S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243-0497

January 4, 2001

Opinion No. 01-003

Naming Rights of Public Building and Advertising Sales

QUESTION

May a county without an election either (i) contract with a private entity to allow that entity to have the exclusive right to attach its name or logo to a publicly financed facility, or (ii) sell or lease advertising space at the facility to one or more private entities without violating Article II, Section 29, of the Tennessee Constitution?

OPINION

A county without an election may either (i) contract with a private entity to allow that entity to have the exclusive right to attach its name or logo to a publicly financed facility, or (ii) sell or lease advertising space at the facility to one or more private entities without violating Article II, Section 29, of the Tennessee Constitution.

ANALYSIS

This Office is informed that a county passed a resolution authorizing the issuance of general obligation public improvement bonds to provide for the acquisition of land for and the construction and equipping of an agricultural exposition park for the county.

The county is considering either (i) contracting with a private entity to allow that entity to have the exclusive right to attach its name or logo to a publicly financed facility, or (ii) selling or leasing advertising space at the facility to one or more private entities.

The lending of the county's credit is prohibited by the Tennessee Constitution absent a referendum. Article II, Section 29, of the Tennessee Constitution provides in relevant part:

> . . . the credit of no County, City or Town shall be given or loaned to or in aid of any person, company, association or corporation, except upon an election to be first held by

> the qualified voters of such county, city or town, and the assent of three-fourths of the votes cast at said election . . ..

To fall within the purview of this prohibition, there must be a "giving or lending of credit." A typical situation that would trigger this prohibition would be a county's borrowing money to lend to a private entity for a project to be used exclusively by that entity. However, under the facts that we have been presented, there does not appear to be a giving or a lending of credit. The county will own the facility. We assume that the county will use the facility as a public facility. The uses in question appear to be merely incidental to the county's public use of the facility. The advertisers presumably would purchase the space for their advertisements at a market price. The entity having the naming rights to the facility presumably would purchase such rights at a market price. We have been informed of no partnership arrangement between the county and these private entities. Thus, there appears to be no "giving or lending of credit" under these circumstances. *See, e.g., Doane v. City of Oak Ridge*, 898 S.W.2d 728 (Tenn. Ct. App. 1995).

While it might be possible to structure a transaction that would run afoul of the prohibition of Article II, Section 29, of the Tennessee Constitution, we do not see an inherent violation of the prohibition merely from a county's either (i) contracting with a private entity to allow that entity to have the exclusive right to attach its name or logo to a publicly financed facility, or (ii) selling or leasing advertising space at the facility to one or more private entities, provided that either contemplated transaction is consummated at a fair compensation to the county.

If tax-exempt bonds are involved in financing the facility, then the suggested transactions by the county raise a number of federal tax issues, particularly with respect to the private activity bond status of the bonds. In its formal opinions, this Office does not address federal tax questions. We do advise, however, that such questions may properly be answered only by competent bond counsel fully advised of all of the facts and documentation involved in both the financing itself and proposed uses of the facility.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

H. PHILLIP CARNES
Senior Counsel

Requested by:

The Honorable Marsha Blackburn
State Senator
305 War Memorial Building
Nashville, Tennessee 37243

The Honorable Mike Williams
State Representative
17 Legislative Plaza
Nashville, Tennessee 37243

The Honorable Charles M. Sargent, Jr.
State Representative
214 War Memorial Building
Franklin, Tennessee 37069