

Treasurer's Advice to the Board of Clallam County Commissioners

March 24, 2016

Opportunity Fund grants

1. For the BOCC to direct the County Administrator (and to secure Attorney General Opinions when in doubt) to ensure that:
 - a. Funds been appropriated consistent with Chapter 36.40 RCW.
 - b. The project qualifies for funding under RCW 82.14.370, Chapter 5.40 CCC, and County Administrative Policy 530.
 - c. The resulting contract meets the requirements of Title 39 RCW, Public Works.
 - d. See attached:
 - i. Correspondence received by Auditor & Treasurer from Jan Richardson.
 - ii. San Juan County 2014 Application and Project Proposal
 - iii. AGO 2001 No. 5
 - iv. AGO 2002 No. 1

670 Wheeler Rd
Sequim, WA
98382

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Ms. S. Riggs & S. Barkuis

223 East 4th Street

Port Angeles, WA

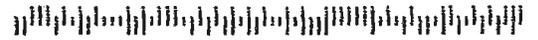
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FEB 29 2016

CLALLAM COUNTY AUDITOR

98362300099



Jan Richardson, Commissioner #5 Clallam County Park & Recreation
District
janrichardson41@msn.com

RECEIVED

FEB 29 2016

Ms. S Riggs / Ms. S Barkuis;

CLALLAM COUNTY AUDITOR

The H-VAV Grant of \$731,000 will be submitted to both offices (Assessors/Treasurers) this coming March 15, from the County Commissioners office on behalf of the YMCA & SARC; that number has not been verified by SARC's board. I, nor other board members know what the added 'domestic water & wastewater system is, let alone how much such a system would cost that's listed on the Grant. The estimated cost of an H-VAV system in 2014 was \$350,000.

In fact these same unsubstantiated numbers were presented to the Economic Development Corporation which used them to recommend the \$731,000 grant to the Opportunity Fund's board which recommend the County Commissioners give a private corporation, YMCA, and SARC public money ... after the public voted down two levies last year for SARC.

I was shown a draft of a contract proposal from the YMCA where ph.5c said, "SARC has no commercial value..." If that's the case, why would the YMCA need \$731,000 of public funds, or why would the public want to give \$731,000 to something that has no value.

My job, as is yours, is to protect the taxpayers ... just a heads-up; jan

Richardson
2-25-16

Jan L Richardson
Clallam County Park & Recreation District,
Commissioner #5
670 Keeler Rd.
Sequim, WA 98382
January 1, 2016

RECEIVED

FEB 29 2016

CLALLAM COUNTY AUDITOR

Clallam County Commissioners
223 East 4th Street
Port Angeles, WA
98362-3000

Dear Commissioners:

Clallam County Opportunity Fund's Board approval of a \$731,000 grant for an Air Handling Unit (H-Vac) for Clallam County Park & Recreation District's facility is a concern. I understand this grant is paramount to the YMCA's leasing and operation of the publicly owned recreational facility known as SARC; but, when SARC's Board hired a professional survey of the H-Vac system the estimated replacement cost was approximately \$350,000. The inflated budget presented to the Economic Development Corporation and the Opportunity Fund's Board was not seen or authorized by SARC's board, and there is no current contract between the YMCA and SARC. The Opportunity Fund Program is not there to provide a \$731,000 gift to a Private National 501c3 Corporation!

How does raising User Fees 100%, and serving fewer of the Community, as the YMCA's survey suggest 'Benefit the Public?' In conversations between boards, the YMCA seems to expect the use of a 34,00 square foot Publicly owned building fully equipped with \$670,000 of exercise machines gratis. They have balked at suggestions of \$100,000 a year minimum lease with the stipulation none of the existing equipment being sold or transferred to other facilities. So, Mr. Commissioners, the question remains; WHO benefits from a Public donation of \$731,000 so a Private 501c3 corporation can appear to be helping the community!

