



**CITY OF ST. LOUIS
LAW DEPARTMENT**

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Alderman Cara Spencer
Board of Aldermen
Room 230, City Hall
St. Louis, MO 63103

Re: Public Vote on Airport Privatization

Dear Alderman Spencer:

You have asked whether the Board of Aldermen may request a public vote on the privatization of St. Louis Lambert International Airport. I think that it can if it does so through the appropriate mechanism.

Board Bill No. 19 is not an appropriate mechanism. At my appearance before the Transportation and Commerce Committee meeting several weeks ago I expressed my grave reservations about the validity of the ordinance proposed by Board Bill 19 if adopted because I feared that it amounted to an unlawful delegation of the legislative authority of the City of St. Louis, which the Charter has vested in the Board of Aldermen. In the intervening weeks my doubts have only grown. Indeed, I can now say categorically that I believe that Board Bill 19 would be invalid if adopted. McQuillin says that so "far as the powers of a municipal corporation are legislative they rest in the discretion and judgment of the municipal body entrusted with them, and the general rule is that the body cannot delegate or refer the exercise of such powers...." McQuillin, *The Law of Municipal Corporations*, (3rd ed.) §10.45. Board Bill 19 constitutes the delegation by the Board of Aldermen to the people of the legislative authority vested by the Charter in the Board. This the Board cannot do. However, there are other means by which the Board might secure a public vote.

The first is one suggested in your request: a nonbinding vote that would simply seek an expression of the people's sentiments that would serve to guide the Board of Aldermen or not as its members see fit. The City of St. Louis is a constitutional charter city, and thus it has all of the power that the general assembly has the authority to confer upon a city, unless limited by the constitution, statute or charter. Article VI, §19(a), Mo. Const. I know of no reason why the general assembly could not authorize cities to put

public issues before the voters for nonbinding votes to assess their sentiments, and I know of no constitutional, statutory, or charter limitation that would be applicable. So I think that the Board of Aldermen could adopt an ordinance submitting this issue to the voters for a nonbinding expression of their sentiments. Whether this is the most expedient way of getting a read on voter sentiment, and whether it is an exercise worth the cost I leave to the Board's judgment.

A second method of securing a public vote on Airport privatization, and one that would be binding, is to submit to the voters a charter amendment that would require a vote of the people before privatization. Board Bill No. 77 presents such an amendment. Something similar was done when the Charter was amended years ago to take from the Board its ordinary legislative authority to set the salaries of firefighters. In *State ex re. St. Louis Fire Fighters Association Local No. 73, AFL-CIO v. Stemmler*, 479 S.W.2d 456 (Mo. banc 1972) the Supreme Court held that this did not constitute an unlawful delegation because it was done by charter amendment. Article IV, §26 of the Charter, which places limitations on the powers of the Board of Aldermen, could be amended to withdraw the power of the Board to authorize privatization unless approved by the voters. Or a new section could be added to Article XXV, which collects miscellaneous provisions, that would prohibit privatization of the Airport unless approved by the voters. Either way would do, and there may be others.

A third method of securing a binding public vote is to submit a charter amendment that would flat out forbid privatization. This would be akin to the provision in Article IV, §26 of the Charter that forbids the disposition of the waterworks. This would be attractive to those who are opposed to privatization under any and all circumstances, no matter how attractive a particular proposal might be. It would be an unattractive proposal to those who wish to keep an open mind, and allow the voters to judge the merits or demerits of particular proposals.

I trust that I have answered your question.

Very truly yours,



Julian L. Bush
City Counselor

JLB/dl