S T A T E O F T E N N E S S E E
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Opinion No. 07-139

Expansion of the Lebanon Special School District

QUESTION

Does the Home Rule Amendment, Article XI, Section 9 of the Tennessee Constitution, which requires either a local referendum or a vote of the local legislative body to pass an act applicable to a municipality or county, apply to legislation expanding the boundaries of the Lebanon Special School District?[1]

OPINION

No. A special school district does not fall within the definition of a "county or municipality" as those terms are used in the Home Rule Amendment. Therefore, legislation expanding the boundaries of the Lebanon Special School District (LSSD) should not provide that the effectiveness of the legislation is contingent upon a local vote, either by the local legislative body or by referendum. Inclusion of such a provision would run afoul of Article II, Sections 1 and 2, of the Tennessee Constitution, which prohibit the delegation of legislative power.

ANALYSIS

Article XI, Section 9, of the Tennessee Constitution referred to as the "Home Rule Amendment," provides, in pertinent part:

> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, **and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its**

[1]In your letter requesting this opinion, you also ask for an analysis of ". . . appropriate questions that should be addressed by the General Assembly, local legislative body, and the LSSD respectively regarding the necessity of and the legal procedures for such an expansion of district boundaries." While we have attempted to address the legal principles applicable to legislation that may propose the expansion of the LSSD, we must respectfully decline to address questions concerning policy matters such as whether expansion of the LSSD is a necessity, or questions that should appropriately be addressed by legislative bodies in determining whether, or in what manner, the LSSD boundaries should be expanded.

> **governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected**.

(Emphasis added). The Home Rule Amendment requires that laws local in effect and application shall be void unless the law is conditioned upon approval by a two-thirds vote of the electorate. In relation to special school districts, however, the Tennessee Supreme Court has specifically held that a special school district does not fall within the definition of a municipality as contemplated in the Home Rule Amendment. *Perritt v. Carter*, 204 Tenn. 611, 614, 325 S.W.2d 233, 234 (Tenn. 1959)(holding that legislature's inclusion of provision requiring local referendum before expansion of special school district would become effective was based on legislature's "erroneous impression" that expansion of special school district falls within the Home Rule Amendment).[2]

Legislation to expand the boundaries of a special school district does not prompt the need for a referendum because the Home Rule Amendment applies to municipalities and counties only. *Id*. Therefore, legislation to expand the boundaries of the LSSD should not provide that the expansion of the boundaries will depend upon approval by either the local legislative body or via a referendum because the LSSD is not considered a municipality. Allowing the effectiveness of a bill expanding the boundaries of a special school district to hinge upon the outcome of a referendum or vote of the local legislative body would be equivalent to allowing local voters to exercise the legislative function of passing legislation. We have previously opined that the General Assembly may not delegate its legislative functions in this way.[3]

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[2] *See also Fountain City Sanitary District v. Knox County Election Commission*, 203 Tenn. 26, 32, 308 S.W.2d 482, 484-485 (Tenn. 1957)(Home Rule Amendment is applicable only to cities and counties, and legislation making creation of sanitary district contingent upon voters' approval included local approval provision only because of erroneous belief on the part of the Legislature that the Home Rule Amendment might apply).

[3] *See* Tenn. Op. Atty. Gen. No. 02-020 (February 26, 2002); Tenn. Op. Atty. Gen. No. 81-418 (July 15, 1981); Tenn. Op. Atty. Gen. 80-205 (April 11, 1980). (copies attached). *See also* Tenn. Const. Art. II §§ 1 and 2. The Home Rule Amendment thus constitutes a limited exception to the general constitutional rule that only the General Assembly may legislate.

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