In an exploratory funding memo the YMCA sent SARC's Board November 2015, a notation under Capital Funding: Opportunity Funding of \$750,000 appears to have been solicited from County Commissioners. What I find disconcerting is the YMCA would be using Public money for remittance to their National Office, and members of both the Economic Development Corporation and the Opportunity Fund Board's have given donations to the YMCA. While those members may not have had to recuse themselves, the acknowledgment of donations would have lessen the impression of improprieties. Also alarming is that 15 to 20 percent of the Y's budget is, as one Opportunity Fund member said, "Pie in the sky!" unsecured donations. That same 15 to 20 percent is what SARC needed from the same population the YMCA will be begging to.

When the YMCA loses their franchise due to lack of secured revenue, even with the City of Sequim's \$90,000 ill conceived donation, how will you, the County Commissioners explain a padded \$731,000 grant for a \$350,000 piece of rusting machinery to the abused tax payers, who have voted down four previous levies to maintain SARC!

Sincerely;

February 26, 2016

Jan L Richardson
Clallam County Park & Recreation Dist.,
Commissioner #5
670 Keeler Rd.
Sequim, WA 98382

RECEIVED

FEB 29 2016

CLALLAM COUNTY AUDITOR

Clallam County Commissioners
223 East 4th Street
Port Angeles, WA 98362-3000

Honorable Commissioners:

A follow-up to my January 1 letter on the YMCA - SARC request for a Grant. My responsibility, as is yours, is to our constituents, and the motivations for the YMCA - SARC grant request gives me concerns. I find the YMCA, who has considerable land holding in Port Angeles request with SARC for \$731,000 of public money for a \$350,000 H-VAC system somewhat bizarre, in light of the Public's refusal to pass a levy to save SARC or schools twice last year.

The fact the YMCA has not bothered to submit a draft of an operational contract to SARC after six months of conversations is proof: 1) the YMCA wants the public sector to take as much of the financial risk as possible of managing SARC. 2) knows it cannot function without substantial yearly gifts from Opportunity Fund, City, OMC and others. 3) their submitted five year budget remains negative for those five projected years; which is added proof they can't maintain their stated goals of servicing All economic categories without item 2.

SARC's demise started in 1983 with two misconceptions: a pool could be self-supporting and the presumption the community cared. The YMCA is walking into the same mind-set trap that can be authenticated in newspaper article from the '80's tell today. Who the YMCA believes to be supporters are the same people who promised and reneged on SARC's endeavor. "A bird in hand..." The YMCA has no secured funding for 15 to 20 percent of their budget; they've lost sight of both the physical and

monetary competition for the community's limited discretionary dollar.

One constant throughout the years is expenses of operating a swimming pool, within state health codes, outreaches its' ability to generate revenue to maintain it. I have addressed my concerns to both YMCA's Executive Board, as well as SARC's, and both discount my research; Community newspapers, Bureau of National Statics, State / National Census, 57 Park and Recreation State districts and recreational associations. I would've hoped those who set on the ADC and OF's boards and donate, and possibly set on the YMCA's, would have done the same.

As a community tax payer and a SARC board member, I'd be delinquent if I didn't admonish you, "There won't be an M&O levy past for the facility while or after the YMCA fails ... if allowed to manage!"

I appreciate the Commissioners putting this grant request before the public for further insightful inspection. I believe that decision will hold the Commissioners in good stead in coming years.



**SAN JUAN COUNTY
PUBLIC FACILITIES FINANCING ASSISTANCE PROGRAM
2014 APPLICATION AND PROJECT PROPOSAL (for funding in 2015)**

Expenditures of Rural Sales and Use Tax received by San Juan County must meet all of the following requirements:

- The funds must be used for “public facilities” as defined in the RCW 82.14.370;
- Funded projects must be listed as an item on the county’s economic development plan; and
- Each public facility must foster economic development in the community.

