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Opinion No. 00-187

County's Authority to Levy Local Litigation Tax for Jail or Workhouse Construction Project under Tenn. Code Ann. § 67-4-601(b)

QUESTIONS

1. Must an actual project exist before a county can adopt a resolution levying a local litigation tax pursuant to the authority granted by Tenn. Code Ann. § 67-4-601(b) (Supp. 2000)?

2. Is the county initially required to fund the project through the use of capital outlay bonding?

OPINIONS

1. Yes. In order to levy a local litigation tax pursuant to Tenn. Code Ann. § 67-4-601(b) (Supp. 2000), a county must embark upon a particular project for jail or workhouse construction, re-construction, or upgrading. The county must stop levying the local litigation tax once all of the project's expenses and debts are paid.

2. No. The county is not necessarily required to fund the project through the use of capital outlay notes. As a general matter, any form of financing authorized for this type of public works project under the Local Government Public Obligations Act of 1986, *see* Tenn. Code Ann. §§ 9-21-101 to -1104 (1999 & Supp. 2000), would be appropriate, including capital outlay notes.

ANALYSIS

Your request requires an interpretation of Tennessee's revenue laws as they relate to a county's authority to levy a local litigation tax for the purpose of funding a jail or workhouse construction project. Tennessee Code Annotated section 67-4-601(a) contains the general authority for a county to levy a local litigation tax. *See* Tenn. Code Ann. § 67-4-601(a) (Supp. 2000). The only limitations on this general authority are that the county must levy the local litigation tax in the same manner as the state litigation tax is levied and the amount of the local litigation tax must not exceed the amount of the state litigation tax. *See*

Op. Tenn. Att'y Gen. 99-104 (May 10, 1999); Op. Tenn. Att'y Gen. 82-320 (June 24, 1982); Op. Tenn. Att'y Gen. 81-598 (Nov. 9, 1981).

In addition to the general local litigation tax authorized by section 67-4-601(a), counties may levy a special local litigation tax pursuant to subsection (b) of the same statute. As amended by the General Assembly in 2000, *see* 2000 Tenn. Pub. Acts 886, Tennessee Code Annotated section 67-4-601(b) authorizes a county to "levy a privilege tax on litigation in all civil and criminal cases instituted in the county, other than those instituted in municipal courts." Tenn. Code Ann. § 67-4-601(b)(1) (Supp. 2000). The authority granted by section 67-4-601(b) is subject to the following limitations. First, the county's legislative body must adopt a resolution levying the local litigation tax by a two-thirds (**b**) majority vote. *See id*. Second, the local litigation tax levied pursuant to section 67-4-601(b) may not exceed ten dollars ($10.00) per case. *See id*. Third, the tax proceeds must "be used exclusively for purposes of jail or workhouse construction, re-construction or upgrading, or to retire debt, including principal and interest and related expenses for same." *Id*. Finally, the tax levied may "only be effective until such time as all expenses of the construction, re-construction or upgrading project have been paid or until such time as the debt for such project has been retired." Tenn. Code Ann. § 67-4-601(b)(2) (Supp. 2000).

The Local Government Public Obligations Act of 1986 authorizes a county to use several types of financing to fund public works projects, provided the county meets the applicable statutory requirements. *See generally* Tenn. Code Ann. §§ 9-21-101 to -1104 (1999 & Supp. 2000). The Act defines "public works projects" to include "jails, workhouses and reformatories." Tenn. Code Ann. § 9-21-105(21)(A) (1999). The financing methods specifically authorized by the Act for public works projects include general obligation bonds, *see* Tenn. Code Ann. § 9-21-201(a)(1) (1999), revenue bonds, *see* Tenn. Code Ann. § 9-21-301(a) (1999), bond anticipation notes, *see* Tenn. Code Ann. § 9-21-501 (1999), capital outlay notes, *see* Tenn. Code Ann. § 9-21-601 (1999), and grant anticipation notes, *see* Tenn. Code Ann. § 9-21-701 (1999).

1. The foregoing requirements demonstrate that a county must embark on an actual jail or workhouse construction project before the county is authorized to levy a local litigation tax pursuant to section 67-4-601(b). In addition to restricting the county's use of the tax proceeds to jail or workhouse construction projects, the statute provides that the tax shall only be effective until all project expenses have been paid or until any debt for the project has been retired. *See* Tenn. Code Ann. § 67-4-601(b)(1), (2) (Supp. 2000). These restrictions contemplate that a county will levy a local litigation tax to fund a specific project and that the county's authority to levy the tax will cease when all project expenses or debts have been paid.

2. A county's legislative body is specifically authorized to use several types of financing, including but not limited to capital outlay notes, to fund public works projects. *See generally* Tenn. Code Ann. §§ 9-21-101 to -1104 (1999 & Supp. 2000). If a county chooses to issue and sell capital outlay notes to fund a jail or workhouse construction project for which the county is levying a local litigation tax

pursuant to section 67-4-601(b), the county should use the litigation tax proceeds to retire the capital outlay notes as the notes fall due.

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