S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 12, 2006

Opinion No. 06-163

Authority Of County To Hold Non-Binding Advisory Referendum

QUESTIONS

Whether a private act is necessary in order for Lincoln County to place a non-binding advisory referendum concerning zoning on the November ballot.

OPINION

Yes.

ANALYSIS

The Lincoln County Commission has passed the following resolution:

> Ask the Election Commission to place on the November ballot, an advisory, non-binding referendum to allow the people of Lincoln County to decide whether we need to study and look hard at land use codes for Lincoln County. There would be no cost to put this referendum on the ballot.

You have asked whether a private act is necessary in order for the Lincoln County Election Commission to place such a non-binding advisory referendum on the November ballot. It is well-settled law in Tennessee that the right to call an election cannot exist without an express grant of power by the legislature. *See Brewer v. Davis*, 28 Tenn. 208 (1948). *See also McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980). This Office has previously determined that there is no general provision in the constitution or statutes of this state that authorizes a local government to hold an advisory or non-binding referendum election. *See* Tenn. Atty. Gen. Op. 95-013 (March 8, 1995); Tenn. Atty. Gen. Op. 81-336 (June 2, 1981) (copies attached). However, this Office has also opined that the General Assembly has the constitutional power to authorize local governments to hold such advisory referendum elections. *See* Tenn. Atty. Gen. Op. 00-081 (May 1, 2000) (Copy attached). Accordingly, it is our opinion that an appropriate private act would be necessary in order for the Lincoln County Election Commission to place a non-binding advisory referendum concerning zoning in Lincoln County on the ballot.

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