For additional information about the program and about eligibility for funding, please see the entire application packet. All applications will be reviewed by the Prosecuting Attorney for eligibility. Please complete the following application completely. Applications are due in the County Manager’s Office by 4:30 pm Thursday, May 22, 2014.

Attach a complete project budget, copies of any bids already obtained, and additional relevant documents to this application form.

Organization: _____ **Federal ID #:** _____

Mailing address: _____

Contact person: _____ Title: _____

Email: _____ Phone: _____

Organization website address (if applicable): _____

Project (brief name): _____

Total project cost: \$ _____ Total amount requested: \$ _____

Is this request for multiple-year funding? Yes No

 If Yes, number of years: _____ Amount per year: _____

Other agencies involved: _____

Funding obtained from other agencies: _____

Required matching funds, and by whom required: _____

Estimated start date: _____ Estimated completion date: _____

Contingencies to be satisfied before project can proceed: _____

Signature of Authorized Representative (required):

Date:

Please answer the following questions with respect to your application:

- 1. RCW 82.14 tax funds can only be used to fund public facilities. Describe your project including how it qualifies as a public facility.**

- 2. Is this project listed in the County Economic Development Plan or the Town of Friday Harbor Economic Development Plan?**

- 2. How does your proposal foster economic development within San Juan County?**

- 2. Summarize efforts taken to date regarding the project in view of the following questions:**
 - a. Is this project part of a plan (Capital Facilities, Growth Management, Business, etc.)?**

 - b. What engineering reports and feasibility studies have been prepared, and when?**

 - c. Have you secured funds for this project from federal, state or local programs or foundations? Specify sources, including local match and amounts. (If there are conditions attached to any of these secured funding sources please specify)**

 - d. Are there other efforts you have made that are unique to this project?**

- 2. What are the anticipated outcomes of this project in terms of the criteria identified below?**
 - a. How many full-time permanent jobs will it create or retain, and how?**

 - b. How many businesses will the project serve?**

 - c. How will this project improve local infrastructure capacity?**

 - d. What is the size of population that will benefit by these infrastructure improvements?**

- 6. Are there other factors significant to this project that we should be aware of?**

- 7. What quantifiable outcomes will you track to measure the success of this project?**



Published on *Washington State* (<http://www.atg.wa.gov>)

[Home](#) > Authorized uses of local option sales and use tax authorized under RCW 82.14.370

Attorney General Christine Gregoire

TAXATION – SALES AND USE TAX – COUNTIES – Authorized uses of local option sales and use tax authorized under RCW 82.14.370.

1. A county may use the local option sales and use tax authorized under RCW 82.14.370 for any of the following purposes if the activity in question relates to a public facility as defined in the statute:

- **capital facilities costs, including acquisition, construction, rehabilitation, alteration, expansion, or improvements of public facilities;**
- **costs of development and improvement for the public facilities;**
- **project-specific environmental costs;**
- **land use and permitting costs;**
- **costs of site planning and analysis;**
- **project design, including feasibility and marketing studies and plans, and debt and revenue impact analysis.**

2. As to counties which are required to plan under the Growth Management Act, in order to be eligible for funding with revenue raised under the local options sales tax authorized under RCW 82.14.370, a project must be broadly related to economic development, but the county has discretion to determine how a project or facility will promote or foster economic development.

3. Counties which are not required to plan under the Growth Management Act may use revenue raised under the local options sales tax authorized under RCW 82.14.370 for projects which do not constitute economic development so long as such projects are included in the county's capital facilities plan or in the capital facilities plan of a city or town located within the county.

September 4, 2001

The Honorable Tim Sheldon
State Senator, 35th District
P.O. Box 40435
Olympia, WA 98504-0435

Cite as:

AGO 2001 No. 5

Dear Senator Sheldon:

By letter previously acknowledged, you have requested our opinion on the following questions relating to county revenues derived from the local option sales and use tax program set forth in RCW 82.14.370:

1. May a county use revenues from the local option sales and use tax program for rural communities, authorized under RCW 82.14.370, to finance any or all of the following costs related to public facilities: (1) capital facilities costs, including acquisition, construction, rehabilitation, alteration, expansion, or improvements of public facilities; (2) costs of development and improvement for the public facilities; (3) project-specific environmental costs; (4) land use and permitting costs; (5) costs of site planning and analysis; and (6) project design, including feasibility and marketing studies and plans, and debt and revenue impact analysis?

