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Opinion No. 03-019

Subjecting Tax Increases to Public Referendum in Home Rule Municipalities

QUESTION

May a municipality that has adopted "home rule" under Article XI, Section 9 of the Tennessee Constitution amend its charter to provide that all increases in city tax rates must be approved by a majority of the voters of the city at a referendum election?

OPINION

A home rule municipality may amend its charter to provide for the procedures by which city tax rates may be increased, which may include a municipal referendum, unless the statute giving the municipality the authority to levy a particular tax specifies the manner in which the rate of that tax must be set. In particular, a home rule municipality may amend its charter to require property tax increases to be approved by referendum, since no statute appears to specify the municipal body or procedure by which that rate is to be set.

ANALYSIS

This opinion addresses whether a city that has adopted "home rule" may amend its charter to call automatically for a referendum election to consider all proposed increases in city tax rates. Article XI, Section 9, the operative provision of the Tennessee Constitution relative to home rule, states in pertinent part:

> Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter ***to provide for its governmental and proprietary powers, duties and functions***, and for the form, structure, personnel and organization of its government, ***provided that no charter provision*** except with respect to compensation of municipal personnel ***shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly***.

Tenn. Const. Art. XI, § 9 (emphasis added). This provision precludes a home rule city from enlarging or increasing its "power of taxation" by a charter amendment, but otherwise it gives a home rule city a great deal of latitude in amending its charter "to provide for its governmental and proprietary powers, duties and functions," provided that such amendment does not conflict with any "general act of the General Assembly." A charter amendment providing that increases in a city tax rate must be approved by a majority of the voters of the city would not be an increase or an enlargement of the city's "power of taxation." Thus, such a charter amendment would be permitted pursuant to Article XI, Section 9, unless it was otherwise in conflict with a statute.

Often, the statute giving the municipality authority to levy a tax will address exactly how the rate is to be set or increased, as well as by what agency of the city government. Such procedure might also be referred to or incorporated into some other relevant statute. Accordingly, to answer your question, a separate inquiry must be made as to the structure of any particular tax. In the absence of a statutory requirement, the language of Article XI, Section 9 is sufficiently broad to allow home rule cities very wide latitude when determining their governmental structures and procedures. Requiring a referendum to raise a tax rate would be well within this discretion.

The property tax is one example of a tax to which such a charter amendment could apply. Even though the governing bodies of counties have been delegated specific taxing duties relative to the property tax, we have not located any similar statutory references to the general powers of municipal governing bodies. Concerning counties, Tenn. Code Ann. § 67-5-102(a) in pertinent part provides as follows:

> (1) For county general purposes, the various counties are authorized to levy an ad valorem tax upon all property subject to this form of taxation.
> (2) The ***amount of such tax shall be fixed by the county legislative body*** of each county.

Tenn. Code Ann. § 67-5-102(a)(1) and (2) (emphasis added). The equivalent statute that also addresses taxation by municipalities, Tenn. Code Ann. § 67-5-103, provides no similar mandate. In fact, subsection (b) provides the following:

> All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses or a combination of the two (2), whether ***imposed by*** general or private act, or ***home rule charter***, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are hereby repealed effective January 1, 1973.

Tenn. Code Ann. § 67-5-103(b) (emphasis added). This statute appears to give cities, as of 1973, a great deal of latitude in fixing the property tax rate, and does not mandate that setting such a rate

is the sole province of the municipal governing bodies, as it is with county legislative bodies. Therefore, the procedure for increasing these municipal property taxes could be addressed in a charter amendment without running afoul of any general laws. Since Tenn. Const. Art. XI, § 9 allows a home rule municipality to amend its charter in any way that does not conflict with general law or increase its power of taxation, and since the property tax laws do not preclude a city from modifying the procedure under which they are levied, a charter amendment which mandates that the city's voters must approve by referendum all increases in the city property tax rate would be permissible.

The Code specifically states that a home rule city may amend its charter by referendum to put the actual property tax rate in the charter. Tenn. Code Ann. § 6-53-105(b) provides in pertinent part:

> Except in [Metropolitan Nashville/Davidson County], ***the local governing body of any municipality that has adopted home rule may, by ordinance, propose an amendment to the charter*** of such municipality by a majority vote of the body and submit the same for ratification by approval of the qualified voters of the municipality, in a special election to be held for such purpose, the amendment to be limited in its substance and applicability to the establishment of a property tax rate, or the increasing or reduction thereof . . . .

Tenn. Code Ann. § 6-53-105(b) (emphasis added). As an alternative to other procedures, this statute contemplates a charter amendment that, upon ratification by the cities' qualified voters at a special election, actually sets the property tax rate ***in the charter***. But this is an optional procedure. It does not prohibit a home rule municipality from amending its charter to establish a general referendum requirement for any property tax rate increase proposed by the governing body of the city, without putting any particular rate in the charter itself. If a home rule charter is amended pursuant to the broad powers delegated by Tenn. Const. Art. XI, § 9, such a charter amendment can establish (or change) the procedure for setting municipal tax rates, and as part of that procedure, can mandate an automatic municipal referendum before city tax rates are increased, just as an amendment can set the tax rate itself in the charter.

When planning the logistics by which a home rule municipality is to conduct an automatic referendum on this issue, however, one must lay the substance and procedure of the various property tax laws over the specific procedure authorized under the charter amendment. As an illustration, some of the procedures and timing required by provisions in the property tax laws may be difficult to coordinate with an automatic referendum on a tax increase under a charter amendment, particularly in a year in which the general reappraisal of values takes effect.[1]

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[1] The state law relative to the certified property tax rate would still apply to home rule municipalities. Tenn. Code Ann. § 67-5-1702 allows a levy in excess of the certified rate only after certain procedures are met. Specifically, in the first year after a general reappraisal, a public hearing would still be required in addition to the automatic

Some state statutes are more specific in delegating taxing authority to the various taxing jurisdictions, and expressly identify the local governmental body that must set the tax rate. In such instances, the procedures for imposing such taxes cannot be changed merely by an amendment to a particular jurisdiction's charter. For example, the local option sales tax law authorizes "any incorporated city" to levy a local option sales tax. However, Tenn. Code Ann. § 67-6-702(a) delineates the specific procedure for imposing this tax, and this procedure is not subject to modification by any amendment to a home rule charter. This is also true about the hotel-motel tax; Tenn. Code Ann. § 67-4-1401 *et seq.* establishes the specific procedure by which a home rule municipality may levy the hotel-motel tax, which likewise cannot be changed by a charter amendment.

In the absence of a general law to the contrary, the Constitution allows a home rule municipality to address in its charter the manner in which city tax rates are to be increased. Accordingly, it is the opinion of this Office that a home rule municipality may amend its charter to provide that a proposed increase in some city tax rates will be effective only upon ratification by a majority of the city's qualified voters at a referendum election. But such a referendum requirement cannot necessarily be applied to some important city taxes that must be levied only in conformity with express statutory mechanisms.

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referendum election specified in the proposed charter amendment. Both the referendum and the public hearing would have to occur with sufficient public notice and in a timely manner for the taxing authority to institute a proper budget as well as satisfy the deadlines for the payment of property taxes.

Requested by:

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