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# COUNTY ADVISORY BULLETIN

**CAB**

*Published by: County Commissioners Association of Ohio*

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**BULLETIN 1992-01**

**MAY 1992**

## **NEW FUNDING OPTIONS FOR 911 PHONE SYSTEMS**

### **INTRODUCTION**

In 1985 the General Assembly enacted H.B. 491 which established a process and procedure for the establishment of 911 phone systems in the State Of Ohio. Since that time 44 counties have established 911 phone systems. Under the original legislation, the financing of the 911 system involved three primary partners as follows:

1. **TELEPHONE COMPANY**--A telephone company which had to make changes in its basic equipment and system is entitled to a tax credit against its public utility excise tax for the equipment and system upgrades necessary to accommodate the 911 system. To date companies have utilized \$27.4 million of the \$38.1 million authorized for the tax credit. This effectively means that the state has provided this amount of revenue to support the establishment of 911 phone systems. Of this total, the following amounts of the tax credit were used by year: 1987, \$2.9 million; 1988, \$8.2 million; 1989, \$9.7 million; 1990, \$4.5 million; and 1991, \$2.0 million.
2. **TELEPHONE SUBSCRIBER**--To pay for the maintenance of the telephone system portion of the 911 system, telephone companies are authorized to collect a monthly fee on the phone bill. Presently these monthly fees range from 12 to 56 cents per month.
3. **LOCAL GOVERNMENT COSTS**--The other costs of providing the 911 service are the responsibility of local governments. These costs are generally related to establishing, equipping, furnishing, operating, and maintaining public safety answering points (PSAP'S). The original legislation required that these costs be allocated in the final 911 Plan for the county among the political subdivisions in the county that were served by the PSAP. The law also authorized the enactment of a real property tax levy by the electors. In many counties this meant that the county became responsible for the local funding of the 911 system.

The General Assembly has now provided two more options for counties to pay for the local costs of a 911 system:

1. SPECIAL ASSESSMENTS--H.B. 418, sponsored by Representative Ross Boggs (D-Andover) became effective on August 12, 1991. It authorizes counties to levy special assessments on all improved property in the county. The assessment or charge is collected with tax bills, and must be a fixed amount irrespective of the size or value of the parcel of land or the number of phone lines serving the property.

2. 911 SALES AND USE TAX--S.B. 131, sponsored by Senator Richard Schafrath (R-Loudonville). This act authorizes county commissioners to submit to the electors the question of a permissive sales and use tax at the rate of either 1/4% or 1/2%. The tax may be levied exclusively for 911 phone systems, or the tax may be submitted to the electors for 911 along with one of the other specifically authorized purposes for which the sales tax may be enacted. At the present time, the bill is on the Governor's desk and we expect he will sign it. Counties interested in using this authority are urged to contact CCAO for the official effective date.

The purpose of this CAB is to explain the details of these two new funding options for 911 phone systems.

## **911 SPECIAL ASSESSMENT**

**(HB 418)**

### **PURPOSE OF THE SPECIAL ASSESSMENT**

The new law authorizes the county commissioners to fix and impose on each lot or parcel of real property in the county that is improved or in the process of being improved, a reasonable charge to be paid by owners of the property for the local costs of providing 911 phone service. The amount of the charge must be equal for all lots or parcels. The charge may be imposed on each lot or parcel that is owned by a person, municipality, township, or other political subdivision. The special assessment or per parcel charge may be used for the following purposes:

1. To pay the costs of establishing, equipping, and furnishing one or more PSAP's under an approved 911 final plan.
2. To pay the costs of operating and maintaining one or more PSAP's under an approved 911 final plan.
3. To pay for the expense of administering and enforcing the special assessment that is authorized by the legislation.

4. In addition, the law allows that the special assessment may be combined so that the assessment would be for any or all of the five authorized purposes--establishing, equipping, furnishing, operating, and maintaining the PSAP's as specified in a approved 911 final plan.

Counties may enact the special assessment for both capital expenditures and operational costs, or may simply impose the charge for the operational costs of the PSAP after it is up and operating.

