S T A T E O F T E N N E S S E E
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February 27, 2001

Opinion No. 01-026

Authorization for Taxation in Home Rule City

QUESTION

May the General Assembly enact legislation to authorize the City of Sevierville to impose a gross receipts tax (capped at 1%) or a hospitality tax (capped at 4%)?

OPINION

No. Because Sevierville has adopted "home rule" under Article XI, §9 of the Tennessee Constitution, the General Assembly may enlarge its powers of taxation only through passage of a general law. The legislature may not, by private act, authorize Sevierville to levy any special tax. The legislature may, however, by general law, authorize a reasonable class of municipalities, which could include Sevierville, to impose such taxes.

ANALYSIS

The City of Sevierville has, through two resolutions, requested the legislature to authorize it to implement a gross receipts tax (capped at 1%) or a hospitality tax (capped at 4%). The resolutions indicate that such taxes are needed because Sevierville has an economy based on tourism and lacks the fiscal capacity through ordinary means of taxation to provide services and facilities for both its permanent residents and the tremendous influx of visitors it receives as a gateway to the Great Smoky Mountains.

Consequently, Sevierville's Board of Mayor and Aldermen proposes that it be authorized to impose a gross receipts tax of no more than one percent on businesses operating within the city limits, and/or a "hospitality tax" of no more than four percent on tourism-related businesses, including hotels and motels, restaurants, amusements, theaters, campgrounds, and overnight rentals. This Office has not reviewed the actual text of any such proposed legislation, so it is unclear exactly how these taxes would operate, and whether they would conflict with the general tax laws in Tennessee. In particular, it seems likely that such taxes would conflict with either the sales tax law, Tenn. Code Ann. §§ 67-6-101 *et seq*.,

or the business tax law, Tenn. Code Ann. §§ 67-4-701 *et seq.* *See* Op. Tenn. Atty. Gen. No. U96-032 (Apr. 10, 1996)(considering proposed restaurant tax in City of Jackson). Ordinarily, the issue would then become whether the proposed acts had a rational basis to authorize special treatment for Sevierville, within the meaning of Article XI, Section 8 of the Tennessee Constitution. This is a difficult standard to meet. Nevertheless, because Sevierville is a community overwhelmingly influenced and impacted by tourism, it is likely that such an act would be sustained, just as the Supreme Court upheld by a 3-to-2 vote a special tax in Gatlinburg on account of its unusual "tourist-oriented economic base." *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 442 (Tenn. 1978).

We need not reach this customary inquiry, however, because, as the request points out, Sevierville is a home-rule city. The Tennessee Constitution makes abundantly clear that the legislature may not pass any private act pertaining to a home rule city, and especially any act granting powers of taxation. Article XI, §9 provides that once the voters of a municipality have adopted home rule, "the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect." Article XI, §9 goes on to specify that, after adopting home rule, the municipality continues to operate under its existing charter but may alter or amend that charter locally. It further provides, however, "that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly." As a result, because the voters of Sevierville have adopted home rule, the legislature has no power to enact the proposed tax laws for that city through private acts applicable exclusively to Sevierville. The Supreme Court has repeatedly reaffirmed this application of the home rule provisions of Article XI, §9 since they were added to the Constitution in 1953. *E.g.,Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 728-30 (Tenn. 1991); *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975); *see* Op. Tenn. Atty. Gen. No. 93-48 (July 22, 1993); Op. Tenn. Atty. Gen. No. U92-49 (Apr. 13, 1992).

The question then becomes one of how a home rule city may acquire increased powers of taxation. The only means of doing so, as Article XI, §9 specifies, is "by general act of the General Assembly." Such a general act may be one that vests such new powers of taxation in all municipalities, in all home rule municipalities, or in a reasonable class of municipalities not aimed at only one city. For instance, Tenn. Code Ann. §§ 67-4-1401 to -1411 is a general tax law applicable to all home rule municipalities, authorizing them to levy a hotel-motel tax. *See* Tenn. Code Ann. § 67-1-1401(3)(defining municipalities subject to the act as only those that have adopted home rule). This act was necessary for home rule cities to impose hotel-motel taxes, since the General Assembly could not pass private acts authorizing specific home rule cities to impose such taxes, as it has done with many municipalities that have not adopted home rule.

The legislature might by general law authorize a reasonable class of municipalities to impose taxes of the sort in question. *Frazer v. Carr*, 210 Tenn. 565, 360 S.W.2d 449 (1962); *Civil Service Merit Board v. Burson*, 816 S.W.2d 725 (Tenn. 1991); *Bozeman v. Barker*, 571 S.W.2d 279 (Tenn. 1978). It appears from the reasoning in *Stalcup* that municipalities that are heavily impacted by tourism might constitute one such class. But to the degree that such a class is likely to include only one city, the

probability of its being invalidated as not in effect a general law, increases. *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975); *Doyle v. Metropolitan Government*, 225 Tenn. 496, 471 S.W.2d 371 (1971); *Board of Education v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960).

In summary, it is clear that any act authorizing Sevierville, either by name, by narrowly-drawn population bracket, or by other category focused on that city, to levy a special tax would be unconstitutional and void under Article XI, Section 9. On the other hand, the General Assembly could by general law authorize a reasonable classification of cities, of which Sevierville might be one, to levy the sorts of taxes under consideration.

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