**S T A T E O F T E N N E S S E E**
OFFICE OF THE
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Opinion No. 00-059

Local Option Budgeting Law and Private Act

## QUESTIONS

The Rutherford County Commission is considering adopting the Local Option Budgeting Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.* (the "1993 Act"). Tenn. Code Ann. § 5-12-205 provides:

> If a county included in this part has adopted the County Financial Management System of 1981, compiled in chapter 21 of this title, the County Budgeting Law of 1957, compiled in part 1 of this chapter, or private acts, and such county does not revoke or repeal such act, in the event of a conflict between the provisions of this part and the provisions of such acts, the provisions of this part shall not supersede those provisions, except that the provisions of § 5-12-210 shall supersede any other law.

The Rutherford County government currently operates under a private act, 1979 Tenn. Priv. Acts Ch. 49 (the "Private Act").

1. a. Does Section 4 of the Private Act conflict with the 1993 Act?

   b. If so, does Section 4 control over the 1993 Act?

2. Could the County Commission amend the Private Act to remove all the provisions except for subsections (c), (e), and (f) of Section 4 so that the County Commission would operate under the 1993 Act, except as to these three provisions?

3. Subsection 4(e) of the Private Act provides in part:

> . . . if at any time during the fiscal year it shall become apparent that the revenues of any of the county's funds together with its unencumbered cash balance at the beginning of such year, will not be sufficient to equal the amount of the original appropriations, it shall be the duty of the Director of Finance to impound the appropriations from such fund in such amount as shall appear necessary, subject to the written approval of the Budget and Finance Committee and such other requirements as provided by law.

If the County adopted the 1993 Act, would 4(e) of the Private Act be superseded by Tenn.

Code Ann. § 5-12-215?

4. As between the Rutherford County Executive or the Finance and Budget Committee of the Rutherford County Commission, who is authorized to propose alternative budgets for a department?

5. Would any alternative budget adopted by the County Commission have to be ratified by the County Board of Education?

## OPINIONS

1. a. and b. The two budgetary processes appear to conflict. In the event of a conflict, the Private Act will control except to the extent it conflicts with Tenn. Code Ann. § 5-12-210 regarding the adoption of the budget, tax rate and appropriation resolution.

2. Any amendment to the Private Act would have to be enacted by the General Assembly and adopted by the county.

3. No. Tenn. Code Ann. § 5-12-215(b) expressly provides that this section is inapplicable to counties having impoundment provisions under other provisions of law.

4. Assuming that Rutherford County adopts the 1993 Act, the budget committee created under the Private Act would propose alternative budgets under Tenn. Code Ann. § 5-12-209.

5. The 1993 Act does not require the Board of Education to ratify any alternative budget adopted by the County Commission.

## ANALYSIS

1. Conflicts in Budget Processes

This opinion addresses several issues regarding the Local Option Budget Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.* (the "1993 Act"), and a private act under which the Rutherford County Commission currently operates, 1979 Tenn. Priv. Acts Ch. 49 (the "Private Act)." The 1993 Act applies only to any county that has adopted its provisions by approval by a two-thirds vote of the county legislative body. Tenn. Code Ann. § 5-12-201. The Rutherford County Commission is considering adopting this act. Under the 1993 Act:

> If a county included in this part has adopted the County Financial Management System of 1981, compiled in chapter 21 of this title, the County Budgeting Law of 1957, compiled in part 1 of this chapter, *or private acts,* and such county does not revoke or repeal such act, in the event of a conflict between the provisions of this part and the provisions of such acts, the provisions of this part shall not supersede those

provisions, *except that the provisions of § 5-12-210 shall supersede any other law.*

Tenn. Code Ann. § 5-12-205 (emphasis added). The first question is whether Section 4 of the Private Act conflicts with the 1993 Act. Section 4 of the Private Act and the 1993 Act each outline a complete process for adopting a budget. Comparison of the processes outlined in each act indicates some conflicts between them. For example, under the Private Act, the County Executive and Director of Finance, and other operating departments, are required to file a detailed estimate of requirements for expenditures from county funds, together with an estimate of revenues, with the Office of Finance on April 15. Private Act, § 4(a). The County Highway Commissioners must file an itemized statement of funds estimated to be required with the Director of Finance by May 1, and the Board of Education is required to prepare its annual budget and file it with the Director of Finance by May 15. *Id.* Under the 1993 Act, the County Executive is required to furnish the Superintendent of Education and the Chief Administrative Officer of the County Highway Department an estimate of revenues generated by one cent of the county property tax for each taxing jurisdiction for the ensuing fiscal year and a form tax rate resolution by March 15. Tenn. Code Ann. § 5-12-207. Each department head in the county, including the Superintendent of Education and the Chief Administrative Officer of the Highway Department, is required to provide the County Executive or Director of Finance with a proposed budget document by April 1. Tenn. Code Ann. § 5-12-208.

