

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 07-109

Applicability of Property Tax Freeze Act to Special School Districts

QUESTION

1. May a special school district establish a property tax freeze program under the Property Tax Freeze Act?

2. If not, may the General Assembly amend the Property Tax Freeze Act to allow special school districts to establish a property tax freeze program under Article II, Section 28, of the Tennessee Constitution?

OPINION

1. No. The Property Tax Freeze Act authorizes only counties and municipalities to establish a property tax freeze program.

2. No. Article II, Section 28, of the Tennessee Constitution authorizes the Legislature to allow the legislative body of any county or municipality to establish a property tax freeze program, but it does not authorize the Legislature to extend this authority to a special school district.

ANALYSIS

The Property Tax Freeze Act authorizes “the legislative body of any county or municipality” to adopt the property tax freeze program described in the Act. *See* 2007 Tenn. Pub. Acts 581, § 1 (to be codified as Tenn. Code Ann. § 67-5-705). A special school district, however, cannot be considered a county or municipality. *See, e.g., Gibson County Special School Dist. v. Palmer*, 691 S.W.2d 544, 550 (Tenn. 1985); *Perritt v. Carter*, 204 Tenn. 611, 614, 325 S.W.2d 233, 234 (1959). “Special school districts are creatures of the legislature,” *Op. Tenn. Att’y Gen. No. 83-195* (Apr. 20, 1983), and they “are not affiliated with cities or counties.” *Op. Tenn. Att’y Gen. No. 87-195* (Dec. 18, 1987).

For similar reasons, a special school district does not come within the specific authorization of the recent amendment to Article II, Section 28, of the Tennessee Constitution that expanded the available avenues of tax relief for the elderly. That 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.

As this Office recently observed,

[r]ather 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.

Op. Tenn. Att’y Gen. No. 07-33 (Mar. 23, 2007).

This amendment extends the authority to adopt a tax relief program to “[t]he legislative body of any county or municipality.” Tenn. Const. art. II, § 28. The General Assembly has only the powers granted it by this provision, and any attempt to extend this authority to special school districts, which are not municipalities or counties, would exceed the powers granted to the General Assembly under the constitutional amendment. Accordingly, the Property Tax Freeze Act may not be amended to allow special school districts to establish a property tax freeze program.

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