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Opinion No. 06-031

Building Permits in Union County

QUESTIONS

1. 2005 Tenn. Priv. Act Ch. 31 amends a private act applicable in Union County. Under the amendment, the Union County Assessor of Properties is entitled to a fee for issuing building permits. The fee is to be set by the Union County Commission, not to exceed certain maximum amounts. Does this act establish the Union County Assessor of Properties as a fee office?

2. Under the act, would the Union County Commission set a flat fee per building permit issued or a percentage of the amount of each building permit issued, as the fee to which the Union County Assessor of Properties is entitled for issuing building permits?

OPINIONS

1. No. Instead, the statute contemplates that fees from issuing building permits will be included in that Office's annual budget.

2. The Commission may set a flat fee per application, vary the fee based on the estimated cost of construction, or adopt some other method to calculate the fee so long as it is levied evenhandedly and does not exceed the maximum fees in the act.

ANALYSIS

1. Union County Assessor of Properties as a Fee Office

This opinion concerns the effect of a change in private acts pertaining to Union County. 1973 Tenn. Priv. Acts Ch. 87 authorizes the Union County Tax Assessor to issue building permits for construction in the county. Section 3 of this private act states:

> The County Tax Assessor shall be entitled to a fee for the issuance of each building permit; the amount of the fee is to be set by the Quarterly Court of Union County and is not to exceed five dollars ($5.00).

2005 Tenn. Priv. Acts Ch. 31 deletes this Section 3 and substitutes the following:

> The County Assessor of Properties shall be entitled to a fee for the issuance of each building permit. The amount of the fee shall be set by the county legislative body for Union County, and shall not exceed the following:
>
> (1) The sum of two hundred twenty-five dollars ($225) for residential construction, including homes and the setup of new and used mobile homes; and
>
> (2) The sum of four hundred fifty dollars ($450) for commercial construction which shall include a unit or development of more than two (2) residential units.

The first question is whether this private act establishes the Office of Union County Assessor of Properties as a fee office. We assume your question refers to an office that retains fees and pays officers and employees out of its fee income. The private act does not reflect any intent to bring about this result. As a general matter, each county property assessor is entitled to the salary set forth in Tenn. Code Ann. § 67-1-508. Subsection (a) provides that, "[t]he assessor of property of each county or metropolitan government shall receive as compensation an annual salary as established by § 8-24-102." The referenced statute sets out minimum salaries for county officers, including property assessors. Reading the general law together with the new private act, we conclude that the private act does not establish the Union County Assessor of Properties as a fee office. Instead, the statute contemplates that fees from issuing building permits will be included in that Office's annual budget.

2. Method of Calculating Permit Fee

The second question is how, under the private act, the new fee should be calculated. The requests asks whether the Union County Commission should set a flat fee per building permit issued or a percentage of the amount of each building permit issued. The private act does not state how the fee is to be calculated; it simply sets the maximum fees that the Assessor of Properties may charge. It appears, therefore, that the Commission may set a flat fee per application, vary the fee based on the estimated cost of construction, or adopt some other method to calculate the fee so long as it is levied evenhandedly and does not exceed the maximum fees in the act.

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