S T A T E O F T E N N E S S E E
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Opinion No. 07-40

Dickson County Adequate Facilities Tax

QUESTIONS

1. May Dickson County continue to levy an adequate facilities tax pursuant to Chapter 168 of the Private Acts of 2000 without regard to the County Powers Relief Act set forth at Tenn. Code Ann. §§ 67-4-2901 to -2913 (2006)?

2. Is there any limit on the rate or amount that Dickson County may levy as an adequate facilities tax pursuant to Chapter 168 of the Private Acts of 2000?

3. Does Tenn. Code Ann. § 67-4-2908 limit Dickson County to a ten percent (10%) increase every four (4) years in the rate or amount of its adequate facilities tax given the fact that Chapter 168 of the Private Acts of 2000 contains no such limitation?

4. If Dickson County adopts a resolution or ordinance electing to levy an adequate facilities tax pursuant to the County Powers Relief Act, will the County be limited to an adequate facilities tax of no more than $1.00 per square foot for the four-year period immediately succeeding the adoption of such resolution or ordinance even if the County is charging, immediately preceding the adoption of the resolution or ordinance, an amount in excess of $1.00 per square foot under Chapter 168 of the Private Acts of 2000?

5. If Dickson County adopts a resolution or ordinance electing to levy an adequate facilities tax pursuant to the County Powers Relief Act, will the County be authorized to increase the rate or amount of the tax to an amount in excess of $1.00 per square foot in less than four years from the date of the adoption given the fact that the County has had an adequate facilities tax in place since 2000 pursuant to Chapter 168 of the Private Acts of 2000?

6. If Dickson County continues to levy an adequate facilities tax pursuant to Chapter 168 of the Private Acts of 2000, is the County authorized to implement (whether by a new private act or by any other means) a development tax or impact fee in addition to the adequate facilities tax?

7. If Dickson County adopts a resolution or ordinance electing to levy an adequate facilities tax pursuant to the County Powers Relief Act, is the County authorized to implement (whether by a new private act or by any other means) a development tax or impact fee in addition to the adequate facilities tax?

8. If Dickson County elects to discontinue its levy of an adequate facilities tax, is the County authorized to implement (whether by a new private act or by any other means) a development tax or impact fee?

OPINIONS

1. Yes. Dickson County may continue to levy an adequate facilities tax pursuant to Chapter 168 of the Private Acts of 2000.

2. No. Chapter 168 does not limit the tax rate that may be imposed by Dickson County, and Tenn. Code Ann. § 67-4-2913 does not limit the authority to impose such taxes under a private act that was in effect before June 20, 2006.

3. No. As long as Dickson County continues to impose an adequate facilities tax pursuant to the private act, any increases in the tax rate imposed by the County will not be limited by the language of the County Powers Relief Act.

4. Yes. If Dickson County proceeds to impose an adequate facilities tax pursuant to the County Powers Relief Act, rather than Chapter 168, the County will be limited to imposing the tax at the initial rate specified in the Act.

5. No. If Dickson County implements an adequate facilities tax pursuant to the County Powers Relief Act, the County cannot increase the rate more than ten percent (10%) every four (4) years as specified by the Act.

6. No. If Dickson County continues to implement an adequate facilities pursuant to Chapter 168, Dickson County may not impose an additional development tax or impact fee through another private act or under the County Powers Relief Act.

7. No. The County Powers Relief Act precludes the future passage of private acts authorizing adequate facilities taxes or other development taxes.

8. If Dickson County discontinues its levy of an adequate facilities tax under Chapter 168, and if the General Assembly repeals Chapter 168, the County subsequently may impose only the tax authorized by the County Powers Relief Act. The Act precludes counties from imposing additional development taxes not authorized by the Act.

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). As noted in your request, the General Assembly passed a private act in 2000 authorizing Dickson County to impose an adequate facilities tax in that county. *See* 2000 Tenn. Priv. Acts 168.

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:

> However, 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.

As this Office explained in a recent opinion,

> 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.

Op. Tenn. Att'y Gen. No. 07-06 (Jan. 17, 2007).

In accordance with the language of the County Powers Relief Act and with our recent opinion construing the Act's language, Dickson County may continue to levy an adequate facilities tax pursuant to Chapter 168 of the Private Acts of 2000. Inasmuch as the private act benefitting Dickson County contains no limitation on the tax rate, Dickson County is not precluded from increasing the rate of the tax it currently is imposing. Although Tenn. Code Ann. § 67-4-2913 precludes counties from adopting any new or additional adequate facilities taxes, it does not preclude a county from increasing the rate of an existing adequate facilities tax if the authority to increase that tax was granted by a private act that was in effect before June 20, 2006, as was Dickson County's. Section 67-4-2913 clearly provides that the County Powers Relief Act does not limit the authority of counties to exercise the express powers accorded them in previous private acts.

For as long as the private act for Dickson County remains in effect, Dickson County may impose an adequate facilities tax only within the authority permitted by the private act. *See* Tenn. Code Ann. § 67-4-2913 (2006). Consequently, Dickson County may not impose a development tax pursuant to the County Powers Relief Act unless the General Assembly repeals Chapter 168 of the Private Acts of 2000. The County Powers Relief Act gives counties with existing private acts only two options: continue to impose a development tax pursuant to the existing private act, or impose the tax authorized by the County Powers Relief Act. This latter option is available only if the General Assembly has repealed the private act.

If Dickson County does impose a tax pursuant to the County Powers Relief Act, the County must comply with the specific language of the Act. A county levying a tax pursuant to the County Powers Relief Act initially is limited to a tax rate of one dollar ($1.00) per square foot on residential property. *See* Tenn. Code Ann. § 67-4-2908 (2006). The Act does not contain an exception for

counties already levying adequate facilities taxes pursuant to private acts. Moreover, the County would have to comply with the Act's provisions regarding any increases in the tax rate and, thus, any increases would be limited to a maximum of ten percent (10%) every four (4) years.

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