

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 25, 2007

Opinion No. 07-57

Proposed Exception to County Powers Relief Act

QUESTION

May the General Assembly amend the provisions of Tenn. Code Ann. § 67-4-2913 to allow for the modification of pre-existing private acts that authorize the imposition of a development tax or adequate facilities tax in order to impose a new tax or increase the rate of an existing tax?

OPINIONS

Yes. The General Assembly may expand Tenn. Code Ann. § 67-4-2913's exception for counties with pre-existing private acts to allow for the amendment of these private acts to authorize the imposition of a new tax or an increase in the existing tax rate.

ANALYSIS

Tenn. Code Ann. § 67-4-2913, which is part 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).

As your request points out, this Office recently opined that “the County Powers Relief Act precludes a county from relying on a subsequently-enacted private act to impose or increase a development tax.” Op. Tenn. Att’y Gen. No. 07-06 (Jan. 17, 2007). We concluded that “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.” *Id.*

To some degree, Tenn. Code Ann. § 67-4-2913 already excepts counties with pre-existing private acts from some of the limitations imposed by the County Powers Relief Act. You have asked whether the General Assembly may expand this exception by authorizing the amendment of these private acts to impose new taxes or to increase the rates of the pre-existing taxes imposed thereunder.

Assuming that a rational basis exists to except these counties from application of the Act, the General Assembly may amend Tenn. Code Ann. § 67-4-2913’s provisions to expand the current exception for counties with pre-existing private acts. The very existence of a private act that pre-dates the enactment of the County Powers Relief Act would appear to provide a rational basis for treating these counties differently under the Act. Thus, if the General Assembly wishes to amend Tenn. Code Ann. § 67-4-2913 to allow for the modification of the private acts for these counties, it may do so.¹

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¹Of course, only the General Assembly has the authority to enact or amend a private act, which the local legislative body is then free to approve or reject, as it sees fit, under Article XI, section 9, of the Tennessee Constitution.

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