

## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

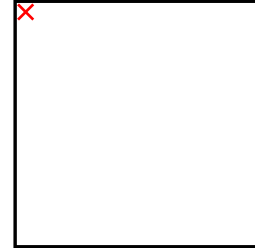
**To:** The Honorable Mayor and Council

**From:** Anja Wendel, Senior Assistant City Attorney AW

**Co-Submitter:** Sterling Solomon

**Date:** 12/04/2018

**Meeting Date:** 12/11/2018




---

#### TITLE:

**Consideration and Approval of Contract:** Contract with Ballard Spahr, LLP for legal services; authorize the City Attorney and any retained legal counsel to file an action to clarify the legal effects of Proposition 126 on the City of Flagstaff and other cities; and direct the City Attorney to prepare a contract for joint representation and cost sharing agreement with other cities.

#### STAFF RECOMMENDED ACTION:

##### Executive Summary:

Arizona voters passed an initiative known as Proposition 126 at the November 8, 2018 General Election ("Prop 126"). Prop 126 amends the Arizona Constitution to prohibit any new tax or fee on the privilege to engage in, or the gross receipts of sales or gross income, derived from any service performed in this state. However, the amendment does not repeal or nullify any tax or fee in effect on December 31, 2017. The term "service" is not defined. The term "in effect" is not defined. Prop 126 calls into question the validity of City voter renewal and/or approval of local transaction privilege tax rates ("sales tax"). City voters have approved a public transportation sales tax rate renewal (effective July 1, 2020) in the November 2016 general election, and in the November 2018 general election approved a transportation tax rate renewal (effective July 1, 2020) and a Lone Tree railroad overpass sales tax rate increase (effective July 1, 2019). The City anticipates it will be necessary to engage in litigation to clarify the scope of City taxing authority.

##### Financial Impact:

If Prop 126 is interpreted by courts to prohibit local sales tax rate renewals or increases, the City will be unable to fund public transportation, transportation road projects, and/or the Lone Tree railroad overpass. All City sales tax rates have a "sunset" clause and therefore will expire unless renewed. The local sales tax is a key source of general revenue for all City operations.

##### Policy Impact:

##### Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:

##### Has There Been Previous Council Decision on This:

##### Options and Alternatives:

1. Approve contract with Ballard Spahr, LLP for legal services. Other options: Retain another law firm. Seek only a legislative solution.
2. Authorize litigation. Other options: Do not authorize litigation, and instead seek only a legislative solution at state legislature.
3. Direct City Attorney to prepare a form of joint representation and joint cost sharing agreement with other cities. Other options: Do not join with other cities in litigation. Seek only a legislative solution.

Pros of recommended actions: City will have the benefit of working with other cities on a joint litigation effort. The expense of litigation will be shared with other cities.

Cons of recommended actions: Conflicts of interest may arise among cities due to different circumstances. If conflicts arise, such as at the appeal level, the City will need to obtain separate legal counsel.

### **Background and History:**

The City has never considered sales taxes to be a tax on services. However, others may argue differently.

### **Expanded Options and Alternatives:**

The City hopes to engage the community in a discussion on possible legislative solutions to limiting the financial impacts of Prop 126. The City anticipates pursuing parallel tracks: litigation and a legislative solution. Any legislative solution must further the purposes of Prop 126 and the support of the business community throughout Arizona will be needed.

---

**Attachments:**     Letter of Representation  
                              Presentation

### **Minutes Attachments**

*No file(s) attached.*

---