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OPINION LETTER NO. 181-95

The Honorable Sheila Lumpe
State Representative, District 72
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Lumpe:

This opinion letter is in response to your question asking whether there can be a city park board as authorized by Sections 90.500 through 90.570, RSMo 1994, in a city having no annual property tax for local parks, but having a sales tax for local parks. Your specific question is:

If a city submits a local parks sales tax initiative to its voters pursuant to H.B. 88, would the city need to maintain some type of a park tax in order to function as an administrative park board as outlined under Section 90.500, RSMo, if the . . . sales tax is collected to the credit of the park fund in lieu of the park tax?

Sections 90.500 through 90.570 authorize certain cities or towns, after a majority approval by the voters therein, to levy an annual property tax for the establishment and maintenance of free public parks in the incorporated city or town, and providing for suitable entertainment therein. Section 90.500.3 provides the property tax collected is to be deposited in the park fund. When a city or town has established and is maintaining public parks pursuant to Sections 90.500 through 90.570, a board of directors (hereinafter the "park board") of nine members is appointed to supervise the parks. Pursuant to Section 90.550, the park board has the exclusive control of the expenditures of all money collected to the credit of the park fund. Section 90.550 provides in part:

[The directors] shall have the exclusive control of the expenditures of all money collected to the credit of the park fund and of the supervision, improvement, care and custody of said park. All moneys received for such parks shall be deposited in the treasury of said city or town to the credit

of the park fund and shall be kept separate and apart from the other moneys of such city or town and drawn upon by the proper officers of said city or town upon the properly authenticated vouchers of the park board. "

However, Section 90.510 authorizes the property tax levy to be reduced. Section 90.510 provides:

90.510. Public parks, maintenance.--In case of an increase in valuation in any year of the taxable property within any city, or whenever the common council of such city is satisfied that a lower rate will produce ample funds, it may reduce the levy herein provided for by levying a tax for the maintenance of said free public parks which in the judgment of said common council shall be sufficient for the maintenance of said free public parks throughout the year.

Your question basically asks if the park board created under Sections 90.500 through 90.570 continues to exist if no property tax for parks is levied as authorized in such sections.

A property tax levy for parks may not be necessary because of the authority to levy a sales tax for local parks. Conference Committee Substitute No. 2 for Senate Committee Substitute for House Committee Substitute for House Bill No. 88, 88th General Assembly, First Regular Session (1995) (hereinafter "House Bill No. 88") authorizes a city to levy a sales tax for parks. Section 8.1 of House Bill No. 88 provides a municipality may impose a sales tax in an amount not to exceed one-half of one percent, upon voter approval, for local parks or for storm water control or both. Section 8.3 of House Bill No. 88 provides:

3. All revenue received by a municipality or county from the tax authorized under the provisions of this section shall be deposited in a special trust fund and shall be used to provide funding for storm water control or for local parks, or both, within such municipality or county.

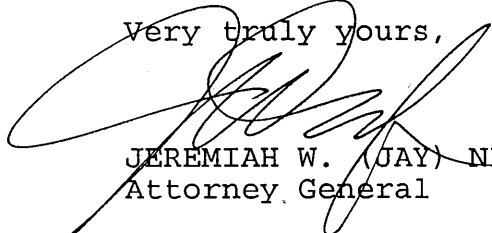
Section 8.5 of House Bill No. 88 provides in part:

. . . all expenditures of funds arising from the local parks and storm water control sales tax trust fund shall be by an appropriation act to be enacted by the governing body of each such municipality or county. Expenditures may be made from the fund for any storm water control or local park functions authorized in the ordinance or order adopted by the governing body submitting the tax to the voters.

In your question, you assume that the sales tax revenue is collected to the credit of the park fund. Section 8.3 of House Bill No. 88 provides that the sales tax revenue is to be "deposited in a special trust fund." Section 8.5 of House Bill No. 88 provides that expenditures of the sales tax revenue are to be by an appropriation act of the governing body of the city. Based on the question you pose, we assume the governing body of the city has chosen to appropriate the sales tax revenue from the "special trust fund" established by Section 8.3 of House Bill No. 88 to the "park fund" described in Section 90.550.¹

Your specific question asks if the park board continues to exist if no property tax for parks is levied. There is no provision in Sections 90.500 through 90.570 that causes the park board to be abolished even if no property tax for parks is levied. Therefore, it is the opinion of this office that a park board created under Sections 90.500 through 90.570, RSMo 1994, continues to exist even if no property tax for parks is levied.

Very truly yours,



JEREMIAH W. (JAY) NIXON
Attorney General

¹To address the question you pose, we do not need to address, and do not address, whether the governing body of the city could expend the sales tax revenue for park purposes and not transfer the sales tax revenue to the park fund.