

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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October 1, 2004

Opinion No. 04-149

Amendment of County Tax Rates

QUESTION

In view of Op. Tenn. Att’y Gen. No. 92-3 (Jan. 14, 1992), may a county board of commissioners, having approved a tax rate in June 2004 for fiscal year 2004-05, amend said tax rate by (1) deciding to levy a property tax increase for the purpose of funding transportation for public education; or (2) lowering the general fund tax rate and raising the education tax rate by an equal and corresponding amount; or (3) lowering the portion of the Business Tax (Tenn. Code Ann. §§ 67-4-701 to -730) that is allocated to the general fund and raising the allocation to the education fund by an equal and corresponding amount and supplementing the general fund by an appropriation from the fund balance account (rainy day fund), in order to provide additional money to fund transportation for the public school system, all prior to the mailing of tax bills to property owners?

OPINION

Yes. A county board of commissioners, having previously approved a tax rate for fiscal year 2004-05, may amend the county’s tax rate, provided the new rate is fixed before taxes become due on the first Monday in October. The various methods for raising tax rates described in your request appear to be appropriate alternatives for raising revenue to fund education. All of the proposed methods specifically levy taxes for school purposes, and none of the alternatives purport to improperly divert revenues collected for general county purposes to educational purposes.

ANALYSIS

Pursuant to Tenn. Code Ann. § 67-5-510, county legislative bodies have the duty “to fix the tax rates on all properties within their respective jurisdictions for all county purposes” on the first Monday in July, “or as soon thereafter as practicable.” Tenn. Code Ann. § 67-5-510 (2003). As a general rule, county, school, and all property taxes are “due and payable on the first Monday in October of each year.” Tenn. Code Ann. § 67-1-702(a) (2003); *see also* Tenn. Code Ann. § 67-1-701(a) (2003). Unpaid property taxes become delinquent on March 1. Tenn. Code Ann. § 67-5-2010(a)(1) (2003).

In Op. Tenn. Att’y Gen. No. 92-3 (Jan. 14, 1992), this Office opined that a county legislative body lacked the authority to alter the county’s property tax rates in mid-fiscal year. Citing the foregoing statutory provisions, we reasoned that

Tennessee statutes expressly contemplate that tax rates be fixed “on the first Monday in July, or as soon thereafter as practicable.” T.C.A. § 67-5-510. Certainly, that provision is intended to mesh with the provision that property taxes, for both general county purposes and for school purposes, become due and payable on the first Monday in October. T.C.A. § 67-1-702(a). In addition, with the delinquency date for property taxes set by statute for March 1 (T.C.A. § 67-5-2010), a mid-fiscal year change in tax rates, if authorized, could lead to taxes becoming delinquent as soon as they are levied, an untenable result. . . . [O]ther than certain very limited express exceptions, no statutes authorize county legislative bodies to set different dates for property taxes to become due or delinquent.

Op. Tenn. Att’y Gen. No. 92-3 (Jan. 14, 1992).

In Opinion No. 92-3, this Office specifically addressed a county legislative body’s attempt to alter the tax rate in mid-fiscal year. In addressing this issue, however, we suggested that alteration of the tax rate would be permissible if such amendment were accomplished prior to the first Monday in October, when taxes become due. In discussing *Badgett v. Broome*, 219 Tenn. 264, 409 S.W.2d 354 (1966), a case in which the courts upheld an amended tax levy, we noted “that the rate was firmly fixed on September 27, 1965, before taxes became due on the first Monday in October.” Op. Tenn. Att’y Gen. No. 92-3 (Jan. 14, 1992). Although a county legislative body lacks authority to amend its tax rates in the middle of a fiscal year, nothing prevents the county from amending a previously established tax rate, provided it does so within the time limitations set forth in the foregoing statutes. This conclusion is in keeping with the general rule “that the exercise of the taxing power one time is not final or conclusive, so as to prevent the levy from afterwards being amended.” *Southern Ry. Co. v. Hamblen County*, 117 Tenn. 327, 333, 97 S.W. 455, 456 (1906).

Your opinion request addresses raising the tax rate in order to fund transportation for the county’s public school system. By statute, a county legislative body is required to levy sufficient taxes to fund the county school system. *See* Tenn. Code Ann. § 49-2-101(6)—(8) (2002). As long as the increased taxes are properly levied for school purposes, such a course of action does not violate the other principle discussed in Opinion No. 92-3 — that “a county legislative body cannot lawfully divert revenues collected for general county purposes, or other non-education purposes, and apply those moneys to education purposes.” Op. Tenn. Att’y Gen. No. 92-3 (Jan. 14, 1992). This principle likewise is not violated where the county legislatively adjusts its tax rates so that a larger portion of the tax rate goes toward education. Such legislative action does not improperly divert revenues that have been collected for general county purposes to education. Instead, it merely

prospectively alters the portion of taxes that will be collected for general county purposes as opposed to special purposes like education.

In accordance with the foregoing authorities, a county board of commissioners, having previously approved a tax rate for fiscal year 2004-05, may amend the county's tax rate, provided the new rate is fixed before taxes become due on the first Monday in October. Moreover, the various methods for raising tax rates described in your request appear to be appropriate alternatives for raising revenue to fund education. As described in your request, all of the proposed methods specifically levy taxes for school purposes, and none of the alternatives purport to improperly divert revenues collected for general county purposes to educational purposes.

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