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Drink Tax Referenda Questions: Ballot Incompatible

Presently weaving their way through the courts, the dueling referenda questions on the County's drink tax could both end up on the November ballot. But as our analysis shows that should not be allowed to occur. If by some happenstance they are both on the ballot, there are potentially serious conflicts arising out of the vote results. The problems will require extensive court involvement to resolve.

To recap, there are two questions possibly up for voters' consideration. The question crafted by bar and restaurant owners and circulated as a petition under the home rule charter as a referendum question (referred to herein as the "citizens' referendum") would, if passed, reduce the rate of the drink tax from 10 percent to no more than 0.5 percent. The Allegheny Institute believes this question meets the legal requirements to be on the ballot and should be on the ballot by itself.

The question crafted by Council (referred to herein as the "Council referendum") would, if passed, increase property taxes in order to repeal, not reduce, the drink tax. The Institute has explained at length why this question violates the law and should not be on the ballot.

Based on the current 2008 County budget, the drink tax is projected to bring in \$28 million (\$2.8 million per point) although recent projections now indicate it will bring in far in excess of the \$28 million budgeted. Property taxes are budgeted to bring in \$261.7 million in revenue (\$56 million per mill).

Here are the possible voting outcomes and problems of the votes should both questions appear on the ballot.

1. *"No" to both questions:* No conflict is created by voting results. Neither the drink tax nor the property tax rate would be affected.

2. *"Yes" to both questions:* Serious conflict arises in this case. On one hand, the drink tax is eliminated and property taxes rise to offset the revenue loss. On the other hand, the drink tax is set at no more than 0.5 percent and there is no instruction or requirement to raise property taxes, leaving the Council in the position of having to decide whether to find the votes to raise taxes or cut spending to offset the revenue

loss. How could a court sort out whether voters wanted to cut the drink tax with no concurrent increase in property taxes or whether they wanted higher property taxes to offset a drink tax repeal?

3. *Yes” to the citizens’ question, “no” to Council question:* Major problems arise. This means the drink tax must be cut to 0.5 percent or less but the property tax rate stays at 4.69 mills, unless the Council can muster 10 votes to raise the millage rate. At the same time, the no vote rejecting repeal of the tax creates a quandary. The court might decide the vote to roll back the drink tax to no more than 0.5 percent was tantamount to a repeal vote. In that case, there is a total impasse. One referendum calls for repeal and the other says no to repeal.

4. *“No” to the citizens’ question, “yes” to Council question:* The last scenario raises the most confusion should it actually come to pass. A “no” vote on the citizens’ referendum means that the drink tax stays at 10 percent. But then a “yes” vote on Council’s referendum means that property taxes would be raised to repeal the drink tax. Obviously, the two outcomes are completely contradictory.

Thus, of the four possible voting outcomes only “no” on both questions would give an ambiguous, non-conflicting result.

Putting both questions on the ballot would be an invitation to legal chaos. Those in charge of the ballot should not allow the Council question on the ballot. Council members who so choose can work to defeat the citizen referendum at the polls. Their competing question is ludicrous. The conflicting questions are akin to Council placing two referendum questions on the ballot at the same time asking first, “should we paint the courthouse red?” and second, “should we paint the courthouse blue?” How are the results to be interpreted if both questions are approved?

All of this confusion could be ended by Council simply removing its question (it is illegal anyway because Council is allowed to call only for referendum questions on Charter-related questions) and mustering up the courage to emphatically say to the public “if you vote to reduce or repeal the drink tax through the citizens’ referendum, we will raise your property taxes to fill the void”. They don’t need another referendum question to take such an action—but apparently they would rather obfuscate the issue and have voters somehow force a property tax increase. Obviously, Council has chosen to arrogate a power to themselves not provided for in the Charter.

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