## **ENACTMENT OPTIONS**

The special assessment is enacted pursuant to a resolution of the county commissioners. Commissioners have two options for the enactment of the special assessment:

1. **RESOLUTION SUBJECT TO REFERENDUM**--County commissioners may enact the resolution subject to a referendum during a thirty day period following the adoption of the resolution. If a referendum petition is then submitted the special assessment may not go into effect until the issue is approved by the electors at the next primary or general election.

2. **DIRECT SUBMISSION TO THE ELECTORS**--County commissioners may submit the question of imposing the special assessment directly to the voters at the next general or primary election. The resolution must be submitted to the board of elections at least 75 days prior to the general or primary election. Counties wishing to submit the question to the electors should be aware that a problem with the law may make it impractical to use this method. This will be discussed in greater detail later in this CAB.

These options for enacting the special assessment are very similar to the options counties now have for enacting permissive sales taxes. It should be noted, however, that there is no authority to enact the 911 special assessment as an emergency measure.

## **ENACTMENT PROCEDURE**

The procedure to enact the 911 special assessment is very simple. The law requires that the resolution must be adopted at a public meeting held in accordance with the sunshine law. Before adopting the resolution, county commissioners must hold two public hearings on the proposal. Before the first hearing is held, the county must publish a notice of the public hearings in a newspaper of general circulation in the county once a week for two consecutive weeks. This notice must include a listing of the amount of the special assessment proposed and the date, time, and location of each public hearing.

The law also includes a requirement that the county commissioners must adopt the resolution within 60 days after the receipt of the 911 final plan submitted to them by the 911 planning committee, and the special assessment resolution must become effective before the commissioners approve the final plan.

## **COLLECTION OF SPECIAL ASSESSMENT**

To collect the special assessment authorized by the new law, county commissioners certify the charges to the county auditor, who places them on the real property tax duplicate. The assessment is then included on the property tax bill and becomes a lien on the property so assessed. When collected, the revenues derived from the special assessment are placed in a separate fund in the county treasury to pay the costs that were authorized in the resolution establishing the special assessment. This may include the cost of administering and enforcing the special assessment if this purpose was authorized in the resolution. Commissioners should work closely with their auditor in this regard to assure that reasonable administrative costs are included when the amount of the special assessment is established, and to assure that they clearly understand the amount of time that the auditor will need to place the special charge on the tax duplicate.

## **OTHER PROVISIONS OF THE LAW**

In addition to these major provisions of the new law, certain other provisions of the law are important to understand. It should be stressed that some of the amendments contained in the act are difficult to understand and seem to conflict with each other. For these reasons a board of commissioners should work closely with its 911 planning committee, with the county auditor, and with the county prosecutor to assure that the new authority contained in the law are properly implemented. Following are some of the other provisions of the law and commentary on some of the sticky provisions of the law:

1. CHANGE IN THE AMOUNT OF THE SPECIAL ASSESSMENT--The law grants broad authority to the county commissioners to change the amount of the charge when the board of commissioners "considers it advisable." It appears that there is no requirement to hold public hearings on this change or even to give notice of such an impending change. The probable intent of this provision is to allow a reduction in the amount of the charge when a county initially enacts the special assessment for the five authorized purposes and then wants to reduce the amount of the assessment when the major cost of establishing, equipping, and furnishing the PSAP is complete.

2. ISSUANCE OF DEBT FOR 911--The law authorizes counties to issue debt for the establishment of the PSAP's. If it is anticipated that debt will be issued to establish, equip, or furnish a PSAP, the resolution enacting the special assessment must declare that bonds or notes will be issued in anticipation of the collection of the special assessments. In a similar vein, the county auditor, when placing the special assessment on the tax duplicate where debt is issued, must include interest at the same rate as that to be paid on the bonds that are issued in anticipation of the collection of the special assessments.

3. CONTENTS OF NEW 911 FINAL PLANS--Under the original 911 law, the final plan had to include a formula by which the costs of establishing, equipping, furnishing, operating, and maintaining each PSAP would be allocated among the political subdivisions served

by the PSAP. The law now requires the plan to include a provision where the 911 planning committee determines whether the local costs should be funded through a special assessment or by an allocation formula among benefitting subdivisions. It also appears that the law authorizes partial funding through a special assessment and partial funding through charges to political subdivisions. The important point, however, is that the plan must include a provision for the use of the special assessment in order for the county commissioners to legally enact the charges.

