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Opinion No. 07-06

Effect of County Powers Relief Act on County's Authority to Increase Development Tax

QUESTION

The County Powers Relief Act, enacted effective June 20, 2006, provides that "this part shall be the exclusive authority for local governments to adopt new or additional adequate facilities taxes on development." Tenn. Code Ann. § 67-4-2913 (2006). Does this provision prohibit any county or municipality which has imposed any type of development tax prior to June 20, 2006, from increasing the tax in existence on that date?

OPINION

Under the provisions of Tenn. Code Ann. § 67-4-2913, a county that imposed a development tax prior to June 20, 2006, pursuant to a pre-existing private act may continue to levy the tax authorized by the private act for so long as that act remains in effect. Nevertheless, Tenn. Code Ann. § 67-4-2913 precludes counties from relying on subsequently-enacted private acts to impose or increase their development taxes.

ANALYSIS

In 2006, the General Assembly enacted the County Powers Relief Act authorizing "counties to levy a privilege tax on persons and entities engaged in the residential development of property." Tenn. Code Ann. § 67-4-2902 (2006). The purpose of the tax is "to provide a county with an additional source of funding to defray the cost of providing school facilities to meet the needs of the citizens of the county as a result of population growth." *Id*. In order to levy such a tax, the county must have adopted a capital improvement program as required by Tenn. Code Ann. § 67-4-2909, and must meet at least one of the growth criteria set forth in Tenn. Code Ann. § 67-4-2907. Initially, the county may levy a tax "at a rate not to exceed one dollar ($1.00) per square foot on residential property." Tenn. Code Ann. § 67-4-2908 (2006). The county may not increase the tax more often than every four (4) years, and any single increase in the tax rate may not exceed ten percent (10%). *See id*. Tax revenues are to "be used exclusively for the purpose of funding capital expenditures for education, including the retirement of bonded indebtedness, the need for which is reasonably related to population growth." Tenn. Code Ann. § 67-4-2911 (2006).

Both the purpose and measurement of the privilege tax authorized by the County Powers Relief Act are similar to adequate facilities taxes that have been authorized in a number of Tennessee counties pursuant to private acts passed by the General Assembly. *See, e.g.*, Op. Tenn. Att'y Gen. No. 04-158 (Nov. 1, 2004) (observing that private acts authorizing adequate facilities taxes have been passed for Maury, Montgomery, and Rutherford counties); Op. Tenn. Att'y Gen. No. 06-089 (May 16, 2006) (discussing private act applicable to Fayette County).

The County Powers Relief Act provides that, after its effective date,

> no county shall be authorized to enact an impact fee on development or a local real estate transfer tax by private or public act. In addition, this part shall be the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development.

Tenn. Code Ann. § 67-4-2913 (2006). In addressing the viability of earlier private acts authorizing the imposition of similar development taxes, Tenn. Code Ann. § 67-4-2913 further provides that

> the provisions of this part shall not be construed to prevent a municipality or county from exercising any authority to levy or collect similar development taxes or impact fees granted by a private act that was in effect prior to the effective date of this act or from revising the dedicated use and purpose of a tax on new development from public facilities to public school facilities. A county levying a development tax or impact fee by private act on the effective date of this act shall be prohibited from using the authority provided in this part so long as the private act is in effect.

The import of the foregoing provisions is that a county that imposed a development tax pursuant to a pre-existing private act may continue to levy the tax authorized by the private act for so long as that act remains in effect. By its terms, however, the County Powers Relief Act precludes a county from relying on a subsequently-enacted private act to impose or increase a development tax. Accordingly, any private act passed after June 20, 2006, and authorizing a county or municipality to impose a new development tax or adequate facilities tax or to increase the rate of such a pre-existing tax would be invalid because it would be in conflict with the general law expressed in Tenn. Code Ann. § 67-4-2913.

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