

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 01-141

Increase in Manchester Hotel/Motel Tax

QUESTION

May the City of Manchester, if authorized through amendment of its charter by the General Assembly, increase its hotel/motel tax to nine percent?

OPINION

Yes. If properly authorized by charter amendment, the City of Manchester may increase its hotel/motel tax to nine percent.

ANALYSIS

A question has arisen as to whether the City of Manchester may increase its hotel/motel tax. The present city charter authorizes a tax of not more than six percent. The Board of Mayor and Alderman has requested legislation authorizing it to increase the tax rate to as much as nine percent.

The General Assembly has broad powers to authorize the municipalities that it has created to impose taxes for municipal purposes. TENN. CONST. art II, §29. Manchester has not adopted home rule under Article XI, §9, so the General Assembly has not been restricted from addressing that city's municipal powers by private act. Thus only a conflicting general law could interfere with the power of the General Assembly to authorize such a tax rate in Manchester.

It apparently has been asserted that Tenn. Code Ann. § 67-4-1425 somehow interferes with the ability of the General Assembly to authorize such a tax rate increase. Subsections (a) and (b) of this statute provide that:

- (a) After May 12, 1988, an private act which authorizes a city or county to levy a tax on the privilege of occupancy of a hotel shall limit the application of such tax as follows:

(1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries;

(2) A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and

(3) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county.

(b) The provisions of this section shall be applied prospectively only and all private acts levying taxes on the privilege of occupancy of hotels which are enacted prior to May 12, 1998, shall remain in full force and effect. For the purposes of this section, “enacted” means passed by both houses of the general assembly and signed by the governor and approved in accordance with the Constitution of Tennessee, article XI, §9.

The thrust of this statute is to prohibit both a county and cities within that county from imposing hotel/motel taxes within the same territory. The design of the act is to prevent double taxation within the city limits. Section 67-4-1425 contains some exemptions in subsections (c) and (d) that are not pertinent here, and it applies only to private acts enacted after May 12, 1988. It says nothing, however, to limit the rate of any hotel/motel tax.¹ It merely prohibits both city and county from imposing hotel/motel taxes in the same territory.

Tenn. Code Ann. § 67-4-1425 does not say or imply that hotel/motel taxes cannot be initially levied or raised after May 12, 1988. It says, rather, that after that date a city hotel/motel tax cannot be imposed by private act if the county has already levied such a tax, and a county hotel/motel tax imposed by private act cannot be levied within any municipality in that county that previously has imposed such a tax by private act.

Coffee County has not imposed a hotel/motel tax. And even if it now attempted to do so, that county tax could not apply within the City of Manchester, because the city tax would have priority in accordance with §§ 67-4-1425(a)(3), as having been levied “prior to the adoption of such tax by the

¹Preceding §§ 67-4-1401 to -1411 authorize home rule cities to levy a hotel/motel tax not exceeding five percent. *See* Tenn. Code Ann. § 67-4-1402(a). These sections only relate to municipalities that have adopted home rule, and thus have no impact on Manchester.

county.”

Nothing in Tenn. Code Ann. § 67-4-1425, or in any other act of which this Office is aware, prevents the City of Manchester, if properly authorized through act of the General Assembly, from increasing the rate of its preexisting hotel/motel tax. Thus it is the opinion of this Office that the General Assembly may properly enact, and Manchester may properly ratify and implement, an act increasing its hotel/motel tax to nine percent.

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