4. AMENDMENTS TO EXISTING 911 PLANS--The law authorizes counties which already have 911 systems in place to amend their plans to re-prescribe the funding of PSAP's using the new special assessment. This may be an opportunity for counties and other political subdivisions who participate in the funding of PSAP's with general fund dollars to free up funds for other purposes and move to a more user based system of funding.

In addition, an amendment to ORC Section 4931.45, which deals with amendments to final plans, states: "Adoption of any resolution under Section 4931.51 of the Revised Code (the section that authorizes the county commissioners to levy a special assessment for 911) pursuant to a final plan that both has been adopted and provides for funding through charges imposed under that section is not an amendment of a final plan for the purpose of this division." It appears that the intent of this provision is to apply to the situation where the commissioners change the amount of the special assessment after the original assessment has been imposed.

The point that again needs to be stressed is that the imposition of the special assessment by the county commissioners is initially contingent upon the inclusion of a special assessment provision in an initial or an amended final plan. Subsequent changes in the amount of the special assessment, however, are not considered amendments to the final plan that must go through the approval process established in statute.

5. SEQUENCE OF FINAL PLAN APPROVAL AND EFFECTIVE DATE OF SPECIAL ASSESSMENT RESOLUTION--Under existing law county commissioners must act to approve or disapprove a final plan within 60 days of its receipt from the planning committee. As was previously stated, the law has been amended to prohibit county commissioners from approving the plan until after a resolution enacting a special assessment has become effective (ORC 4931.44 [A]). Since ORC 4931.51 (D) provides that the special assessment resolution may not become effective for thirty days after its adoption, it is clear that commissioners must adopt the resolution at least 30 days before the end of the sixty day period they are given to approve or disapprove the final plan. Since inaction by the county commissioners within the 60 days is presumed to be disapproval of the plan, this timing problem could mean that a new planning committee would have to be convened and the process would have to start over again whether it is a new plan or an amendment to an existing plan.

Of even greater concern is, if the resolution enacting the special assessment becomes

subject to referendum or if the county submits the question to the electors, then it appears that the statutory deadline for plan approval by the county commissioners can not be met. In both cases the commissioners must act on the plan within 60 days of its receipt from the planning committee or the plan is disapproved, but on the other hand the new law precludes their acting on the plan until after the special assessment resolution is effective. There is no way to meet both deadlines.

## **911 SALES AND USE TAX**

### **EXISTING LAW**

Counties now have the authority to levy a permissive sales and use tax at a rate not to exceed 1 1/2%, and they may enact the tax in 1/4% increments. Of this 1 1/2% authority, 1% is levied pursuant to ORC Section 5739.021 and the additional 1/2% is levied pursuant to ORC Section 5739.026. While the 5739.021 tax is solely for use of the general fund, the tax authorized by Section 5739.026 may be used for five purposes as follows:

1. Convention facilities.
2. Mass transit.
3. County general fund.
4. Permanent improvements through a community improvements board.
5. Specific permanent improvements in counties with populations of 175,000 or less.

In the case of the tax enacted pursuant to ORC Section 5739.021 there are four ways to enact the tax:

1. Adoption of a resolution that is then subject to a 30 day period during which a referendum petition may be submitted. If the petition is submitted, the tax can not go into effect until after it is approved by the electors at the next primary or general election.
2. Direct submission of the question to the electors at the next primary or general election.
3. Adoption as an emergency measure. In this case the tax takes effect immediately and is then subject to repeal pursuant to an initiative process in any subsequent general election.
4. Adoption as an emergency measure with a provision that the issue will be placed before the electors at the next general election.

In the case of the ORC 5739.026 tax, these same procedures apply only to the situation

where the county commissioners enact the tax for the exclusive use of the county general fund. If the commissioners enact the tax for any other particular purpose or for any combination of authorized purposes, then the question must be submitted to the electors at the next primary or general election. Finally, counties that enact the sales tax pursuant to the sections noted above also must, at the same time, enact the permissive use taxes authorized pursuant to ORC Sections 5741.021 or 5741.023 as is appropriate.

