

**LEGAL DEPARTMENT MEMORANDUM  
12-03**

DATE: January 26, 2012  
TO: Honorable Mayor and Members of City Council  
FROM: Kenneth R. Krushenski, City Attorney  
SUBJECT: SALES TAX DISBURSEMENT TO THE CITY OF OAK RIDGE –  
LETTER FROM SCHOOLS ATTORNEY CHARLES CAGLE DATED  
OCTOBER 7, 2011

OAK RIDGE HIGH SCHOOL CONSTRUCTION/RENOVATION PROJECT –  
APPROXIMATELY \$67 MILLION TOTAL DEBT

This Memo is a follow-up to the discussion of the above-referenced matter that took place at the Council's January 9, 2012 meeting under "City Attorney's Report." I have attached a copy of Ordinance No. 13-04 and the Ballot with the Question approved by Council on Second Reading at its May 17, 2004 meeting. The Question, overwhelmingly approved by voters in the August 5, 2004 election, in part, states:

"...the revenue from such increase shall be appropriated and expended for the purpose of funding and paying for construction, renovation, purchase of capital equipment, and/or retirement of school construction debt service for the Oak Ridge High School, and at such time as the high school debt service is paid in full, the sales tax proceeds collected as a result of this increase shall be distributed as prescribed by state law, except as modified or limited by statute become operative" (Attached as Exhibit A)

Approximately seven (7) years after this election, the City was presented with a written opinion dated October 7, 2011 from current school attorney, Charles W. Cagle, addressed to Keys Fillauer, Chairman of the School Board and Dr. Thomas Bailey, Superintendent of Schools, (Attached as Exhibit B) which references a five year "Agreement" supposedly reached by the City of Oak Ridge and Oak Ridge Schools according to Mr. Cagle. The Agreement he refers to called for the "Board of Education to remit to the City a percentage of the local option sales tax dollars it receives which would, in turn, be applied to bond payments." Mr. Cagle goes on to say that this alleged "Agreement was for a term of five (5) years or until the County adopted the maximum local option sales tax rate."

As City Attorney, I participated in discussions with the former school attorney, James Webster, about the school construction project and its funding sources from the beginning of the project. To my knowledge, we never discussed a five year agreement such as the one Mr. Cagle refers to in his letter. In fact, Legal Department Memo #04-44 dated August 12, 2004 was prepared by my office and distributed to the Council at the request of Mayor David Bradshaw. It referenced the process required by State law in the event that Anderson County decided to supersede the City's sales tax. (See Attached Exhibit C) It was contemplated as early as August 12, 2004 that the County could eventually act to preclude the City's rate. In point of fact, the funding for the High School Renovation Project and the alleged five year "Agreement" were discussed in an email exchange between School Board Member Angie Agle and Deputy City Manager Steve Jenkins as recently as April 2010. (See Attached Exhibit D)

This is not a Maintenance of Effort issue as Mr. Cagle claims. Anderson County's decision to supersede the City of Oak Ridge's Sales Tax Increase Referendum did not create a new revenue source but only resulted in a re-distribution of the taxes that were created as a result of the City's August 2004 Referendum. Superintendent Bailey realized the obligation to pay off the debt in a statement he gave to *The Oak Ridger* on June 5, 2006. There was no mention of a five (5) year "Agreement" in his or School Board Chairman John Smith's statements in this Article. (See Exhibit E)

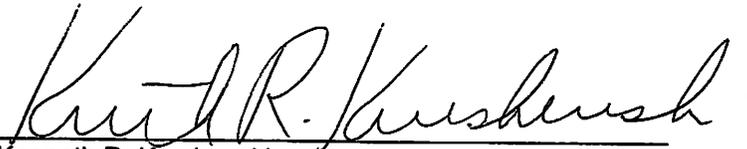
The money that schools are receiving is still characterized as "sales tax." It should not be considered a financial "windfall" to the schools to use as they see fit. Any attempt by either the City of Oak Ridge or the Oak Ridge City Schools to use the proceeds of the .5% sales tax increase for any other purpose than to pay off the debt on the High School Construction Project would run contrary to the Referendum Question approved by the city of Oak Ridge voters in the August 2004 election. The use of this sales tax money to fund the High School construction debt was an obligation imposed on both the City of Oak Ridge and the Oak Ridge Schools by the Voters in that election.

#### CONCLUSION

The High School Construction and Renovation Project was presented to the City of Oak Ridge voters as a "no property tax increase" project in all the public hearings held to discuss the High School renovation. Even assuming that the "Five (5) Year Agreement" Mr. Cagle referred to in his letter existed, it would have been spelled out in the Question on the Referendum Ballot in order to give legal notice to the voters that there was the possibility that the revenue stream created by the .5% increase in sales tax would terminate after five (5) years and the potential existed that increased property taxes would have to be used to fund the debt remaining on the High School Renovation Project. This was not done because no agreement ever existed between the City and the Schools. The conditions of the Referendum Question approved by the voters in August 2004 were clearly stated:

"...the revenue from such increase shall be appropriated and expended for the purpose of funding and paying for construction, renovation, purchase of capital equipment, and/or retirement of school construction debt service for the Oak Ridge High School, and at such time as the high school debt service is paid in full, the sales tax proceeds collected as a result of this increase shall be distributed as prescribed by state law, except as modified or limited by statute become operative" (Attached as Exhibit A)

Included with this Memo are copies of the above-referenced Exhibits. In addition to these Exhibits, this Memo is supplemented with copies of the minutes from Council meetings and presentations in which the sales tax referendum and the School Renovation Funding Plan were discussed in public. Tapes of these meetings will be sent to Council electronically or on disk for viewing as soon as they can be transcribed.

  
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Kenneth R. Krushenski  
City Attorney

Attachments (Exhibits A-H Listed on Separate Sheet)

cc: Mark S. Watson, City Manager  
Janice E. McGinnis, Finance Director

## LIST OF EXHIBITS

- EXHIBIT A: Ordinance No. 13-04 approved on May 17, 2004 by Council authorizing the Sales Tax Referendum and Ballot Question for the August 5, 2004 Election with Minutes of the Meeting.
- EXHIBIT B: Letter dated October 7, 2011 from School Attorney Charles W. Cagle
- EXHIBIT C: City Attorney Memo No. 04-44 dated August 12, 2004
- EXHIBIT D: Email – April 5, 2010 – Angie Agle/Steve Jenkins
- EXHIBIT E: Oak Ridger article dated June 5, 2006
- EXHIBIT F: Council Resolution 4-51-04 dated April 19, 2004 and minutes of meeting This Resolution directs the City Manager to investigate funding for the renovation of Oak Ridge High School, Option B, 21<sup>st</sup> Century School.
- EXHIBIT G: Minutes of Council Meeting, May 3, 2004 when the First Reading of Ordinance 13-04 was held.
- EXHIBIT H: Power Point Presentation by Steve Jenkins for a Public Hearing on the Funding Plan on the High School Renovation Project held on May 12, 2004.

## ADDENDUM

Tapes of the Council meetings referred to in Exhibit's A, F, and G are being prepared to be transferred to disk and provided to Council as part of this Memo.