S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

May 4, 2000

Opinion No. 00-085

Impact of Legislative Proposal on a Rutherford County Referendum to Increase the Local Sales Tax

QUESTION

If the General Assembly changes the State's tax structure to mandate an increase in the sales tax rate to 8.75% and to change the allocation of that increase to local governments, how would Rutherford County and its incorporated cities be classified in light of the currently-scheduled referendum to increase the local sales tax to the maximum rate presently allowed under State law?

OPINION

The impact of such proposed legislation, in light of the timing of the pending Rutherford County referendum, would depend entirely on the precise wording of the proposed legislation.

ANALYSIS

You have informed us that Rutherford County has scheduled a referendum of voters to be held on May 23, 2000 to approve or reject an increase in the local option sales tax to 8.75%, the maximum allowed by law. You have also informed us that one of the proposals before the General Assembly, which contemplates a change in the State's tax structure to mandate an increase in the sales tax to a uniform statewide rate of 8.75% and to alter the allocation of that increase to local governments, might treat those counties that have adopted a sales tax at the maximum percentage currently allowed by law differently than those counties that have not adopted a sales tax at the maximum percentage.

The 1963 Local Option Revenue Act, set forth in Tenn. Code Ann. §§ 67-6-701, *et seq.*, governs the operation of local sales and use taxes levied by county and municipal governments and the distribution of revenue collected from such taxes. The procedures concerning the referendum in Rutherford County, including the date of implementation of the tax increase, if approved by the voters, is governed by Tenn. Code Ann. § 67-6-706. No wording of the referendum in question can determine the classification of the Rutherford County tax under the legislative proposal because the procedures for both the implementation of the referendum and enactment of the legislation are wholly dependent upon State law and, therefore, are beyond the direct control of Rutherford County.

Based on the foregoing, it is the opinion of this Office that the classification of the Rutherford County tax under the legislative proposal would entirely depend on the precise wording of the legislation. The legislation could be drafted to recognize, or not to recognize, any tax increases levied by counties such as Rutherford County that were in the process of increasing the local rate to the current maximum rate when the new State system was proposed or adopted. The manner in which such legislation would apply to these counties is subject to the complete discretion of the Legislature, as embodied in the final terms of any such act.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

WINSTON B. SITTON
Assistant Attorney General

Requested by:
The Honorable Andy Womack
State Senator
9-A Legislative Plaza
Nashville, Tennessee 37243