



Clatsop County

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LEGAL OPINION

December 11, 2020

TO: Board of Commissioners
County Manager Don Bohn
Assistant County Manager Monica Steele
Public Works Director Ted McClean

FROM: County Counsel Joanna Lyons-Antley

RE: Road District No. One – Tax Rate Use

On December 7, 2020, you received a letter from an attorney representing a group of citizens opposed to the Resiliency Plan; specifically, opposition to the purchase of the Lewis & Clark Mainline Road and the “Sorting Yard” for relocation of the Public Works Department. The attorney, Mike Sargetakis, states that the County may not use its Road District #1 tax monies or gas tax monies to fund the proposed relocation.

The Sargetakis letter appears to conflate the laws and regulations on special districts, tax levies, Measures 47 and 50, and the restrictions on expenditures.

As discussed below, the County has the legal right to use the tax monies for the proposed relocation of the Public Works Department for the following reasons: (1) “Clatsop County Road District 1” is not a special district and therefore, the restrictions cited by Sargetakis do not apply; (2) permanent rate tax revenues from Road District ~~No.1~~ may be used for the proposed relocation; (3) gas tax monies will not be used for the proposed relocation; and (4) even if the County could not utilize tax monies from “Road District #1” for the proposed relocation, the County may utilize its timber revenues for the proposed relocation.

Background

Road District Creation

Per a Legal Opinion by County Counsel Heather Reynolds, dated January 2020:

Clatsop County Road District 1 was created as one of the Clatsop County Court’s earliest acts (the first discernable record is Book 1, Page 4, Commissioner Journal, for which only the index remains), and is one of Oregon’s earliest road districts and has remained in place since then. Most other counties have abolished their county wide road districts.

So why did we have a Clatsop County Road District? According to the Association of Oregon Counties, the County Road Manual, the "road district" is a historic distinction for the purposes of funding:

In 1901 the legislature authorized all counties to levy a 10 mill (\$1/\$1000) tax for county road purposes in lieu of the kinds of taxes previously authorized. This statute continued the requirement for apportionment to road districts, although apparently no specific percentage of the proceeds was required to be apportioned to districts until 1903 (OL 1903 p. 262, section 34), when a 50 percent apportionment was required. It also continued the previous restriction against use of non-road tax money for road purposes. An annotation included for section 4829 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon (1902) says that the restriction impliedly repealed a statute permitting use of up to three mills from the general fund for roads.

Two features of those early laws that have survived in various forms to the present day are somewhat puzzling in the light of modern transportation financing policy. First, most counties have long since abolished their road districts in the interest of gaining flexibility in responding to county road needs (see manual Chapter 12), but state law still mandates that each incorporated city constitutes a separate road district, and the statutes still require that 50 percent of any road property taxes levied within "districts" (i.e., cities) be "apportioned" to those districts according to each district's percentage of the county's taxable property. See ORS 368.710(1). * * *

Second, the early prohibition against using county money for roads that has not been specifically levied for that purpose survives as ORS 368.705(3):

County funds derived from any ad valorem tax levy may not be used or expended by the county governing body upon any roads or bridges except:

(a) Funds derived from a levy within the permanent rate limit of section 11 (3), Article XI of the Oregon Constitution, or the statutory rate as provided in ORS 310.236 (4) or 310.237, *if a voter-approved county serial levy dedicated to road improvements was used in determining the rate limit*, or

(emphasis added).

1988 Tax Levy

In 1985, legislation (ORS 371.107) was passed that allowed Clatsop County and one or two other counties to enact a permanent tax base for their road districts. In 1988, the County passed a levy (Measure 4-4) for road purposes and that serial levy continued each year. The purposes of Measure 4-4 is further discussed below.

In 1997, Measures 47 and 50 removed the sunset provisions of levies and converted the serial levies into a permanent tax rate. Further, ORS 371.107 that allowed a levy for a road district was repealed in 1997. Therefore Measure 4-4 which enacted a serial levy, was converted into a permanent tax rate.

Timber Funds

In addition to the taxes from Road District 1, the County also receives timber funds pursuant State Forest Trust Lands. According to former County Counsel Heather Reynolds, Road District 1 receives timber funds because it levies a tax:

Because Road District 1 levies a tax, it receives a distribution from the State Department of Forestry (through the County Assessor) for revenue from timber sales of forest trust land located within the boundaries of the district (which is the unincorporated County). The revenue received is divided, pursuant to ORS 530.115(1)(c), between the taxing districts from which the timber was removed, in the proportion that the rate of tax levy in each district bears to the total rate of tax levy for all such taxing districts. The money is allocated to taxing districts but is not a tax. It is a share of sales proceeds.

It is likely that we still continue the Road District for the benefit of the receipt of the timber funds. The amount received since 2006 averages about \$1.3m.

County Road Funds

The Road District Fund is a fund that receives the revenues from the district taxes and timber revenues. These revenues are distributed to the Road Administration, Road Maintenance and Construction and Road Contingency funds.

