S T A T E O F T E N N E S S E E
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Opinion No. 08-109

Amendment of Tullahoma City Charter to Require Supermajority to Exceed Certified Tax Rate

QUESTION

Does a proposed amendment to the Tullahoma City Charter, which would require a supermajority to approve any increase in the property tax rate exceeding the certified tax rate established by the State Board of Equalization, violate the general law or any provision of the Tennessee Constitution?

OPINION

No, the proposed amendment does not violate any provision of general law or the Tennessee Constitution.

ANALYSIS

A proposed amendment to the Tullahoma City Charter would require a supermajority's approval of any increases in the property tax rate exceeding the certified tax rate established by the State Board of Equalization. As amended, the charter would contain the following provisions:

> The Board of Mayor and Aldermen, with a majority vote, may set a property tax assessment rate up to or equal to the certified tax rate established by the state board of equalization. Any vote containing an increase in the property tax assessment rate exceeding the certified tax rate established by the state board of equalization shall require an affirmative vote by five (5) members of the board of Mayor and Aldermen.

You have asked whether the latter provision violates the general law or the Tennessee Constitution. The Tullahoma Board of Mayor and Aldermen has seven members.

Tenn. Code Ann. § 67-5-103, relative to the taxation of property by municipalities, contains the following provisions:

> (a) Taxes on property for municipal purposes shall be imposed on the value thereof as the same is ascertained by the assessment for state taxation, ...
>
> (b) All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses or a combination of the two (2), whether imposed by general or private act, or home rule charter, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are hereby repealed effective January 1, 1973.

Tenn. Code Ann. § 67-5-103(a), (b) (2006). As this Office previously observed, "[t]his statute appears to give cities, as of 1973, a great deal of latitude in fixing the property tax rate," and "the procedure for increasing these municipal property taxes could be addressed in a charter amendment without running afoul of any general laws." Op. Tenn. Att'y Gen. No. 03-019 (Feb. 19, 2003).

In our prior opinion, we stated that a home rule municipality could amend its charter to change the manner in which city tax rates are increased. *See id*. Similarly, absent a general law to the contrary, the General Assembly is free to amend Tullahoma's City Charter to require a supermajority's approval of any increase in the property tax rate beyond the certified rate established by the State Board of Equalization. Such a provision does not violate Tenn. Code Ann. § 67-5-103, nor does it violate Tenn. Code Ann. § 67-5-1702, which authorizes a municipality or county to "adopt a resolution or ordinance levying a tax rate in excess of the certified tax rate," provided that the local governing body has complied with the statute's public notice and hearing requirements. *See* Tenn. Code Ann. § 67-5-1702 (2006). The proposed charter amendment, which would require five out of seven members to pass such a resolution or ordinance, does not conflict with these provisions. It is certainly necessary and appropriate for a municipal charter to establish the procedures for adopting municipal ordinances, including the number of votes required to do so. While in most instances passage would ordinarily require a simple majority vote, a charter may require a greater majority to pass ordinances,[1] including tax ordinances.

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[1]*See, e.g., Family Golf of Nashville, Inc. v. Metropolitan Gov't*, 964 S.W.2d 254, 259 (Tenn. Ct. App. 1997).

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