Even if these two processes are read together with regard to information furnished and documents required, the deadlines under each process are different. Under the Private Act, required dates may be changed subject to the approval of the Budget and Finance Committee on five working days' written notice. Private Act, § 4(h). Under the 1993 Act, the Comptroller may modify dates required in any particular county if good cause is shown. Tenn. Code Ann. § 5-12-216. Section 4 of the Private Act and the 1993 Act therefore conflict.

The second part of this question is, in the event Section 4 of the Private Act and the 1993 Act conflict, whether Section 4 will govern. As cited above, under Tenn. Code Ann. § 5-12-205, if the 1993 Act conflicts with a private act that the county does not "revoke or repeal," the 1993 Act will not supersede the private act, except that Tenn. Code Ann. § 5-12-210 will supersede any other law. Section 5-12-210 governs adoption of the budget, the tax rate, and the appropriation resolution, and provides, among other matters, that if the county commission fails to adopt a budget, property tax rate resolution and appropriation resolution by August 15 of any year, then the proposed budgets specified in that statute become effective by operation of law. Therefore, where the two processes conflict, the Private Act will govern except to the extent it conflicts with Tenn. Code Ann. § 5-12-210.[1]

[1] The conclusions in this opinion about the application of the Private Act in the event of a conflict with the 1993 Act do not, of course, refer to the provisions of the Private Act deemed to be unconstitutional in earlier opinions of this Office. Op. Tenn. Atty. Gen. 83-464 (October 26, 1983); Op. Tenn. Atty. Gen. 80-462 (September 24, 1980).

2. Partial Revocation of Private Act

The second question is whether the county could amend the Private Act by removing all its provisions except for Subsections (c), (e) and (f). Based on Question 1, we assume that the question refers to these subsections of Section 4 of the Private Act. As cited above, Tenn. Code Ann. § 5-12-205 states "[i]f a county included in this part has adopted . . . private acts, and such county does not revoke or repeal such act[,]" then the 1993 Act will not supersede those provisions, except for Tenn. Code Ann. § 5-12-210. Ordinarily, a county could not "repeal" a private act; we assume that the statute refers to the General Assembly's enacting a new private act that the county would then adopt. Any amendment to the Private Act would have to be enacted by the General Assembly and adopted by the county.

3. Impoundment

Question 3 is whether the impoundment provisions in Tenn. Code Ann. § 5-12-215 would supersede impoundment provisions in subsection 4(e) of the Private Act. Tenn. Code Ann. § 5-12-215 authorizes the County Executive to impound county appropriations as may be necessary to prevent deficit operation. The County Commission may override the impoundment power by a two-thirds vote if the Commission makes amendments at the same meeting to the budget as may be necessary to prevent deficit operation. Subsection (b) of this statute provides "[t]his section is inapplicable to counties having impoundment provisions under other provisions of law." Since the Private Act contains an impoundment provision, the impoundment provision in Tenn. Code Ann. § 5-12-215(a) would not apply.

4. Proposing Alternative Budgets

Question 4 is whether the Rutherford County Executive or the Finance and Budget Committee of the Rutherford County Commission created under the Private Act is authorized to propose alternative budgets for a department. This question appears to refer to the review of proposed budgets and presentation to the county legislative body under Tenn. Code Ann. § 5-12-209. That statute authorizes the "county executive or budget committee" to propose changes to a budget before it is submitted to the County Commission, and sets forth the way in which these changes are to be negotiated and reflected in the proposed budget submitted to the County Commission. Tenn. Code Ann. § 5-12-202 provides:

> As used in this part:
>
> (1) "Budget committee" refers only to a budget committee created by law . . . or created by private act;
>
> * * * *
>
> (3) "County executive or budget committee," in counties not having a budget committee as referred to in subdivision (1), means the county executive;

Tenn. Code Ann. § 5-12-202 (1) and (3). Assuming that Rutherford County adopts the 1993 Act, the budget committee created under the Private Act would therefore propose alternative budgets under Tenn. Code Ann. § 5-12-209.

5. Ratification of Alterative Budget

The last question is whether the Rutherford County Board of Education must ratify an alternative budget adopted by the County Commission. The process for submitting alternative budgets to the County Commission under the 1993 Act is addressed in Tenn. Code Ann. § 5-12-209. Adoption of the final budget by the County Commission is addressed in Tenn. Code Ann. § 5-12-210. Neither of these statutes requires the Board of Education to ratify an alternative budget adopted by the County Commission, nor does any other statute appear to contain such a requirement. *See* Tenn. Code Ann. § 49-2-101(1)(C). The 1993 Act does expressly provide that the Board of Education, through its designated representative, has the right to address the County Commission in regard to the Board's budget and tax rate proposals. Tenn. Code Ann. § 5-12-210(f).

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