LEAGUE OF WOMEN VOTERS®
OF LOUDOUN COUNTY
P.O. Box 822, Leesburg, Virginia 20178
(703) 777-9425, http://www.loudoun.va.lwvnet.org/

Do Citizens Have Veto Power on Paying for Public Facilities?

October 1998

Loudoun County is one of the fastest growing areas in the U.S. Twenty-five years ago, Loudoun made planning and zoning decisions, which, combined with real estate market and banking conditions, put the County on a fast growth course, and now the county is straining to pay for new schools, public safety, and recreation facilities.

Controversies that have erupted in Loudoun over the two recently defeated bond referenda for the financing of public buildings have left the public confused about exactly what they are voting upon and about the power of their elected county representatives. In an effort to clarify the issue, the League of Women Voters of Loudoun County consulted a variety of legal and financial experts, an elected state representative, and numerous written documents to determine just what is going on.

The Virginia Constitution clearly states in Article VII, Section 10, that

> *"No debt shall be contracted by or on behalf of any county unless provision be made for submission to the qualified voters of the county … Such approval shall be a prerequisite to contracting such debt."*

Note that this language focuses on the contracting of the debt, that is the financing of a facility.

Those who work in the legal and public finance fields say they see no room for interpretation of the voters' rejection of a bond referendum as a rejection of the public building, road, or other capital improvement named in the bond question. It is not a veto of the project.

Mr. William J. Strickland, author of the Virginia Public Finance Act of 1991, says that he is not aware of any case law which expands the statutory language found in Title 15.2 of the Virginia Code. It is his opinion that "the applicable provisions of the Virginia Constitution and the Public Finance Act of 1991 provide that a bond election is authorized and required to obtain voter approval on the question of a county contracting debt and issuing general obligation bonds but not on the project itself."

If a bond referendum is approved by voters, then the monies from the sale of the bonds must be used for the project specified. The authority given to the local officials is to issue the bonds. They also have the option of not issuing the bonds and of using a funding source that does not require voter approval. In fact, an affirmative bond vote is no guarantee that the public facility will be built.

The recent controversy raised in Loudoun over failed bond referenda for a courthouse expansion and a new government building indicates that some citizens either believe that they are actually voting on whether or not to build the facility, or see the bond referenda as an opportunity to express an opinion about the facility.

That interpretation of bond referenda was acknowledged by the experienced state Representative whom the League consulted. Loudoun's State Senator Bill Mims noted that when a bond referendum is rejected, the voters may, in fact, be expressing their opinion of the project itself. Mims pointed out that an elected official should always try to determine the will of the people, including looking beyond the technical issue of whether the government should or should not contract debt for a particular facility.

Four instances of rejected bonds in Loudoun illustrate the range of options the local government has if they decide that the public facility should be built.

1. **Real Estate Tax Increase**: A raise in real estate tax over a period of three years was the way the local Board of Supervisors financed a court-ordered court improvement project in the late 70's. Twice, voters had defeated a bond referendum proposing court improvements, but judges have the power to order capital improvements as they see fit, and the local Board was ordered to improve Loudoun's courts to an acceptable level or be subject individually to contempt of court penalties. Loudoun improved its court facilities to comply with the order.
2. **New Revenue Source and Re-design**: In 1995, the failed referenda for the courts complex sent the county back to the drawing board on the location and the design of the buildings. With the likelihood of a court order, the supervisors did identify alternative funding. A one-time windfall revenue produced by switching to a biennial personal property tax collection was used for the project.
3. **Lease-Purchase Agreement**: The lease purchase method, which uses the certificate of participation, was selected by the Loudoun County Board of Supervisors to fund the County Government Center after a failed bond referendum in 1993.

An unsuccessful court challenge was filed. The fundamental question raised in the court cases is whether public money appropriated over a number of years, on an annual basis, for a particular public facility, is actual public debt. While the answer is technically no, a public facility is in the end, the result of the yearly payments. The payments are up to the discretion of the local official body each year, but it is widely acknowledged that it is unlikely such a lease/purchase agreement would be abandoned, leaving citizens without the facility.

The Loudoun case never went forward. A 1992 Virginia Supreme Court decision (Dykes v. No. Va. Transportation District Commission) affirmed that annual appropriations are a moral obligation for the local government to pay, but are not a legally binding requirement to fulfill each year.

