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Opinion No. 02-043

Setting Tax Rate for Franklin Special School District

QUESTION

In light of Op. Tenn. Atty. Gen. 01-034 (March 12, 2001), what is the validity of a proposed bill's language establishing a new tax and its rate related to Franklin Special School District refunding bonds?

OPINION

Because the proposed bill does not set a tax rate, but appears to allow the School District to set and change the rate without legislative approval, the bill might be challenged as an unconstitutional delegation of the General Assembly's taxing power.

ANALYSIS

You have provided a proposed bill that would authorize the Franklin Special School District to issue refunding bonds and that would establish a new tax. The proposed bill does not set a specific tax rate but states as follows:

> [T]here is hereby levied, in addition to any tax currently being levied within the boundaries of the District for the benefit of the District, a continuing annual tax equal to a rate per one hundred dollars ($100) of assessed value of real and personal property located within the District which provides the District one hundred percent (100%) of the amount of outstanding principal, premium, if any, and interest coming due on refunding bonds in the next succeeding year. . . . [T]he District shall by resolution of the [School] Board on or before September 1 of any year certify to the County Trustee the special school district tax rate. The County Trustee shall adjust the tax rate established herein to an adjusted rate which is estimated to provide [the amount described above].

Proposed bill, Section 4.

Previous acts authorizing the District to issue bonds have levied a tax and set a specific rate.[1] The proposed bill, however, is similar to the one discussed in Op. Tenn. Atty. Gen. 01-034. The proposed bill does not set a tax rate but sketches a rate in broad, undefined terms. It appears to allow the District to determine the actual tax rate, without legislative approval. As explained in Op. Tenn. Atty. Gen. 01-034, the General Assembly may not delegate taxing authority to special school districts. The proposed bill seems to do that. Thus, we must conclude that the proposed bill might be constitutionally unsound.

This opinion deals only with the proposed legislation and is not intended to address the validity of or affect any outstanding bond issue.

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[1] *E.g.*, 1992 Priv. Acts, ch. 181 § 3: [T]here is hereby levied a continuing annual tax of forty cents ($0.40) on each one hundred dollars ($100.00) worth of taxable property in the school district . . . .”