2. Does the requirement in RCW 82.14.370(3) that a public facility must be listed as an item in an officially adopted county overall economic development plan, or the economic development section of a county's comprehensive plan, or the comprehensive plan of a city or town located within a county for those counties planning under the Growth Management Act (GMA), mean that the public facility must have an economic development purpose such as the permanent private sector job creation or retention (beyond jobs created directly in constructing a project)?

3. Is the answer to question 2 the same for those counties

that do not have an adopted overall economic development plan and do not plan under the GMA, where RCW 82.14.370(3) requires that the public facilities must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county?

4. If the answer to question 2 or 3 is yes, what is the standard, if any, by which a county must determine whether a public facility has an economic development purpose?

BRIEF ANSWERS

The answer to your first question is yes—a county can use revenues derived from the local option sales and use tax program to finance the costs listed in your question when those costs are associated with public facilities as defined in RCW 82.14.370.

The answer to your second question is yes, because a public facility listed in the economic development plan or economic development section of the comprehensive plan of a county planning under the Growth Management Act will, by virtue of its inclusion in the plan, have an economic development purpose.

The answer to your third question is no, because no statute requires a county that does not plan under the Growth Management Act to include an economic development purpose in its capital facilities plan.

The answer to your fourth question is that there are no express statutory standards by which a county can determine whether a public facility has an economic development purpose. A county planning under the Growth Management Act need not independently measure the economic purpose of public facilities under RCW 82.14.370 against any standards. Rather, the county (or city within the county) need only list the public facility in its economic development plan or in the economic development section of its comprehensive plan in order to finance a public facility with revenues derived from the local option sales and use tax.

ANALYSIS

1. May a county use revenues from the local option sales and use tax program for rural communities, authorized under RCW 82.14.370, to finance any or all of the following costs related to public facilities: (1) capital facilities costs, including acquisition, construction, rehabilitation, alteration, expansion, or improvements of public facilities; (2) costs of development and improvement for the public facilities; (3) project-specific environmental costs; (4) land use and permitting costs; (5) costs of site planning and analysis; and (6) project design, including feasibility and marketing studies and plans, and debt and revenue impact analysis?

A rural county may use revenues derived from the local option sales and use tax for all of the costs listed above provided those costs are associated with any of the public facilities defined in RCW 82.14.370(3). [1] Other than identify the facilities that are eligible for funding and require that they be listed in the comprehensive plan, the statute does not limit the use of revenues derived from the tax to finance particular costs associated with the facility. Each item listed in your request is a cost that must be incurred in order to complete the public facility or otherwise is directly related to the facility.

2. Does the requirement that a public facility must be listed as an item in the county's economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under the GMA mean that the public facility must have a economic development purpose such as permanent private job creation or retention?

The Legislature adopted the local option sales and use tax in 1997. See Laws of 1997, ch. 366, § 3 (codified at RCW 82.14.370). As originally enacted, the revenues from the tax could "only be used for the purpose of financing public facilities in rural counties." RCW 82.14.370 (1997). The Legislature passed the local option sales and use tax as one of several measures that were intended to assist rural distressed counties in their efforts to promote economic development and employment opportunities. Laws of 1997, ch. 366, §§ 1 & 2.

