S T A T E O F T E N N E S S E E
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September 4, 2001

Opinion No. 01-143

Tolls /Fees on County or State Highways

QUESTIONS

1. Whether a city or county may charge a toll/fee on a county or state highway?

2. Whether a toll/fee may be charged on a county or state highway at the border with another state?

3. Whether legislation would be required to authorize a city or county to charge a toll/fee on a county or state highway; and, if so, could such legislative authorization be accomplished through a private act?

ANSWER

1. No, a city or county may not charge a toll/fee on a county or state highway without express legislative authority.

2. No, a toll/fee may not be charged on a county or state highway at the border with another state without express legislative authority.

3. Legislation would be required to authorize a city or county to charge a toll/fee on a county or state highway. Such legislation could be authorized by private act except in "home rule" cities which require that such authority be granted by general law.

ANALYSIS

1. Counties are political subdivisions of the state and thus have no authority except that expressly given by or necessarily implied from state law. *State v. Bilbrey* , 878 S.W. 2d 567, 571 (Tenn. Ct. App. 1994). And, like counties themselves, county legislative bodies possess only the powers vested in them by the Tennessee Constitution or by state law. *Id; State ex rel. Barksdale v. Wilson*, 250 S.W. 2d 49, 50 (Tenn. 1952).

The Legislature has vested county legislative bodies with broad powers to build, repair and

maintain public roads. These powers are set out at Tenn. Code Ann. § 54-10-101, *et seq*. Nowhere in this broad grant is there conferred the ability to charge tolls or fees on county or state highways. Therefore, in the absence of any express or implied grant of authority from the Legislature, counties are barred from imposing such fees.

Likewise, municipalities (cities) are creatures of the Legislature. *State ex rel. Arlington v. Shelby County* 352 S.W. 2d 809 (Tenn. 1961). And the legislature is in complete command of the creation of cities. *Corp. of Collinsville v. Fayette County Election*, 539 S.W. 2d 334 (Tenn. 1976). Further, municipalities may exercise only those express or necessarily implied powers delegated to them by the legislature or their charters. *City of Lebanon v. Baird*, 756 S.W. 2d 236 (Tenn. 1988). Municipalities have broad powers of regulation and a wide discretion in the exercise of the police power. *Porter v. City of Paris*, 201 S.W. 2d 688 (Tenn. 1947). Nonetheless, police power belongs to the State, and passes to municipalities only when and as conveyed by legislative enactment. *Holdredge v. City of Cleveland*, 402 S.W. 2d 709 (Tenn. 1966). But the exercise of the police power must lie within authority expressly or impliedly granted to the municipal corporation by general state law or its charter provisions. *Draper v. Haynes*, 567 S.W. 2d 462 (Tenn. 1978). We are not aware of any general state law that authorizes cities to charge highway tolls. Thus, unless a particular city were granted such authority by its charter, it would have no authority to impose such tolls.

2. We assume that this question asks whether a city or county may charge a highway toll at the border of another state. For the reasons expressed in the analysis of question number 1, it appears that imposing these tolls or fees on county or state roads bordering other states is not authorized.

3. For the reasons expressed in the analysis of question number 1, legislation would be required to authorize a city or county to charge a toll/fee on a county or state highway. With the enactment of the Tennessee Tollway Authority Act (Tenn. Code Ann. § 54-15-101, *et seq*.) the legislature has established a mechanism by which tolls or fees may be charged on all public highways, roads or streets. However, the Tennessee Tollway Authority is a state entity and does not confer power on cities or counties to impose tolls or fees. Moreover, pursuant to Tenn. Code Ann. § 54-5-132, "[t]he collection of tolls on all state owned or operated toll bridges is discontinued..."

As to "home rule" cities, authorization to impose tolls or fees must be granted by general law. We are unaware of any general state law which would prohibit counties from being authorized by private act to impose tolls or fees.

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