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FILE NO. S-886

**CONSTITUTION:
Constitutionality of the
Referendum Procedure for the
Discontinuance of the County
Tuberculosis Tax**

Honorable James R. Burgess, Jr.
State's Attorney
Champaign County
Court House
Urbana, Illinois 61801

Dear Mr. Burgess:

This is to acknowledge receipt of your letter in which you raise a question concerning the constitutionality of the referendum procedure to discontinue the tax for the treatment of tuberculosis. In your letter you state that a referendum was held in the County of Champaign to decide the proposition: "Shall the tax for care and treatment of persons afflicted with tuberculosis be discontinued?" in accordance with section 29 of "AN ACT relating to the care

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and treatment of persons afflicted with tuberculosis and providing the means therefor" (Ill. Rev. Stat. 1973, ch. 34, par. 5131.) A majority of the votes cast on the proposition was in favor of discontinuance of the tax. However, said majority was less than three-fifths of the votes cast as required by section 29, supra. Noting that the referendum procedure outlined in section 11 of article VII of the Illinois Constitution of 1970 requires only a majority of the votes cast, you have asked whether three-fifths of the votes cast, or a simple majority, was required for the adoption of the proposition.

Stated differently, the issue you have raised is whether the referendum procedure set out in section 11(b) of article VII of the Illinois Constitution of 1970 applies to a referendum held under "AN ACT relating to the care and treatment by counties of persons afflicted with tuberculosis * * *".

Section 29 provides in pertinent part:

"§ 29. Any county which has adopted the provisions of this Act under Sections 21 and 22 or

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Sections 31 and 32 for the care and treatment of persons afflicted with tuberculosis may discontinue it by a referendum initiated by a petition signed by not less than 5% of the registered voters in each of at least 2/3 of the townships or road districts within the county. The ballot to be used for the submission of the proposition at the election shall be in substantially the following form:

Shall the tax for care and treatment of persons afflicted with tuberculosis be discontinued?	YES	
	NO	

If 3/5 of the votes cast upon the proposition are for the discontinuance, the board of directors shall proceed at once to close up the affairs of the board.
* * *

Section 11 of article VII of the Illinois

Constitution of 1970 provides:

"(a) Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law.

(b) Referenda required by this Article shall be held at general elections, except as otherwise provided by law. Questions submitted to referendum shall be adopted if approved by a majority of those voting on the question unless a different requirement is specified in this Article."

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It is my opinion that the procedure outlined in section 11(b) does not apply to a referendum authorized under section 29, supra. Section 11(b) is limited to referenda "required by this Article". See, Opinion S-806, September 4, 1974.

In Hooqasian v. Regional Transportation Authority, 58 Ill. 2d 117, a somewhat analogous issue was raised. Challengers to the Regional Transportation Authority Act argued that the procedure set out in the Act which allowed the elimination of spoiled or improperly marked ballots in computing the number necessary to constitute a majority ran afoul of the constitutional mandate for uniformity in the counting of votes in referendum elections contained in section 11(b) of article VII, which requires approval "by a majority of those voting on the question". The court answered at 58 Id. 136 as follows:

"The foregoing arguments advanced by plaintiffs are premised primarily upon the applicability of section 11(b) of article VII of the Constitution to the RTA referendum election. In our opinion,

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it was not applicable. By its terms, section 11(b) governs referenda 'required by this Article.' A review of article VII reveals that referendum elections are required in specified instances, including, among others, the changing of county boundaries and county seats (art. VII, sec. 2); the creation or elimination of county offices and the changing of terms of office and manner of selection (art. VII, sec. 4); formation, consolidation and merger of townships (art. VII, sec. 5); and various matters relating to home-rule units (art. VII, sec. 6). It is evident that the establishment of a regional transportation authority pursuant to the RTA Act is not a matter for which referendum is 'required' by article VII. The RTA referendum election was not held pursuant to section 11(b) of article VII, nor was it otherwise subject to its provisions. * * *

Upon an examination of article VII, it appears that the referendum for the discontinuance of a tax levy for the care and treatment of tuberculosis is not a matter for which a referendum is required under that article. Accordingly, it is my opinion that three-fifths of the votes cast, and not a mere simple majority, was necessary to adopt the proposition to discontinue the tax.

Very truly yours,

A T T O R N E Y G E N E R A L