In 1999, the Legislature amended RCW 82.14.370 to define the public facilities that would qualify for financing with local options sales use tax revenues. See Laws of 1999, ch. 311, § 101. In the same chapter, the Legislature added the requirement that the public facilities must be listed in a county or city comprehensive plan in order to be financed with the tax revenues. *Id.*^[2]

Your questions ask whether RCW 82.14.370 requires public facilities funded with revenues from the local option sales and use tax to have an economic development purpose. The primary objective of statutory construction is to give effect to the intent of the Legislature. *Lacey Nursing Ctr., Inc. v. Dep't of Rev.*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). To determine the Legislature's intent, we must look first to the plain meaning of the words in the statute. *Id.* RCW 82.14.370 requires that public facilities financed by the tax:

[M]ust be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

RCW 82.14.370(3).

The plain language does not require that public facilities have an economic development purpose. Rather, for counties that plan under the Growth Management Act (GMA), the facilities must be listed in the county's economic development plan or in the economic development section of the comprehensive plan. Therefore, we must determine whether the plans in question require facilities listed within them to have an economic development purpose.

An "economic development plan" is not defined in RCW 82.14. The GMA also does not define "economic development plan". While economic development is a goal of the GMA, it is not a separable element of a comprehensive plan for counties or cities that plan under the GMA. See RCW 36.70A.020(5), .070. Therefore, there is no requirement in the GMA

that counties must plan for economic development separately from the other planning elements that include economic development aspects, such as land use, capital facilities, and transportation planning. See RCW 36.70A.070(1), (3), (6). Counties are free to include a separate economic development section in their comprehensive plans or to provide for economic development in their capital facilities plans.

Although not specifically required by the GMA, a GMA-planning county nevertheless must have either an overall economic development plan or a comprehensive plan—and include the public facility in that plan—in order to impose the local option sales and use tax. RCW 82.14.370. Therefore, we must determine what “economic development” means in the context of the GMA.

“Economic development” is not defined in the statute. Therefore, we must give it its ordinary meaning. See *Simpson Inv. Co. v. Dep't of Rev.*, 141 Wn.2d 139, 150, 3 P.3d 741 (2000). Courts will look to a dictionary to discern the plain and ordinary meaning of a word. See *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 922, 969 P.2d 75 (1998). “Economic” is broadly defined as “of or relating to the development, production, and management of material wealth, as of a country, household, or business enterprise.” Webster's II New College Dictionary 357 (1995). “Development” means the act of aiding in the growth of something. *Id.* at 310 (from the definitions of “development” and “develop”). Under this definition, “economic development” would include, among other things, job growth and commercial and industrial expansion. Thus, if a county includes a public facility in its economic development plan, the county has identified that facility as benefiting the county's economy.

We note that this standard grants counties considerable discretion in determining whether a public facility should be included in the economic development plan. However, in exercising this discretion, counties must comply with the requirements of the GMA. For example, the comprehensive plan must be consistent with the goals of the GMA, RCW 36.70A.020, as well as with the adopted countywide planning policies. RCW 36.70A.210. Counties must coordinate their planning with the economic development plans of neighboring and included jurisdictions. RCW 36.70A.100. An economic development section of a comprehensive plan must be consistent with the other sections of the comprehensive plan. RCW 36.70A.070. And, very importantly, counties must allow for early and continuous public participation in the comprehensive planning process. RCW 36.70A.140. These requirements will ensure that counties plan for their public facilities in advance, rather than use tax revenues to finance projects not planned for or

properly evaluated.

3. Is the answer to question 2 the same for those counties that do not have an adopted overall economic development plan and do not plan under the GMA, where RCW 82.14.370(3) requires that the public facilities must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

For those counties that do not plan under the GMA, RCW 82.14.370 requires only that the facility be listed in the capital facilities plan of the county or of a city within the county. For those counties that do not plan under the GMA, economic development is not a mandatory component of their comprehensive plans. See RCW 36.70.320. Therefore, in answer to your third question, there is no statutory requirement that the public facilities included in such a county's comprehensive plan must have an economic development purpose.

4. If the answer to question 2 or 3 is yes, what is the standard, if any, by which a county must determine whether a public facility has an economic development purpose?

