S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

November 21, 2007

Opinion No. 07-156

Property Tax Relief for the Disabled

QUESTIONS

1. Under the 2006 amendment to Article II, Section 28 of the Constitution authorizing the legislature to establish a program of property tax relief for the elderly in the form of a tax freeze that may be adopted by counties, cities and towns by resolution or ordinance, and the provision of that section permitting property tax relief to homeowners totally and permanently disabled, which existed before the 2006 amendment, may the General Assembly authorize a tax freeze program for homeowners totally and permanently disabled?

2. If the General Assembly may authorize a tax freeze program for homeowners totally and permanently disabled, must such program be identical in all respects, except for the age limitation, to that of the tax freeze program for elderly homeowners?

OPINIONS

1. Yes. The language of Article II, Section 28, indicates that any tax relief provided to the elderly by the Legislature may also be provided to home owners who are totally and permanently disabled, irrespective of age.

2. Yes. Any tax freeze program authorized for disabled homeowners must be the same as the tax freeze program provided for the elderly.

ANALYSIS

Prior to November 2006, the Tennessee Constitution contained the following provisions relative to property tax relief for the elderly and disabled:

> The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such

> reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns.
>
> The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tenn. Const. art. II, § 28.

In November 2006, Tennessee voters approved an amendment to Article II, Section 28, of the Tennessee Constitution that expanded the available avenues of tax relief for the elderly. The amendment, which was inserted directly between the two paragraphs quoted above, 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 amended in 2006).

The texts of both Senate Joint Resolutions submitting this constitutional amendment for ratification by the votors directed that it be inserted immediately after the fourth paragraph of Article II, Section 28. *See* S.J. Res. 1, 104th Gen. Assem. (2006); S.J. Res. 71, 103rd Gen. Assem. (2004). Moreover, the ballot question ultimately approved by the voters during the November 2006 general election specified that the amendment would be inserted immediately after the fourth paragraph. By virtue of this placement within the text of Article II, Section 28, the amendment is followed by the provision that "[t]he Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly." You have asked whether this provision applies to the tax relief program authorized by the recent constitutional amendment, or whether the provision instead is limited to the tax relief program provided directly by the Legislature pursuant to the original constitutional provision.

In our view, the language at issue is broad enough to encompass the tax relief program for elderly taxpayers authorized by the recent constitutional amendment. When viewed as a whole, the present constitutional provisions concerning tax relief for elderly and disabled homeowners evince the intent to make available to disabled homeowners the same tax relief that is available to the elderly, if the Legislature chooses to authorize such a program. The fact that the language at issue directly follows the recently-adopted provisions concerning local tax relief programs suggests that it applies to the recent amendment, and that it is not limited to the original tax relief program authorized in the paragraph immediately preceding the amendment.

The argument could be made, of course, that the language at issue applies only to the tax relief program authorized by the pre-existing provision. Any tax relief program authorized by that provision is provided directly by the Legislature, as opposed to the more recent constitutional amendment, pursuant to which the Legislature may authorize local governments to adopt a tax relief program. Stated another way, the original tax relief program authorized by the Constitution was one provided by the Legislature itself through reimbursement to the local governments, while the more recent tax relief program described in the Constitution is one that is authorized by the Legislature, but actually provided by the local governments.

Nevertheless, such a narrow construction of the language at issue is unwarranted. In some sense, the Legislature is providing tax relief for the elderly, whether it does so pursuant to the original provision authorizing a tax relief program administered by the State government, or pursuant to the recently inserted provision authorizing a tax relief program administered by the local governments. The provision authorizing the Legislature to provide tax relief to disabled homeowners "as provided herein for the elderly" is sufficiently broad to encompass both types of elderly tax relief programs authorized in the preceding paragraphs.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK
Senior Counsel

Requested by:

The Honorable G.A. Hardaway
State Representative
109 War Memorial Building
Nashville, Tennessee 37243