

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 Fifth Avenue North  
NASHVILLE, TENNESSEE 37243-0497

March 12, 2001

Opinion No. 01-034

Tax Rates for the McKenzie Special School District

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**QUESTION**

1. What is the legal definition of the term “statutory levy<sup>1</sup>” as it is used in Chapter 166 of the Private Acts of 1975?
  
2. Must the McKenzie Special School District obtain legislative approval prior to increasing the current certified tax rate provided such increase does not result in a rate which exceeds the statutory rate?

**OPINION**

1. The term “statutory levy” as used in Chapter 166 of the Private Acts of 1975 refers to any rate set forth by private act of the legislature governing the tax rate the McKenzie Special School District may impose for the purpose of funding the Special School District.
  
2. Yes.

**ANALYSIS**

1. Your question apparently concerns the language contained in Section 1 of the 1975 Amendment to the 1917 Private Acts, Chapter 53.<sup>2</sup> The 1975 Amendment provides, in part, that:

The Board of Education of the McKenzie High School District shall have statutory authority to set the tax rate lower than that imposed by this act as amended or by any other

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<sup>1</sup> Although your opinion request refers to the “statutory rate,” the private act cited in your request uses the term “statutory levy.”

<sup>2</sup> The 1917 Act created a special school district called the “McKenzie High School District.” The district name was changed from “the McKenzie High School District” to “the McKenzie Special School District” by Chapter 136 of the 1998 Private Acts.

act setting a tax rate for “The McKenzie High School District” but shall not have the power to impose a tax in excess of any *statutory levy* nor shall it have the power to lower any special levy assessed for the purpose of bond repayment. In order to change the rate of taxation, the Board must certify on or before September 1 to the county trustee the new special school district tax rate not to exceed the rate imposed by any legislative act, and the county trustee shall collect only the taxes based on the rates so certified.

1975 Private Acts, Chapter 166, Section 1 (emphasis added).

In interpreting what the Legislature means by its use of the term “statutory levy,” the act should be construed to give effect to the legislative intent. *Worrasll v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). This intention is primarily ascertained from the natural and ordinary meaning of the language used. *Id.* In this case, the language indicates that the private act sets the ceiling above which the tax rate for the district may not go (“shall not have the power to impose a tax in excess of any statutory levy” and “special school district tax rate not to exceed the rate imposed by any legislative act”). 1975 Private Acts, Chapter 166, Section 1. Thus, the term “statutory levy” as used to in Chapter 166 of the Private Acts of 1975 appears to refer to any rate set forth by private act of the legislature, as amended from time to time,<sup>3</sup> that governs the tax rate the McKenzie Special School District may impose for the purpose of funding its schools.

2. The power to tax belongs to the Tennessee Legislature and cannot be delegated unless the Tennessee Constitution expressly allows such delegation. *B.O. Keese v. Civil District Bd. of Educ.*, 46 Tenn 128 (1868). Article 2, Section 29 of the Constitution allows the Legislature to delegate its taxing powers to counties and towns.<sup>4</sup> The Tennessee Supreme Court has held that this delegation of taxing power does not extend to special school districts. *Gibson Co. Special School District v. Palmer*, 691 S.W.2d 544, 549 (Tenn. 1985); *Williamson v. McClain*, 249 S.W. 811 (Tenn. 1923).

In this case, it appears that the Legislature has attempted to delegate its taxing power in Section 1 of the 1975 Private Acts, Chapter 166. Section 1 suggests that the McKenzie Special School District could, without legislative approval, change the current certified tax rate, provided that the rate did not exceed the statutory levy and other statutory requirements were met. This scheme is, in essence, a grant of the power to tax to the McKenzie Special School District. As there is no express provision in the Tennessee Constitution that allows the Legislature to redelegate its taxing authority to special school districts, the McKenzie Special School District may not increase the current certified tax rate, even if it does

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<sup>3</sup> The Legislature may, and has, amended Chapter 53 of the 1917 Private Acts to provide for changes in the permissible rate of tax that may be imposed by the McKenzie Special School District. *See, e.g.*, 1981 Private Acts, Chapter 143, Section 1; 1987 Private Acts, Chapter 93, Section 1.

<sup>4</sup> Section 29 provides, in part, that “[t]he General Assembly shall have the power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes, respectively, in such manner as shall be prescribed by law . . .” Tenn. Const. Art. 2, § 29.

not exceed the statutory levy, unless the the Legislature enacts appropriate legislation allowing such a tax increase.

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Requested by:

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