4. **Revised Bond Referendum**: School bonds that were defeated early in the 1980's prompted a reduction in the number of building projects for a subsequent referendum. The voters supported the use of bonds for the revised price tag.

Other optional forms of financing capital projects which do not require voter approval are:

1. Revenue bonds for facilities which have a definable use and an identifiable revenue source. An example is a parking garage.
2. Special Assessment or Special Improvement District bonds issued to finance improvements that benefit a specific area. An example is a replacement sewer for a neighborhood.
3. Tax Increment Financing bonds used to promote economic development. Debt service on these bonds comes from the development revenues.
4. Leases of equipment or facilities on an annual basis with no ownership of the facility.
5. Designation of a specific tax for a specific project.

There are financial pros and cons for each method of public facility financing, as well as political considerations. Issuing general obligation bonds (GOB's) is the most economical way to finance large expenditures because repayment is spread over a determined number of years and does not require a dramatic rise in the annual real estate tax. The total cost is, however, increased with the debt service payments, much like a home mortgage based on a fixed rate of interest. This finance method also is the only way a sitting Board of Supervisors can obligate future boards to pay the incurred debt. It is a promise that payment on the GOB will be the first one made out of the current revenues.

The Supervisors also have options specific to the funding of school construction. The first choice is for GOB's for reasons given above. A less preferred choice is through Virginia Public School Authority bonds. In this case, the state issues bonds and uses the proceeds from these bonds to buy county bonds. The school board and the supervisors must agree on the project, and they must hold a public hearing, but a referendum is not required. Loudoun County has a fiscal policy to use this form only for elementary schools and smaller projects. This funding method was used for an elementary school recently when the need developed suddenly due to dramatically changing demographics as the county grows at a rapid rate.

Less affluent counties in Virginia can, without referendum, sell bonds to the Literary Fund, the Virginia Retirement System or any other state agency as prescribed by law. This fund method is not available to Loudoun County, however, because of its relatively high level of incomes and property values.

The conclusion of the Loudoun League research confirms that the local representatives have the authority to determine what public facilities will be constructed, when and how they will be financed. It is abundantly clear that the Virginia Constitution dictates that voters shall decide whether to assume long term debt, meaning bonds. The Constitution does not require direct voter approval of public debt other than for bonds. Voting on a referendum does not mean voting on the facility. It is voting for the method of financing.

Under the Virginia Constitution and the Virginia Code, County Boards of Supervisors are charge with the responsibility to acquire, whether by purchase or lease, land facilities, buildings, and services and to arrange for the method of paying for these government functions. They take an oath to protect the health, safety, and welfare of the citizens in their jurisdiction. The degree of the protection they provide is a political decision influenced by citizen requests, staff recommendations, and the individual sense of responsibility and philosophy held by each supervisor. Voters express their approval or disapproval through the election process. Elected officials must make many difficult and complex decisions and we, as citizens who elect them, have the responsibility to show informed participation in the democratic process.

Unless Loudoun County finds alternatives to real estate taxes as sources of revenue, referenda will be a feature of local elections for years to come. Within the next five years, our County will need $400 to $500 million to pay for schools, courts, and other public facilities. The League of Women Voters of Loudoun County encourages citizens to become informed about the issues facing them in the voting booth.

Resources:

Kirby Bowers - Loudoun County Administrator
The Honorable Julia Cannon - Judge, General District Court, former County Attorney
A.E. Dick Howard – Professor of Law, University of Virginia Law School
League of Women Voters of Virginia
Ben Mays – Loudoun County Budget Officer
The Honorable William C. Mims – Virginia State Senator
M.E. Poole, Jr. – Loudoun County Director of Finance
The Honorable Frank Raflo – State Commission on Local Government
John R. Roberts, Esquire – Loudoun County Attorney
Stephen P. Robin, Esquire – Former County Attorney
William J. Strickland, Esquire – author of The Virginia Public Finance Act – attorney with McGuire, Woods, Battle, & Boothe
Mary Jo White – Bond Counselor with Long, Aldridge & Norman

Written Resources:

Virginia Constitution: Article VII, Section 10
Virginia Code – Title 15.2
Dykes v. Northern Virginia Transportation District Commission, 242 Va. 357. 411 SE 2d1 (1991)
A.E. Dick Howard's Commentaries on the Revision of the Virginia Constitution, 1974
Virginia Public Finance Act
"An Elected Official's Guide to Debt Issuance" – pamphlet published by the Government Finance Officers Association, 1994