can modify the majority requirement provided for in the State Constitution. The Wayne County Election Commission raised this question, in its decision not to certify this question to be placed on the ballot. However, while a 60 percent vote requirement might be unconstitutional, the County may have some latitude in placing a 2/3-vote requirement on the Board of Commissioners.

The Taxes Affected

This proposed amendment would affect only taxes levied by county government. These supermajority requirements would not apply to property taxes levied by cities, villages, townships, schools, or special authorities. The city income taxes levied by Detroit, Hamtramck, or Highland Park would not be affected, nor would the Utility Users Tax levied in Detroit. These requirements would not apply to the fees and special assessments levied by the county or any other local unit of government.

Michigan counties are authorized to levy only three kinds of taxes: real estate transfer taxes, taxes on hotels and automobile leasing companies, and property taxes. Counties cannot levy income taxes, sales taxes, or highway-user taxes such as a gas tax.

Wayne County currently levies a *Real Estate Transfer Tax* at a rate of 75 cents per $500 of total value. Wayne County is the only county authorized to levy this tax at a rate higher than 55 cents per $500. An increase in the rate of this tax would not be possible without action by the state legislature.

The *Stadia and Convention Facility Taxes* are also levied at their statutory limits: two percent of gross receipts from automobile leasing or renting and one percent of gross receipts from hotel room rentals. These tax revenues are dedicated to funding construction of a new baseball stadium; therefore the tax rates could not be increased to fund another county service.

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The 1997 Wayne County *property tax* rate totaled 7.9290 mills: 5.7386 mills of charter millage and 2.1904 mills of extra-voted millage. State law and the Wayne County Charter authorize a tax levy of up to 10 mills, including 6.07 mills of charter millage that can be levied without voter approval. If supermajority requirements would apply only to the 3.93 mills (10 minus 6.07) available with voter approval, 1.7396 mills of which currently is not being levied.

The 2.1904 mills currently levied constitutes an average of about six percent of the total homestead tax rate and about four percent of the non-homestead total tax rate. Because the tax rates vary for taxpayers in different communities – due to city, village, township, community college, extra-voted school, and debt taxes being levied at different tax rates – county taxes do not represent a uniform percentage of total taxes for all properties. Due to these other tax rates, county property taxes constitute a minimum of four percent and a maximum of 11 percent of the total tax rate for homestead properties (three to six percent for non-homestead properties).

Arguments For and Against

The sole rationale for the adoption of a supermajority requirement for tax increases is to make it more difficult to raise taxes. Experience with these requirements by local governments in California and Maryland suggests that they are very effective in accomplishing this end.

Opponents argue that while supermajority requirements may make it more difficult to raise taxes, they also have negative consequences. First, they make it easier to create special tax breaks than to close them. It becomes more difficult to make adjustments in the overall tax package. A simple majority is all that is required to cut taxes, but a supermajority is for tax increases.

Supermajority requirements make it more difficult to respond to financial difficulties that might require additional tax revenues.

Supermajority requirements move away from the democratic principle of majority rule that is basic to government policymaking.

Finally, supermajority requirements can be less than effective because policymakers often look to alternative revenue sources, not subject to these requirements, when additional revenues are needed. In the end, these alternative revenue sources may be less desirable than the property taxes. The experience in California has been that taxes and fees not subject to the supermajority requirements have increased in lieu of the taxes subject to these requirements and the Proposition 13 requirements.

Conclusion

Should Proposal A pass, its constitutionality is almost certain to be challenged, and even should it survive such a challenge, it will apply to a relatively limited degree of Wayne County taxing authority.