Our answer with respect to Question 2 is answered above. We answered question 3 in the negative; therefore, we do not need to reach this question with respect to counties that do not plan under the GMA.

To summarize, RCW 82.14.370 authorizes a county to finance the costs listed in your request if incurred for a public facility as defined in RCW 82.14.370. A capital facility that is included in a county's economic development plan or in the economic development section of a county's comprehensive plan need not have an economic development purpose separate from that contained in the plan. A county that does not plan under the GMA is not required to establish an economic purpose for those public facilities listed in its capital facilities plan. Finally, there are no standards, other than those set forth in its comprehensive plan, by which a GMA-planning county can determine whether a public facility has an economic development purpose.

We trust this opinion is of assistance to you.

Sincerely,

SHANNON E. SMITH
Assistant Attorney General
(360) 586 2683

:pmd

Footnotes

[1] RCW 82.14.370(3) defines “public facilities” as “bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.”

[2] In 1999, the Legislature also changed the description of the counties authorized to impose the tax. Under the 1997 law, a “rural distressed county”, which was defined as a county with an average unemployment rate exceeding the average statewide unemployment rate, could impose the tax. The 1999 amendments authorized a “rural county”, defined as a county with a population density of less than 100 persons per square mile, to impose the tax. *Compare* RCW 82.14.370(5)(1997) *with* RCW 82.14.370(1999).



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[Home](#) > Authority of rural county to use special sales tax revenues to pay for installation of fiber optic cable for privately-owned electrical utility

Attorney General Christine Gregoire

COUNTIES – TAXATION – Authority of rural county to use special sales tax revenues to pay for installation of fiber optic cable for privately-owned electrical utility.

1. A county may not use revenue from taxes levied under RCW 82.14.370 to acquire or install fiber optic cable for a utility which provides cable service to the county but which is privately owned and operated.
2. RCW 82.14.370, in limiting the use of special sales tax revenue to “public facilities”, does not specify the extent to which an operation might be jointly owned or operated in a public/private partnership and still remain a “public facility”.

March 18, 2002

Honorable Randall K. Gaylord
San Juan County Prosecuting Attorney
P. O. Box 760
Friday Harbor, Washington 98250

Cite As:
AGO 2002 No. 1

Dear Prosecutor Gaylord:

By letter previously acknowledged, you have asked for our opinion on the following questions, which we have slightly paraphrased for clarity:

1. May a “rural county” use tax revenues generated under RCW 82.14.370 to fund the purchase and/or installation of fiber optic cable and optical switching electronics by a non-profit electrical cooperative for the purpose of extending broadband high-speed telecommunications service to the residents and businesses in the county?

2. If the answer to Question No. 1 is no, are there any circumstances in which a county could fund, using revenues derived from RCW 82.14.370, a facility owned by a private party (whether "for profit" or non-profit)?
3. Does a grant of funds derived from RCW 82.14.370 to a private entity always require the same level of joint ownership or control as required in a grant of lodging tax revenue as discussed in AGO 2000 No. 9?

BRIEF ANSWER

A system of fiber optic cable and optical switching electronics owned and operated by a private company or cooperative is not a "public facility" as defined in RCW 82.14.370 and therefore could not be funded by a county with revenues from that source. The statute does not specify the extent to which a "public facility" must be publicly-owned in order to meet the "public facility" definition.

ANALYSIS

RCW 82.14.370 authorizes a "rural county"^[1] to impose a sales and use tax for described purposes, in addition to other taxes authorized by law.^[2] The permitted uses of revenues derived from this tax are set forth in subsection (3) of the statute:

Moneys collected under this section shall only be used for the purpose of financing public facilities in rural counties. . . . For the purposes of this section, "public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

RCW 82.14.370(3).^[3] With this statutory language as background, we proceed to your questions:

1. May a "rural county" use tax revenues generated under RCW 82.14.370 to fund the purchase and/or installation of fiber optic cable and optical switching electronics by a non-profit electrical cooperative for the purpose of extending broadband high-speed telecommunications service to the residents and businesses in the county?

