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Opinion No. 08-85

Inability of Municipalities to Rescind Election of "Tennessee River Resort District" Status

QUESTIONS

1. May a municipality that has elected to be a "Tennessee River resort district" as provided under Tenn. Code Ann. § 67-6-103(a)(3)(F) later rescind that election?

2. If so, would the county within which the rescinding municipality is located automatically receive tax allocations for sales in the rescinding municipality in the same manner that the county would have received the allocations had the rescinding municipality never elected to be a "Tennessee River resort district?"

OPINIONS

1. No. The Tennessee River Resort District Act does not permit a municipality to rescind its election to be a "Tennessee River resort district."

2. Because the Tennessee River Resort District Act does not permit a municipality to rescind its election to be a "Tennessee River resort district," the second question is rendered moot.

ANALYSIS

In 2005, the General Assembly enacted Chapter 212 of the Public Acts, also known as the Tennessee River Resort District Act (the "Act"). Among other things, the Act amended Tenn. Code Ann. § 67-6-103 to add subdivision (a)(3)(F). In 2007, the General Assembly amended this subsection of the Act by enacting Chapter 602, Section 48, of the Public Acts ("Public Acts Chapter 602"). Tenn. Code Ann. § 67-6-103(a)(3)(F) (2007) reads as follows:

> (F) (i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. . . ;

(ii) (a) Subject to subdivision (a)(3)(F)(iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River resort district status by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction.

* * *

(iii) Notwithstanding any other provision of law to the contrary, of the revenue retained pursuant to an election under the provisions of subdivision (a)(3)(F)(i), less the amount that would have been received by such district had the district not exercised the election, fifty percent (50%) shall be used exclusively for either the promotion and support of tourism in the jurisdiction or the promotion and support of tourism in conjunction with other jurisdictions so electing Tennessee River resort district status;

(iv) Tennessee River resort district status may be elected by both a county and a municipality within such county, subject to the following provisions:

(a) If the election occurs between January 1, 2006, and June 30, 2006, a municipality electing Tennessee River resort district status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the municipality only. A county electing such status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county; provided, however, that the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in the county; or

(b) If election occurs on and after July 1, 2006, a county electing Tennessee River resort district status prior to a non-electing municipality shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county and within the boundaries of non-electing municipalities. No non-electing municipality shall later elect Tennessee River resort district status; provided, that a non-electing municipality may elect such status prior to election of such status by the county and, in that event, tax collections would be distributed in accordance with the provisions of subdivision (a)(3)(F)(iv)(a);

* * *

(vi) Notwithstanding any provision of this subdivision (a)(3)(F) to the contrary, the election provided in this subdivision (a)(3)(F) shall only be available to eligible counties and municipalities that make the election prior to July 1, 2008.

The purpose of the Act is to provide distressed counties and municipalities located along or near the Tennessee River with additional funds and to promote economic development in those

areas. H.B. 1800, *House Comm. on State and Local Gov't*, 104th Gen. Assembly, First Regular Session (April 19, 2005) (statement of Rep. Rinks, Chairman, Comm. on State and Local Gov't). Under the Act, certain economically-distressed municipalities and counties may elect to become a "Tennessee River resort district" (hereinafter sometimes referenced as "TRRD"). If a municipality elects to become a TRRD it will receive 4.5925% of the sales taxes actually collected in the municipality rather than the population-based distribution set out in Tenn Code Ann. § 67-6-103(a)(3)(A).[1] Tenn Code Ann. § 67-6-103(a)(3)(F)(i) (2007). Prior to the Act, counties did not receive any distribution of sales taxes collected by the state. Under the Act, a TRRD county will receive 4.5925% of the sales taxes collected by the state within that county but not including any taxes collected within TRRD municipalities located in the county. Tenn Code Ann. § 67-6-103(a)(3)(F)(i) and (iv) (2007).

The election to become a TRRD is voluntary, not mandatory, and the Act expressly provides the manner in which a municipality or county makes the election. An eligible county or municipality must adopt "a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction." Tenn Code Ann. § 67-6-103(a)(3)(F)(ii)(a). The Act establishes July 1, 2008, as a deadline for eligible counties and municipalities to elect to be TRRDs. Tenn Code Ann. § 67-6-103(a)(3)(F)(vi).

The Act does not expressly state whether a municipality that has elected to be a TRRD may later rescind its election, much less the manner in which it would effect such a rescission. Considering that the Act describes with specificity the manner in which a municipality may elect to be a TRRD, the lack of language providing for the rescission of the election suggests that the General Assembly did not intend for a municipality to have that ability. Additionally, although the purpose of the Act is to provide certain counties and municipalities with additional funds for economic development, it does not necessarily follow that the General Assembly intended for a municipality to be able to rescind its election because it actually receives less funds subsequent to the election. In fact, in the April 19, 2005, transcript of the State and Local Government Committee of the State House of Representatives, Representative Randy Rinks, a sponsor of the bill, acknowledged that some municipalities would lose funds if they elected to be a TRRD. Furthermore, in 2007, the General Assembly amended the Act by adding eligible counties and by allowing counties to make the TRRD election without also making the "liquor-by-the-drink" election. Tenn. Code Ann. § 67-6-103(a)(3)(F)(i) and (ii) (2007). But the Act was not amended to add any language that would allow a city to withdraw its TRRD election. Finally, the setting of a deadline for the TRRD election suggests that the General Assembly intended the decision to elect (or not to elect) to carry great weight. The consequent permanence of a decision not to elect TRRD status implies that the General Assembly intended that an election would be permanent as well.

Accordingly, it is the opinion of this Office that a municipality that elects to be a TRRD may not later rescind the election. To interpret the Act otherwise would effectively add language that does not appear in the Act itself. Given our opinion, it is unnecessary to address the second question

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[1]Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A) (2007), municipalities receive 4.5925% of the total sales taxes collected by the state and apportioned to each municipality *based on the municipality's population*.

regarding the effect of a rescission.

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