**S T A T E O F T E N N E S S E E**
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Opinion No. 07-33

Property Tax Relief for the Elderly

## QUESTION

Subsection (c) of the recently adopted amendment to Article II, Section 28, of the Tennessee Constitution provides that elderly taxpayers "whose total combined annual income or wealth exceeds an amount to be determined by the General Assembly" are not eligible for the property tax relief described in the amendment. If the General Assembly sets maximum income and/or wealth qualifications, may a city or county adopt the program but establish lower maximum amounts?

## OPINION

No. By its terms, the constitutional amendment requires the General Assembly to determine the amount of income or wealth that will entitle an elderly taxpayer to property tax relief. The amendment does not authorize local legislative bodies to determine this amount, and does not authorize the General Assembly to delegate this power to the localities. Rather, the amendment requires the General Assembly to determine the amount by a general law.

## ANALYSIS

In November 2006, Tennessee voters approved an amendment to Article II, Section 28, of the Tennessee Constitution that expanded the available avenues of tax relief for the elderly. The amendment provides that

> [b]y general law, the Legislature may authorize the following program of tax relief:
>
> (a) The legislative body of any county or municipality may provide by resolution or ordinance that:
>
> (1) Any taxpayer who is sixty-five (65) years of age or older and who owns residential property as the taxpayer's principal place of residence shall pay taxes on such property in an amount not to exceed the maximum amount of tax on

> such property imposed at the time the ordinance or resolution is adopted;
>
> (2) Any taxpayer who reaches the age of sixty-five (65) after the time the ordinance or resolution is adopted, who owns residential property as the taxpayer's principal place of residence shall thereafter pay taxes on such property in an amount not to exceed the maximum amount of tax on such property imposed in the tax year in which such taxpayer reaches age sixty-five (65); and
>
> (3) Any taxpayer who is sixty-five (65) years of age or older who purchases residential property as the taxpayer's principal place of residence after the taxpayer's sixty-fifth birthday shall pay taxes in an amount not to exceed the maximum amount of tax imposed on such property in the tax year in which such property is purchased.
>
> (b) Whenever the full market value of such property is increased as a result of improvements to such property after the time the ordinance or resolution is adopted, then the assessed value of such property shall be adjusted to include such increased value and the taxes shall also be increased proportionally with the value.
>
> (c) Any taxpayer or taxpayers who own residential property as their principal place of residence, whose total or combined annual income or wealth exceeds an amount to be determined by the general assembly shall not be eligible to receive the tax relief provided in subsection (a) or (b).

Tenn. Const. Art. II, § 28.

By its terms, the constitutional amendment provides that the General Assembly will determine the amount of income or wealth that will entitle elderly taxpayers to property tax relief under the prescribed program. Under the amendment, if the General Assembly passes a general law authorizing the tax relief program, then a local legislative body may adopt a resolution or ordinance implementing the tax relief program in its jurisdiction; however, the local legislative body's authority ends there. The amendment directs the General Assembly to determine the amount of income or wealth that may not be exceeded by program recipients, and this language does not contain authorization for local legislative bodes to deviate from this amount.

Although the amendment does not authorize local legislative bodies to establish the applicable income or wealth amounts, the General Assembly is not precluded from passing a general

law that would impose different amounts in different localities across the state. For instance, the General Assembly could enact a general law that classifies counties according to median income level and provides a different maximum amount for each class. These amounts must be established by the General Assembly, however, and not by the various local legislative bodies that choose to implement the tax relief program.

This Office is aware that statements made by the amendment's sponsor during the 2004 legislative session would advocate a broader construction to allow local legislative bodies to establish their own income or wealth limits, provided these local limits did not exceed the state maximum established by the General Assembly. Senate State & Local Gov't Comm., 103d Gen. Assembly, Tape 1 (Tenn. Apr. 6, 2004); Senate Fin., Ways & Means Comm., 103d Gen. Assembly, Tape 1 (Tenn. Apr. 20, 2004) (statements of Sen. Norris).[1] The sponsor's comments, however, do not tie to any language in the amendment that can support such a construction. Rather than representing a broad authorization for the General Assembly to enact property tax relief for the elderly, the amendment represents a specific, limited exception to the uniform taxation requirements of the Tennessee Constitution. Thus, the General Assembly has only the powers granted it by this provision, which is written in an unusually restrictive manner. The amendment sets out the precise program that the Legislature may authorize, as well as the provisions of the resolution or ordinance that a county or municipality may adopt. Nothing in the amendment gives a locality the power to ordain any other provisions. And the General Assembly's discretion in authorizing this program is confined to determining the maximum level of wealth or income for those eligible. Nothing in the amendment indicates that the General Assembly may delegate this power to the localities. To the contrary, the clear direction is that the General Assembly must set the maximum. Since the amendment so carefully circumscribes the power of both the General Assembly and the localities in implementing its provisions, we see no basis upon which a locality could implement a lower maximum, and no authority for the Legislature to delegate such power to the localities. Rather, the amendment states that cities and counties may adopt the stated program, with the limitations set by the Legislature. In the opinion of this Office, no authority is granted by which a locality can adopt the tax relief program at a lower level. While the amendment gives local legislative bodies the discretion to determine whether they will adopt the property tax relief program, the amendment does not grant them discretion to delineate the program's various requirements.

[1]We observe that these statements were made during preliminary committee meetings rather than on the Senate or House floor. The legislative history fails to reflect that the full Senate or House or, for that matter, the electorate at large was aware of these statements when they voted for the amendment's passage.

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