

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 23, 2007

Opinion No. 07-56

Levying or Increasing Adequate Facilities Tax Pursuant to Private Act

QUESTIONS

1. Whether the provisions of Tenn. Code Ann. § 67-4-2913 permit a county, by vote of its legislative body, to levy an adequate facilities tax up to an amount that was authorized by a private act in existence prior to June 20, 2006.

2. Whether an adequate facilities tax authorized by a private act that was adopted by a county's legislative body prior to June 20, 2006, but never levied, may be levied by the county by vote of its legislative body.

OPINIONS

1. Yes. Tenn. Code Ann. § 67-4-2913 permits a county to levy or increase an adequate facilities tax pursuant to a pre-existing private act as long as the tax rate or tax increase is authorized by the private act's language.

2. Yes.

ANALYSIS

Your request addresses the effect of Tenn. Code Ann. § 67-4-2913 on a county's authority to levy or increase an adequate facilities tax pursuant to a private act that was in existence prior to June 20, 2006. This section of the recently enacted County Powers Relief Act provides that

[a]fter June 20, 2006, 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. 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.

Tenn. Code Ann. § 67-4-2913 (2006).

This Office recently issued two opinions related to the County Powers Relief Act and, in particular, the effect of the above-quoted provisions. *See* Op. Tenn. Att’y Gen. No. 07-06 (Jan. 17, 2007); Op. Tenn. Att’y Gen. No. 07-40 (Apr. 2, 2007). Consistent with the analysis of those opinions, “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.” Op. Tenn. Att’y Gen. No. 07-06 (Jan. 17, 2007). Moreover, “[a]lthough 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.” Op. Tenn. Att’y Gen. No. 07-40 (Apr. 2, 2007). As we observed, “[s]ection 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.” *Id.* Thus, for as long as the pre-existing private act remains in effect, the county may impose an adequate facilities tax within the authority permitted by the private act.

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Requested by:

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