1. “Clatsop County Road District No. 1” is not a special road district.

Attorney Sargetakis stated, “While a special road district may transfer funds to the County, it may only do so in accordance with its levy.” Sargetakis Letter dated December 7, 2020, p. 2. According to the research by Heather Reynolds, Clatsop County Road District 1 is not a special road district formed under ORS 371.305. Further, since there are no formation documents for a county service district under ORS chapter 451, I do not believe that Road District 1 is a county service district.¹

This distinction is important because the statutes, cases, and analysis about a special district do not apply to this situation. As such, the assertion by Attorney Sargetakis that a special road district may only transfer funds to the County in accordance with a levy does not apply.

2. Tax revenues from Road District 1 may be used for the proposed Public Works relocation.

Attorney Sargetakis alleges that the revenue from Road District 1 is restricted because the levy (Measure 4-4) enacted in 1988 limited the expenditures to maintenance only.

As discussed above, the County enacted a serial levy (Measure 4-4) for road purposes. This levy continued until it was converted into a permanent tax rate in 1997. The Clatsop County Measure 4-4 states the following:

¹ The County Budget states that the Clatsop County Road District 1 is a service district, a type of a special district formed under ORS chapter 451. This will need to be corrected in the budget documents.

CLATSOP COUNTY ROAD DISTRICT NO. 1

MEASURE 4-4

TO ESTABLISH A NEW TAX BASE

QUESTION: Shall Clatsop County Road District No. 1 establish a new tax base of \$841,750.00 effective in the 1988-89 fiscal year?

EXPLANATION: Clatsop County Road District No. 1 has a current tax base of zero (0) dollars and depends on yearly levies to continue operations. The levy for 1987-88 is \$925,000.00 and the district is proposing to establish a tax base of \$841,750.00 effective in the fiscal year 1988-89. Passage of this tax base would mean a reduction of \$83,250.00 from the serial levy previously approved by the voters for the fiscal year 1988-89. The proposed tax base will provide the means for continued maintenance of county roads and bridges and will assure the stability of long range programs such as bridge replacement, that involve federal and state matching funds and take over one year for completion.

YES 160 

NO 162 

First, to maintain county roads and bridges, the County incurs not only the direct costs of maintenance such as labor, materials and equipment, but also incurs indirect costs of storage and administrative oversight. Sargetakis argues that only direct costs of maintenance are allowed by the levy. The Sargetakis argument ignores the practicalities of the Public Works Department.

Second, the levy itself made it clear that the levy was not only to support maintenance of county roads but also long-range programs that take over one year to complete. It is ~~a~~ reasonable to assume that relocating the Public Works Department out of the ~~subduction-inundation~~ zone would be considered one of these "long range programs."

Lastly, in 1997, when the serial levy was converted to a permanent tax rate, it is not clear to me that the revenues raised from the permanent tax rate carried any restrictions from the 1988 levy.

3. Gas tax monies will not be used for the proposed relocation.

The County will not utilize gas tax monies for the proposed Public Works relocation, so this argument does not need to be addressed. Regardless, administrative and planning costs are a legitimate expense of gas taxes under Oregon Constitution Article IX, section 3a. See *Telecommunications v. Dept. of Transp.*, 144 P.3d 935, 341 Or. 418 (Or. 2006)

4. Even if the County could not utilize tax monies from "Road District 1" for the proposed relocation, the County may utilize its timber funds for the proposed relocation.

As discussed above, in addition to the taxes from Road District 1, the County also receives timber funds pursuant State Forest Trust Lands. These timber funds are unrestricted funds, meaning that the County may utilize these funds for any lawful purpose. Traditionally, these timber funds have been utilized for road and bridge purposes and utilizing the timber funds for the proposed relocation of the Public Works Department would be consistent with past use.

As a result, even if the Road District 1 funds must be spent on direct costs of maintaining roads and bridges, there are no such restrictions on the timber funds that have traditionally been allocated to the Road Fund. According to the County Finance Department, since 2006, Road District 1 has received and saved \$9.2m from the timber revenues. This amount is sufficient to pay for the proposed Public Works relocation.

Misstatements

In addition to the above clarifications, Sargetakis letter misstates the following:

- The County is ~~no longer~~ trying to purchase the south portion of what is known as the Lewis and Clark Mainline- from _____ to _____ which include tax lots 709190001200, 709300000200, 709310000300, 710360000100, 610010000400, 610010000700, and 610000000700 owned by L&C Tree Farms LLC and a portion owned by L&C TRS, LLC.
- The County has spent ~~minimal money~~ approximately \$79,000 out of pocket on the due diligence of the purchase of the Sorting Yard and the south portion of the Lewis & Clark Mainline-- nowhere near the alleged hundreds of thousands of dollars. ~~The~~ County staff has spent many hours planning on how to make the Public Works more resilient in the event of a major tsunami, but this planning is the responsibility of a proactive government.

As a result of the foregoing, the County has neither mismanaged, misappropriated or conducted misconduct as alleged by attorney Sargetakis.