The background section of your opinion request makes it clear that this question derives from the request of a non-profit electrical cooperative for a county "grant", to be used by the cooperative to purchase and/or install fiber optic cable and optical switching electronics so that county residents may receive broadband high-speed telecommunications services. Your first question breaks down into two parts: (1) whether fiber optic cable and optical switching electronics constitute "telecommunications infrastructure" and (2) whether, given that the proposal is for the purchase and/or installation by a private party and not by the county itself or another governmental entity, the proposal still meets the definition of "public facility".

As to the first part, it seems clear that fiber optic cable and optical switching electronics constitute "telecommunications infrastructure". Our dictionary defines "telecommunications" as "the science and technology of communication by electronic transmission of impulses, as by telegraphy, cable, telephony, radio, or television". *Webster's II New Riverside University Dictionary* 1189 (1988). The same source gives the following definition for "infrastructure": "The basic facilities, equipment, and installations needed for the functioning of a system". *Id.* at 628. Since the stated purpose of acquiring and installing cable and switching devices, according to your question, is to provide high-speed broadband telecommunications, it is clear that the cable and switching equipment in question constitutes the "basic facilities, equipment, and installations" for a telecommunications system and therefore constitutes "telecommunications infrastructure".

If your question were about a proposal by the county to simply purchase or install such a "telecommunications infrastructure" for its own use or ownership, it would be quite easy, then, to simply answer "yes" to your first question.^[4] However, your question makes it clear that the proposal actually involves the acquisition or installation of telecommunication facilities by a private party who intends to provide services to the general public, and the county's role would not be that of owner, but that of financial benefactor, through providing tax revenues for the purpose.

Although RCW 82.14.370 is not absolutely explicit on the point, we are convinced that the term "public facilities" necessarily assumes a "facility" in which the ownership is "public" and not private. We note, first, that the list of facilities qualifying for use of revenues derived from the tax in question consists in great part of structures or facilities which are traditionally built and owned by government agencies rather than private parties. For instance, the list includes bridges, roads, water and sewer facilities, earth stabilization facilities, storm sewers, transportation infrastructure, and port facilities. RCW 82.14.370(3). The other items on the list—railroads, electricity, natural gas, buildings, structures, telecommunications infrastructure, and commercial infrastructure—vary considerably as to the extent to which they are traditionally owned or operated by government or by privately-owned concerns. None of the items on the list, however, are always (or automatically) a privately-owned facility.

Second, the term "public facility" as generally understood presupposes a facility owned by a public entity rather than by a private company or cooperative. The dictionary defines "public" as "maintained for or used by the people or community" or "connected with or acting on behalf of the people, community, or government". *Webster's II New Riverside University Dictionary* 951 (1988). Thus, even though RCW 82.14.370 does not spell out expressly that the "facilities" listed must be publicly-owned, that is implied by the use of the term "public".^[5]

Finally, we apply the maxim that a statute is interpreted in such a way as to avoid rendering it unconstitutional. *Woodson v. State*, 95 Wn.2d 257, 623 P.2d 683 (1980). The state constitution prohibits most types of gratuitous transfers of public funds to support the activities of privately-owned entities. Article VIII, section 7 of the state constitution provides:

No county, city, town or other municipal corporation shall hereafter give any money, or

property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

The state Supreme Court has consistently held that this provision prohibits the gratuitous transfer of public funds or credit to private individuals or associations.^[6] In the early case of *Johns v. Wadsworth*, 80Wash.352, 141 P. 892 (1914), the court invalidated a grant of county money to a private association for the purpose of holding a county fair. Although the court found that a county fair served a public purpose, it found that article VIII, section 7 nevertheless forbids carrying out that purpose through a gratuitous transfer of public funds to a private organization. See also *Lassila v. City of Wenatchee*, 89 Wn.2d 804, 576 P.2d 54 (1978), invalidating the acquisition of land by a city for the purpose of reselling it to a private land developer in connection with an economic development plan. In light of the case law delineating the importance of protecting public funds from gratuitous transfer to private parties, we conclude the Legislature intended to imply, when listing the permissible uses of funds under RCW 82.14.370, that the “public facilities” in question must be publicly owned to be eligible for funding.

