

STATE OF TENNESSEE

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Opinion No. 07-126

Growth of Appropriations under Article II, Section 24, of the Tennessee Constitution

QUESTION

Under Article II, Section 24, of the Tennessee Constitution and Tenn. Code Ann. § 9-4-5203, is the Governor required to use appropriations to determine whether and to what extent the appropriations of state tax revenue exceed the growth of the State's economy?

OPINION

By their terms, both the Tennessee Constitution and Tenn. Code Ann. § 9-4-5203 require officials to determine the percentage increase in "appropriations from state tax revenues" from the previous fiscal year in preparing the budget for each fiscal year.

ANALYSIS

This opinion addresses how to implement the limits on appropriations contained in Article II, Section 24, of the Tennessee Constitution. That provision states in relevant part:

In no year shall the rate of growth of appropriations from state tax revenues exceed the estimated rate of growth of the state's economy as determined by law. No appropriation in excess of this limitation shall be made unless the General Assembly shall, by law containing no other subject matter, set forth the dollar amount and the rate by which the limit will be exceeded.

Tenn. Code Ann. §§ 9-4-5201, *et seq.*, implement this provision. Under these statutes, the measure of estimated growth is the projected change in Tennessee personal income. Tenn. Code Ann. § 9-4-5201. The State Funding Board prepares a report of the estimated growth of the State's economy and forwards copies to the Commissioner of Finance and Administration and each member of the General Assembly. The State Funding Board also prepares state revenue estimates in December.

Tenn. Code Ann. § 9-4-5203 concerns the budget document that the Governor submits to the General Assembly. Subsection (c) of this statute states:

(c) When in any budget document the percentage increase of recommended appropriations from state tax revenues exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the governor shall submit a bill or bills for introduction in both houses of the general assembly which shall contain no other subject matter and shall set forth the dollar and percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the Constitution of Tennessee, art II, § 24.

(d) When the percentage increase of appropriations of state tax revenue by the general assembly exceeds the percentage increase of estimated Tennessee personal income as defined in § 9-4-5201, for the ensuing fiscal year, the general assembly shall by law containing no other subject matter, set forth the dollar and the percentage by which the estimated growth of the state's economy is exceeded by the appropriations of state tax revenue in accordance with the Constitution of Tennessee, art. II, § 24.

The question is whether the Governor is required to use "appropriations" to determine whether and to what extent the appropriations from state tax revenue exceed the growth of the state's economy. By their terms, both the Tennessee Constitution and Tenn. Code Ann. § 9-4-5203 require officials to determine the percentage increase in appropriations from state tax revenues in preparing the budget for each fiscal year. The base figure from which this calculation is made is the total of appropriations from state tax revenues during the preceding year. *Op. Tenn. Att'y Gen. 85-153* (May 7, 1985). The Tennessee Supreme Court has defined an appropriation as an authority from the legislature, given at the proper time and in legal form, to the proper officers, to apply sums of money, out of that which may be in the treasury, in a given year to specified objects or demands against the State. *State ex rel Noonan v. King*, 108 Tenn. 271, 276, 67 S.W. 812 (1902). Most appropriations appear in the annual appropriations bill and authorize expenditures from available state funds for particular purposes. It should also be noted that Article II, Section 24, looks only to appropriations "from state tax revenues." The State receives revenue from other sources, including, for example, license fees and federal funds. Appropriations from revenue sources other than state taxes are not to be counted for purposes of making the calculation contemplated by Article II, Section 24.

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