



August 17, 2023

***Via Email***

Yuma County Board of Supervisors  
198 South Main Street  
Yuma, Arizona 85364

Re: Secondary Property Tax for Yuma Hospital District

Honorable Members of the Yuma County Board of Supervisors:

I understand that the Yuma Hospital District (“District”) recently transmitted its budget to the Yuma County Board of Supervisors (“Board of Supervisors”), asking the Board of Supervisors to approve another property tax to cover the District’s expenses for the new fiscal year. I am writing to urge you not to approve the property tax, which under Arizona law can be imposed only with voter approval.

A.R.S. § 48-1907(A)(6) authorizes a hospital district to “[i]mpose a secondary property tax on all taxable property within the district for the purpose of funding the operation and maintenance of a hospital... that is owned or operated by the district.” But the statute sets forth a precondition: “Prior to the initial imposition of such a tax a majority of the qualified electors must approve such initial imposition.” *Id.* Moreover, “[t]he continued imposition of such a tax must be approved by a majority of the qualified electors at least every five years from the date of the initial imposition.” *Id.* Yuma County voters have never approved (or even voted on) a property tax to fund the District.

Instead of presenting the issue to voters as the law mandates, it appears the District has been bypassing this requirement for the past two years, and is now attempting to do so again, by asking the Board of Supervisors to impose a tax on its own authority. But Arizona law gives the Board of Supervisors no such authority.

To be sure, the Board of Supervisors is charged with “levy[ing]... a tax which will... provide sufficient funds to meet the financial needs of the district.” A.R.S. § 48-1914(B). But this authority can only be exercised by the Board of Supervisors *after* “such a tax [has been] approved by a majority of the qualified electors.” A.R.S. § 48-1907(A)(6). The statute does not authorize the District to bypass clear voter approval requirements merely by presenting its budget to the Board of Supervisors.

Allowing the District to circumvent the voter approval requirements of A.R.S. § 48-1907(A)(6) so easily would defeat that statute’s purpose and would enable the District to “do indirectly what it is forbidden from doing directly”—something the government may not do. *See Cave Creek Unified Sch. Dist. v. Ducey*, 231 Ariz. 342 (App. 2013). Courts have held that the power to impose a tax is never implied, but must be specifically and directly granted by statute. *E.g. Maricopa Cnty. v. S. Pac. Co.*, 63 Ariz. 342 (1945). Here, the relevant statutes grant no power to increase property taxes for the District without voter approval as a necessary precondition.

It is well-established in Arizona that taxes for hospital districts must be voter-approved, unless they are for a purpose that is specifically exempted from voter approval. *See, e.g., Atchison, Topeka & Santa Fe Ry. Co. v. Ariz. Dep’t of Rev.*, 162 Ariz. 127 (App. 1989), *abrogated on other grounds, Bromley Grp. v. Ariz. Dep’t of Rev.*, 170 Ariz. 532 (App. 1991) (holding that “any hospital district... may impose a secondary property tax... provided it complies with § 48-1907(6)”); Att’y Gen. Op. I87-149 (explaining that “the authority to impose a tax for the operation and maintenance of a hospital is expressly conditioned upon approval of the voters”). There is no such exemption in this case.

It is also doubtful that a property tax, which the law authorizes only for “the purpose of funding the operation and maintenance of a hospital,” A.R.S. § 1914(A), is an appropriate means for funding the District’s proposed budget here, which overwhelmingly consists of fees, not for the District’s “operation or maintenance of a hospital,” but instead to finance ongoing litigation *against the hospital*.

In addition to these legal defects, it is troubling that when the District approved its new budget on June 29, 2023, it apparently did so without providing twenty-four hours’ notice to the public, and it posted a recording of the meeting only on Facebook, thus restricting access for anybody without a Facebook account. *See* A.R.S. §§ 38-431.01, 431.02(A)(3). Not only does this raise concerns about the District’s compliance with Arizona Open Meeting Law; it is especially inappropriate here, where the prospect of a tax affecting all Yuma residents calls for the utmost transparency and public accountability.

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For all of these reasons, I urge you to reject the proposed property tax. Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Thorpe".

John Thorpe  
Staff Attorney  
Scharf-Norton Center for Constitutional Litigation  
at the Goldwater Institute

cc:

Jon Smith  
Yuma County Attorney

Ian McGaughey  
Yuma County Administrator