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Opinion No. 07-155

Use of Highway Funds to Pay Other State Expenditures

QUESTION

May the General Assembly appropriate funds from the highway fund of the state Department of Transportation ("TDOT") to the state general fund and use such funds to pay the expenditures of other state government branches, departments, institutions, offices, agencies, entities and programs?

OPINION

Yes. The legislative power of the General Assembly with respect to the appropriation of public funds is unlimited except to the extent such power is restrained by express or implicit restrictions in the Tennessee Constitution. The Tennessee Constitution does not limit the General Assembly's power with regard to the transfer of public monies from one state government entity or program to another. Therefore, the General Assembly may transfer highway funds to the general fund and use those monies to pay the expenditures of state government entities and programs other than TDOT through the appropriations act. The General Assembly's desire to appropriate funds in such a manner is evidenced, but not limited, by Tenn. Code Ann. § 4-3-1016.

ANALYSIS

Pursuant to Article II, § 3 of the Tennessee Constitution, the legislative authority of the State is vested in the General Assembly. The General Assembly's legislative power is unlimited except to the extent such power is restrained by express or implicit restrictions in the state or federal constitution. *Keith v. Funding Bd.,* 155 S.W. 142 (1913), *overruled on other grounds,* 219 S.W. 729 (1919); *Bell v. Bank of Nashville*, 7 Tenn. 269 (1823). Article II, § 24 of the Tennessee Constitution provides a number of restrictions on the appropriation of public monies by the General Assembly. One such restriction is the balanced-budget provision, which states that "[e]xpenditures for any fiscal year shall not exceed the state's revenues and reserves, including the proceeds of any debt obligation, for that year." Tenn. Const. Article II, § 24. Another restriction is that public monies shall not be "expended except pursuant to appropriations made by law." *Id*.

The Tennessee Constitution does not prohibit the General Assembly from using the funds normally designated for one state entity to pay for another's expenditures. Therefore, it is within the General Assembly's power to use such funds in such a manner if it so desires. The only constitutional requirement is that such expenditures be made "pursuant to appropriations made by law", or, in other words, pursuant to an appropriations act. *Id*.

In addition to the appropriations acts of the General Assembly, the exercise by the General Assembly of its power to use funds from one government entity or program to pay the expenses of another is illustrated in certain sections of the Code. Prior to 2002, the General Assembly, pursuant to § 54-2-103 of the Code, prohibited the diversion of the funds of TDOT "to any other branch of state government." However, in 2003, the General Assembly amended the Code to add § 4-3-1015, authorizing the Commissioner of Finance and Administration (the "Commissioner") to transfer money from the funds of numerous state entities and programs, including TDOT, to the general fund "for the purpose of meeting the requirements of funding the operations of state government" for the fiscal years ending June 30, 2003, and June 30, 2004. Tenn. Code Ann. § 4-3-1015 provided as follows:

> (a) Notwithstanding any provision of the law to the contrary, subject to the specific provisions of an appropriation act, the commissioner of finance and administration is authorized to deny carry forwards for, and to transfer funds from, the funds, reserve accounts or programs identified in subsection (c) to the state general fund for the purpose of meeting the requirements of funding the operations of state government for the fiscal year ending June 30, 2003. The authorization provided for in this subsection (a) shall not apply to allow the transfer of any fund balances that are mandated by federal law to be retained in such fund. This authority shall only apply to transfers and carry forwards necessary to fund the expenditures for the state for the fiscal year ending June 30, 2003, and June 30, 2004.
> (b) No funds shall be transferred unless specifically appropriated in an appropriations act and such funds shall only be expended in accordance with the provisions of such act.
> (c) Transfers are authorized from the following funds, reserve accounts and programs:
> (1) * * *
> ***(28) Notwithstanding §§ 54-2-102 and 54-2-103 or any other provision of law to the contrary, department of transportation funds in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67***[.]

Tenn. Code Ann. § 4-3-1015 (2003) (emphasis added). Subsection (c) of Tenn. Code Ann. § 4-3-1015 provided an extensive list of entities and programs from which funds might be transferred. Subsection (c)(28) stated that transfers of TDOT's funds were authorized "[n]otwithstanding T.C.A. Sections 54-2-102 and 54-2-103 or any other provision of law to the contrary . . . ." Tenn. Code Ann. § 4-3-1015(c)(28) (2003).

The General Assembly further authorized the transfer of TDOT funds to the state general fund in Tenn. Code Ann. § 4-3-1016 (2006):

> (a) Notwithstanding any provision of the law to the contrary, subject to the specific provisions of an appropriation act, the commissioner of finance and administration is authorized to deny carry forwards for, and to transfer funds from, the funds, reserve accounts or programs identified in subsection (c) to the state general fund for the purpose of meeting the requirements of funding the operations of state government for the fiscal year ending June 30, 2006, and subsequent fiscal years. The authorization provided for in this subsection (a) shall not apply to allow the transfer of any fund balances that are mandated by federal law to be retained in such fund. This authority shall only apply to transfers and carry forwards necessary to fund the expenditures for the state for the fiscal year ending June 30, 2006, and subsequent fiscal years.
> (b) No funds shall be transferred unless specifically appropriated in an appropriations act and such funds shall only be expended in accordance with the provisions of such act.
> (c) Notwithstanding §§ 54-2-102 and 54-2-103 or any other provision of law to the contrary, transfers are authorized from department of transportation funds, reserve accounts and programs in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67.

Tenn. Code Ann. § 4-3-1016, as amended, is different from the now-obsolete Tenn. Code Ann. § 4-3-1015 in two ways. First, in subsection (a) the General Assembly's authorization to transfer and use funds applies to the fiscal year ending June 30, 2006, and subsequent fiscal years. Second, the list of entities and programs from which funds may be transferred has been substantially reduced, removing all entities and programs except for TDOT's "funds in the highway fund or other funds created or referenced in titles 54, 55, 57, 65 and 67." Tenn. Code Ann. § 4-3-1016(c) (2006). Tenn. Code Ann. §§ 54-2-102 and -103 are subject to Tenn. Code Ann. § 4-10-1016. *Id*.

Similar to § 4-3-1015, the General Assembly's authorization under § 4-3-1016 of the Code includes certain limitations on the ability of the Commissioner to transfer funds to the general fund and use them to balance the budget. First, the Commissioner's ability to transfer and use such funds "shall only apply to transfers ... necessary to fund the expenditures for the state for the [applicable] fiscal year[]." Tenn. Code Ann. § 4-3-1016(a). Based on this language, it is not the General Assembly's intent to permit the transfer of funds from TDOT to provide another government entity or program with more funds than are needed by the transferee entity or program for the fiscal year in which the transfer is made. Also, the Commissioner is not authorized to transfer "any fund balances that are mandated by federal law to be retained in such fund." *Id*. Finally, funds shall not be transferred "unless specifically appropriated in an appropriations act and such funds shall only be expended in accordance with the provisions of such act." Tenn. Code Ann. § 4-3-1016(b).

It must be noted that the "limitations" described in Tenn. Code Ann. § 4-3-1016 do not restrict the General Assembly's power to transfer and use TDOT funds (or other public monies) to pay other state government expenditures. The General Assembly cannot limit or bind a subsequent General Assembly through legislation. The only limitation on the current or a future General Assembly's power to use such funds in such a manner is the Tennessee Constitution's requirement that expenditures of public monies be made pursuant to an appropriations act.

Therefore, it is the opinion of this Office that the General Assembly may transfer money from the highway fund of TDOT to the general fund and use it to pay the expenditures of other state government entities and programs, provided, however, such funds are appropriated in an appropriations act.

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