**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
**PO BOX 20207**
**NASHVILLE, TENNESSEE 37202**

May 14, 2003

Opinion No. 03-062

Imposition of Hotel-Motel Tax by Home Rule City Located in County Levying Such a Tax by Private Act

## QUESTION

May the City of Clinton, a home rule municipality located in Anderson County, levy a hotel-motel tax when the county has previously imposed such a tax by private act?

## OPINION

Yes. Since Tenn. Code Ann. §§ 67-4-1401 *et seq.* specifically empower all home rule municipalities to levy a hotel-motel tax, the City of Clinton may proceed to do so, despite the provisions of T.C.A. §§ 67-4-503 and 67-4-1425(a)(2) that would prohibit a city located in a county already levying such a tax from imposing a similar city tax by private act.

## ANALYSIS

The City of Clinton is a home rule municipality located in Anderson County. TENNESSEE BLUE BOOK 1999-2000, "Municipal Data," at 610. This Office is informed that it has passed an ordinance levying a hotel-motel tax. The instant question is whether that ordinance is valid in light of the hotel-motel tax that Anderson County has previously imposed and collected since 1990 under the authority of Chap. No. 193, 1990 Private Acts. The answer is that while in most similar situations the effort of a city to duplicate a hotel-motel tax already in effect in the county would be invalid, in this instance the tax is permissible because it has been imposed under the general law applicable to home rule cities, and not by private act.

Two Code sections attempt, to some extent, to limit duplication of hotel-motel taxes within the same jurisdiction. The broader provision is T.C.A. § 67-4-503, which declares in pertinent part,

> (a) Notwithstanding any provision of the law to the contrary, except where specifically authorized by general law, when any county has pursuant to private act levied a tax on a privilege, no municipality therein shall thereafter levy a tax on the same privilege, and when any

> municipality has heretofore pursuant to general law or private act levied a tax on a privilege, the county in which such municipality is located shall not levy a tax on the same privilege.

The other provision, more directly focused on hotel-motel taxes, is T.C.A. § 67-4-1425, which reads,

> (a) After May 12, 1988, any private act which authorizes a city or county to levy a tax on the privilege of occupancy of a hotel shall limit the application of such tax as follows:
> (1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries;
> (2) A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and
> (3) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county.

The Anderson County hotel-motel tax is levied under a private act of the type that these general laws purport to regulate and coordinate.

The specific tax in question, however, is the hotel-motel tax that has been levied by the City of Clinton. Because Clinton has adopted home rule under Article XI, Section 9 of the Tennessee Constitution, the General Assembly may "act with respect to [it] only by laws which are general in terms and effect." In particular, Article XI, Section 9 expressly provides that "the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly." Accordingly, the General Assembly has passed just such a general law, authorizing all home rule municipalities to impose a hotel-motel tax, not to exceed 5% of the consideration charged by the operator. *See* Tenn. Code Ann. §§ 67-4-1401 *et seq.*, particularly § 67-4-1401(3)(defining municipalities covered by the act as those which have adopted home rule).

Because of the legal mechanisms under which the Clinton tax has been levied, it escapes the impact of the anti-duplication statutes quoted above. Tenn. Code Ann. § 67-4-503 says that a municipality may not levy a tax on a privilege that the county in which it lies has already taxed by private act, "except where specifically authorized by general law." But Clinton, as a home rule municipality, has been specifically authorized by general law to levy a hotel-motel tax, and thus falls outside the ban of the statute. Similarly, Tenn. Code Ann. § 67-4-1425(a) also prohibits a city from imposing a hotel-motel tax if its county has previously adopted such a tax, but that section operates only by limiting the terms of "any private act which authorizes a city or county to levy a tax on the privilege of occupancy of a hotel . . . ." Because Clinton's tax is not dependent on any private act,

and in fact could not be imposed by private act because of Article XI, Section 9, the Clinton tax is not affected by § 67-4-1425.

Consequently, neither § 67-4-503 nor § 67-4-1425 interferes with Clinton's ability as a home rule city to impose a hotel-motel tax under Tenn. Code Ann. §§ 67-4-1401 *et seq*. Since the tax in question here was imposed by ordinance premised on that authority, it is the opinion of this Office that the Clinton hotel-motel tax is valid.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

CHARLES L. LEWIS
Deputy Attorney General

Requested by:

The Honorable Leslie Winningham
State Representative
36 Legislative Plaza
Nashville, TN 37243-0138