In all cases, enacting the permissive sales and use tax requires public notice and public hearings. For the purposes of this CAB we will not detail these procedures, but counties should check with their county prosecutor to be sure they are in compliance with the requirements of law. In addition, the Ohio Department of Taxation and CCAO are available to review sales tax resolutions to help assure that they comply with the law.

## **SALES AND USE TAX AUTHORITY FOR 911 PHONE SYSTEMS**

The new authority to enact the sales and use tax for 911 phone systems was enacted as a sixth authorized purpose for the ORC Section 5739.026 tax. It may be enacted either at the rate of 1/4% or 1/2%. Under the statute, the purpose of the tax is to provide revenue for the implementation and operation of a 911 system in the county.

In all cases the levy of a permissive sales and use tax for 911 requires the submission of the question to the electors for their approval, and all normal hearing and notice requirements apply to the enactment of the tax.

Under the law, however, there are really two options for the enactment of a tax that can be used for 911 systems:

1. Single purpose 911 sales and use tax.
2. Multiple Purpose 911 sales and use tax.

### **SINGLE PURPOSE 911 SALES AND USE TAX**

If a county chooses to enact the tax solely for the purpose of a 911 system the tax may not be levied for a period of more than 5 years. In addition, at the end of the five year period, any balance in the special fund in the county treasury must remain in the fund and be used exclusively for the 911 system until all monies are expended for that purpose. The law also prohibits the commissioners from petitioning the court of common pleas to transfer any remaining money to another fund. The law also authorizes the rate of the tax to be increased from 1/4% to 1/2% as long as it does not exceed 5 years in duration.

### **MULTIPLE PURPOSE 911 SALES AND USE TAX**

If a county wishes to enact a sales and use tax for 911 purposes for longer than 5 years,

it must be levied along with one or more of the other five authorized purposes that were previously listed. For example, a county could enact the tax, subject to voter approval, for 911 and county general fund, or for 911, county general fund, and for permanent improvements, or for any other combination of authorized purposes.

In addition, in the case of a multiple purpose tax, the commissioners must establish the method that will be used to determine the dollar amount or percentage of total tax revenues received that will be distributed for each of the purposes. In developing this methodology, counties must specify the method that will be used each year, but the amount or percentage need not be the same each year. This provision is especially useful for 911 systems considering that the initial years will probably be more expensive because equipment will have to be purchased with only operating and maintenance costs the overall system cost should be less in subsequent years.

For example, a county that enacts the tax for 911 and for county general fund purposes could provide that 100% would be used during the first two years the tax is in effect, and thereafter would be allocated 60% for 911 and 40% for county general fund.

## **REVISED PUBLIC RECORDS PROVISIONS FOR 911 SYSTEMS**

S.B. 131 also includes a provision dealing with the disclosure of information in a 911 data base. ORC Section 4931.49 (E) was amended to make it clear that the only information in a 911 data base serving the PSAP that may not be disclosed is information concerning the telephone numbers, addresses and names of the people in the data base. Some counties had taken the position that they were prohibited from releasing recordings between dispatchers and callers. Such recordings are often requested by the news media. The amendment clarifies that most information with the exception of names, addresses, and phone number is public record subject to the public records law.

## **CONCLUSION**

The enactment of H.B. 418 and S.B. 131 provide additional tools that counties can use to establish and operate 911 phone systems. In the case of the authority to establish special assessments, there is the opportunity to use this method to free up general fund dollars for other programs and to move to a more user based system. While CCAO still feels the best way to fund 911 is through a surcharge on the phone bill, the telephone industry is still opposed to this idea. As a matter of fact, initial discussions concerning H.B. 418 involved a proposal by the sponsor to allow the charges to be collected on the phone bill. The new authority to enact a sales tax for 911 purposes provides additional flexibility to counties to obtain support for popular programs, but counties should take care and recall that the sales tax is the major source of revenue for future county general fund needs.