

STATE OF TENNESSEE

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Opinion No. 01-172

Legislature's Power to Create Commission to Set or Regulate State Taxes

QUESTIONS

1. Does the Legislature have the power to create a group or commission to set or regulate state taxes in Tennessee?

For example, could such a group or commission

- a) provide tax relief to the elderly?
- b) classify property for tax purposes?
- c) set the method of taxing?
- d) reform the state's tax structure?

2. What constitutional language would have to be in place in order to give this type of power or authority?

OPINIONS

1. No. The Legislature does not have the power to create a group or commission to set or regulate state taxes in Tennessee. Delegation of the Legislature's taxing power to any entity other than counties and towns would violate Article II, Section 29 of the Constitution.

2. The Constitution would have to be amended to provide that a specific group or commission other than the Legislature is vested with taxing authority.

ANALYSIS

The power of taxation belongs to the State in its sovereign capacity. This power is vested in the Tennessee Legislature by the state Constitution, and the Legislature has no authority to delegate its taxing power except as expressly authorized by the Constitution. *Marr v. Enloe*, 9 Tenn. 452, 454, 1 Yer. 452 (1830), *Keese v. Civil Dist. Bd. of Educ.*, 46 Tenn. 127, 130-32 (1868); *Waterhouse v. Board of President & Dirs. Of Cleveland Pub. Sch.*, 55 Tenn. 857, 859 (1874); *Lipscomb v. Dean*, 69 Tenn.

546, 550 (1878); *Smith v. Carter*, 131 Tenn. 1, 7, 173 S.W. 430 (1915); *Williamson v. McClain*, 147 Tenn. 491,494, 249 S.W. 811 (1923); *West Tenn. Flood Control & Soil Conservation Dist. V. Wyatt*, 247 S.W.2d 56, 58 (Tenn. 1952). Article II, Section 29 of the Constitution allows the Legislature to delegate its taxing powers only to counties and towns.¹

Throughout the course of Tennessee history the Legislature has made a number of attempts to delegate its taxing authority to agencies other than counties and incorporated towns. The courts have consistently held that delegation of the taxing power to any other agencies is unconstitutional and void. *Marr*, 9 Tenn. at 455; *Keesee*, 46 Tenn. at 133; *Waterhouse*, 55 Tenn. at 859; *Lipscomb*, 69 Tenn. at 554; *Smith*, 131 Tenn. at 10; *Williamson*, 147 Tenn. at 502; *West Tenn. Flood Control & Soil Conservation Dist.*, 247 S.W.2d at 62. “The power of taxation is one of too grave and important character, to be delegated or exercised except strictly within the limits of the Constitution.” *Waterhouse*, 68 Tenn. at 859.

The case law regarding this issue confirms that the Legislature does not have the authority to delegate its taxing power to any entity other than the counties and incorporated towns of the State. Therefore, the creation of a group or commission to set or regulate State taxes is beyond the scope of the Legislature’s power. Turning to the specific examples listed in Question 1, such a group or commission could not provide tax relief to the elderly, classify property for tax purposes, set the method of taxing, nor reform the State’s tax structure.

This Office has previously addressed the question of providing tax relief for the elderly and has opined that the General Assembly may not empower another entity to provide for property tax relief to elderly homeowners. Op. Atty. Gen. No. 99-216 (October 27, 1999). Such relief can be provided only by State reimbursements to taxpayers, as authorized by Article II, Section 28 of the Tennessee Constitution. Furthermore, our Supreme Court has held that “the Legislature alone has the right to determine all questions of time, method, nature, purpose, and extent in respect to the imposition of taxes.” *Sears Roebuck & Co. v. Woods*, 708 S.W.2d 374, 383 (Tenn. 1986).

In order for the Legislature to delegate taxing authority, the Constitution would have to be amended to provide that a specific group or commission other than the Legislature is vested with taxing authority. Amending the Constitution would have to be done through the formal procedure outlined in Article XI, Section 3 of the Tennessee Constitution.

¹Section 29 provides, in part, that “the General Assembly shall have power to authorize the several counties and incorporated towns in this state, to impose taxes for county and corporation purposes, respectively, in such manner as shall be prescribed by law....” Tenn. Const. Art. 2, §29.

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