2. If the answer to Question No. 1 is no, are there any circumstances in which a county could fund, using revenues derived from RCW 82.14.370, a facility owned by a private party (whether “for profit” or non-profit)?

Our answer to your first question largely answers your second question also: A privately-owned facility is not a “public facility” as defined in RCW 82.14.370. To the extent your second question asks us to speculate about hypothetical projects or arrangements which might be funded under RCW 82.14.370, we must decline to do so. The statute itself provides the best guidance, and we cannot add to the analysis above without examining specific proposals.

3. Does a grant of funds derived from RCW 82.14.370 to a private entity always require the same level of joint ownership or control as required in a grant of lodging tax revenue as discussed in AGO 2000 No. 9?

Your third question refers in AGO 2000 No. 9, in which we concluded that a government expending lodging tax revenues for the support of a tourism-related facility must have at least a partial ownership interest in the facility. AGO 2000 No. 9 involved a different statute from the subject of your questions, which authorizes a different tax to be used for a different type of expenditures. In that sense, its reasoning is not directly applicable to this opinion. Your question does not outline any proposal involving joint public/private ownership of a facility, so we are not in a position to analyze how such a proposal would fare if the source of public funds were taxes collected under RCW 82.14.370.

We trust the foregoing will be of assistance to you.

Sincerely,

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:pmd

[1] The statute defines “rural county” as one with a population density of less than one hundred persons per square mile as determined by the Office of Financial Management each year. RCW 82.14.370(5). For purposes of this opinion, we assume that any county under discussion meets this definition.

[2] The maximum tax authorized is 0.08% of the selling price (for a sales tax) or 0.08% of the value (for a use tax). RCW 82.14.370(1). The tax in question is a “credit” against the state sales and use tax and is collected by the state Department of Revenue. RCW 82.14.370(2).

[3] In quoting subsection (3) of RCW 82.14.370, we omitted several procedural prerequisites imposed by the statute before a county can impose the tax. For purposes of this opinion, we will assume (as you requested) that a county has met all of these requirements.

[4] Because your questions do not include any proposals for the county to provide telecommunications services to the general public using the “infrastructure” in question, we do not here address whether a county has authority to provide such services.

[5] This point is strengthened somewhat by the fact that the original 1997 version of RCW 82.14.370 used the term “public facility” without providing any list of examples. Laws of 1997, ch. 366, § 3. The list of specific eligible public facilities was added when the statute was amended in 1999 under Laws of 1999, ch. 311, § 101 and was part of a Senate striking amendment. *Senate Journal*, 56th Leg. 1999 at 1564-65. We could discover no legislative history illuminating the intent behind the 1999 amendment, but the implication is that its purpose was to clarify the meaning of “public facility” by listing specific types of “public facilities” intended by the legislature to be eligible for funding under RCW 82.14.370. The 1999 amendments certainly do not suggest an intent to expand the term “public facility” to include facilities owned or operated by private parties.

[6] The constitution has been amended to permit certain specified exceptions to the prohibition in article VIII, section 7. The only amendment which appears to be relevant to this discussion is article VIII, section 10 (adopted as Amendment 91 to the constitution in 1997), which authorizes counties and certain other local governments to assist private parties in financing the installation of materials and equipment for the conservation or more efficient use of water, energy, or storm water or sewer services. We will not speculate as to whether there might be any overlap between this article and the “public facilities” mentioned in RCW 82.14.370, since the telecommunications facilities

mentioned in your question do not appear to be designed for energy conservation.