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Opinion No. 06-089

Use of Funds Generated by Fayette County Adequate Facilities Tax

QUESTIONS

1. Can the funds generated by the Fayette County Adequate Facilities Tax in one area of the county be used for growth-related capital improvements in another part of the county?

2. What test should be used to determine whether items in the required capital improvements plan are "reasonably related to new development in the county"?

OPINIONS

1. Yes. So long as the funds generated by the Adequate Facilities Tax are used to provide public facilities, the need for which is reasonably related to new development in the county, the funds may be used for such capital improvements anywhere within the county.

2. The rational basis test should be used to determine whether capital improvements are related to new development, and the County Commission has broad discretion in making that determination.

ANALYSIS

(1)

The Fayette County Adequate Facilities Tax was first authorized by Chapter No. 69 of the 2001 Private Acts. That Act was rewritten by Chapter No. 38 of the 2003 Private Acts, which sets forth the present law. Like similar taxes in several other counties, the Act, once ratified in accordance with Article XI, section 9 of the Tennessee Constitution, authorizes the County Commission to impose a privilege tax on the development of buildings and structures for residential and non-residential purposes, based on their square footage. Before such a tax can be imposed, the County Commission must adopt a capital improvements program and find that "the need for such public facilities is reasonably related to new development in the county." Section 5. The Act, at Section 2(d), defines "capital improvement program" to mean

> a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expense, for the purchase, construction, or replacement of the physical assets of the community are included.

Many other provisions of the Act implement this general scheme, but none restrict the use of revenues produced from the tax in any other way.

The initial question is whether funds generated from development in one part of the county may be used to construct public facilities in another part of the county. The Act contains no language that can be read to support a geographical restriction on the use of revenues resulting from the tax. While the facilities must be related to new development in the county, nothing in the Act says that tax revenues from a particular development must be expended on public facilities to serve that particular area or development. Indeed, such a requirement would require complex record-keeping to ensure that every dollar of revenue is used for a facility located so as to serve the area that produced the revenue. The Act contains no such provisions. Indeed, in most instances such a tie-in would be administratively impractical.

Such an interpretation of the Act would also run counter to the requirement that the capital improvement program must list, in priority order, all major projects and the means of financing them. This implies that priority projects may be funded by available revenues, without regard to the part of the county from which those revenues are derived. This is consistent with the general proposition that in Tennessee each county is a taxing jurisdiction and ordinarily views its needs and fiscal resources as a whole. *See Albert v. Williamson County*, 798 S.W.2d 758 (Tenn. 1990).

In the absence of either express language or clear implication that the use of funds from the Act is restricted to the area of the county from which they derive, the Act should not be read to impose such a requirement. Therefore, revenues generated by the Adequate Facilities Tax may be used to finance appropriate public facilities anywhere within the county.

(2)

The next question concerns the standard to be used to determine if a facility included in the capital improvements plan is "reasonably related to new development in the county." As with most tax laws, the proper standard for determining this is the rational basis test, as the Legislature has emphasized by using the phase "reasonably related." *See City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997); *Admiralty Suites and Inns, LLC v. Shelby County*, 138 S.W.3d 233, 239-41 (Tenn. Ct. App. 2003); *Nolichuckey Sand Co. v. Huddleston*, 896 S.W.2d 782, 788 (Tenn. Ct. App. 1994). It is impossible to specify a more precise standard, since in this realm the legislative body (here the County Commission) will be accorded very broad discretion. *Estrin v. Moss*, 221 Tenn. 657, 430 S.W.2d 345, 349 (1968). As long as a reasonable argument can be advanced to support the assertion that a facility is necessitated by new development in the county, then the

rational basis test is satisfied and the decision of the legislative body will be honored.

The Act sets out the types of public facilities that it contemplates, including, but not limited to, the following:

> roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater, and drainage projects, airport facilities and other government capital improvements . . . .

Section 2(n). If such facilities are necessitated by new development in the county, so as to serve an increased population and to fulfill the resulting demand for public services, then the requirement that they be "reasonably related" is satisfied. Such a determination by the County Commission will be accorded great deference by the courts.

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