

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 11, 2003

Opinion No. 03-016

Regulation of Mortgage Lending by Local Governments

QUESTIONS

1. May local governments (cities or counties) enact local ordinances or regulations governing aspects of mortgage loan transactions, including such things as interest, usury, fees, consumer protections, or other limits on a loan transaction?
2. If yes, and if a local government promulgates such ordinances or regulations, must the local government's ordinance or regulations apply to all transactions within the local government's jurisdiction, or may the regulations be applied only to those lenders who voluntarily do business with the local government entity?

OPINIONS

1. Counties and cities have no authority to regulate mortgage loan transactions.
2. We do not reach this question because we answer question one in the negative.

ANALYSIS

Local governments have the powers and authority that the General Assembly gives them. *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706, 711-12 (Tenn. 2001).¹ In our review of statutes on city and county powers,² we have discovered no delegation of general authority to cities and counties to regulate mortgage loan transactions. In addition, even if there were such authority, the exercise of local regulatory authority must be consistent with state law. *See, e.g., Southern Railway Co. v. City of Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968).

¹ The Tennessee Supreme Court stated, "In determining the question now made, it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation--against the existence of the power." (*Southern Constructors*, 58 S.W.3d at 710 (quoting *Merriam v. Moody's Ex'rs*, 25 Iowa 163, 170 (1868)).

² Tenn. Code Ann. §§ 5-1-101, *et seq.*, 6-2-201, *et seq.*, 6-19-101, *et seq.*, 6-33-101, *et seq.*, 6-54-101, *et seq.*, 7-3-101, *et seq.*, 7-31-101, *et seq.*, 7-51-101, *et seq.*

Because the federal and state governments regulate this subject matter extensively, it seems unlikely that a local ordinance regulating mortgage loan transactions could be consistent with the applicable federal and state law.

The State regulates interest rates, including a maximum effective interest rate on loans. Tenn. Const., Art. XI, § 7; Tenn. Code Ann. §§ 47-14-101, *et seq.*; *see also* Tenn. Code Ann. §§ 47-15-101, *et seq.* Neither the Tennessee Constitution nor state statutes give cities and counties authority to set interest rates. Further, federal law preempts even the state's authority to set residential mortgage interest rates under certain conditions. 12 U.S.C. § 1735f-7a(a)(1); *see Grunbeck v. The Dime Savings Bank of New York*, 74 F.3d 331, 339 (1st Cir. 1996).

In addition, state and federal law heavily regulate other aspects of residential mortgage loan transactions, such as fees and disclosure requirements. *See, e.g.*, the Federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.*, and regulations, 12 C.F.R. §§ 226.1, *et seq.* Where federal law specifically applies to a particular mortgage loan practice, it could preclude local government regulation of the same subject matter even if the State had authorized the local action. *See, e.g., James Cable Partners, L.P. v. City of Jamestown*, 43 F.3d 277, 281 (6th Cir. 1995). Further, the State regulates mortgage lending. *See* Op. Tenn. Atty. Gen. 87-192 (December 16, 1987) for a discussion of several state and federal laws regarding fees on loan transactions. Thus, even if a city or county could regulate mortgage loan practices, it would have to consider all applicable state and federal laws to determine (1) whether the regulations it proposes have not been preempted and (2) whether the proposed regulations would be consistent with all applicable laws.

Cities and counties lack statutory authority to regulate mortgage transactions.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Craig Fitzhugh
State Representative
20 Legislative Plaza
Nashville, TN 37243-0182