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October 16, 2008

Opinion No. 08-167

Authorization and Adoption of County Litigation Taxes

QUESTIONS

1. If a county acts pursuant to Tenn. Code Ann. § 67-4-601(b)(5) and (6), as amended by Ch. No. 1187, § 1, 2008 Pub. Acts (effective August 27, 2008), would that county be authorized to charge two $25.00 privilege taxes on litigation for a total of $50.00?

2. Is a county that acts pursuant to Tenn. Code Ann. § 67-4-601(b)(5) (Ch. No. 1187, § 1, 2008 Pub. Acts) required to adopt an increase in the privilege tax on litigation to $25.00 by a two-thirds majority vote or by a simple majority vote?

3. Is a county that acts pursuant to Tenn. Code Ann. § 67-4-601(b)(5) limited in using the proceeds from that increase in the tax for the purposes set out in Tenn. Code Ann. § 67-4-601(b)(1) (Supp. 2007)?

OPINIONS

1. Yes. As recognized by Tenn. Code Ann. § 67-4-601(b)(7) (Ch. No. 1187, § 1, 2008 Pub. Acts), a county may adopt $25.00 privilege taxes under both subsections (b)(5) and (b)(6) for a total tax of $50.00.

2. A county that adopts an increase of its (b)(1) litigation tax under (b)(5) must do so by adopting a resolution by a two-thirds majority vote of the county commission.

3. Yes. Unlike Tenn. Code Ann. § 67-4-601(b)(6) (Ch. No. 1187, § 1, 2008 Pub. Acts), the plain language of subsection (b)(5) does not authorize a county to use the proceeds of a tax increase for purposes other than those described in subsection (b)(1).

ANALYSIS

1. Pursuant to Tenn. Code Ann. § 67-4-601(b)(1) (Supp. 2007), counties may levy a litigation tax:

> (b) (1) Notwithstanding any other law to the contrary, each county by resolution of its legislative body, adopted by two-thirds (2/3) majority vote, may levy a privilege tax on litigation in all civil and criminal cases instituted in the county, other than those instituted in municipal courts, in addition to all other such privilege taxes authorized by law. Any tax levy adopted under this subsection (b) shall not exceed ten dollars ($10.00) per case; and the proceeds shall be used exclusively for the purposes of jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

In 2004, the General Assembly enacted Chapter 945 of the Public Acts, which added subsection (b)(5). In 2006, the General Assembly enacted Chapter 958 of the Public Acts, which, among other things, added subsection (b)(6). In 2008, the General Assembly enacted Chapter 1187 of the Public Acts.[1] Chapter 1187 amended subsections (b)(5) and (b)(6) and added subsections (b)(7)[2] and (b)(8):

> (5) Notwithstanding any provision of law to the contrary, upon the adoption of a resolution by two-thirds majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case.
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> (6) Notwithstanding any provision of law to the contrary, upon the adoption of a resolution by two-thirds majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case, to be used exclusively for court house security, in addition to those purposes identified in subdivision (b)(1).

[1]Section 2 of Chapter 1187 states that the "act will take effect 12:01 a.m. July 1, 2008, the public welfare requiring it." However, the act did not become law until it was approved by Governor Phil Bredesen on July 18, 2008, and cannot take effect before that date. Thus, pursuant to Article II, §§ 18 and 20 of the Tennessee Constitution, the act took effect on August 27, 2008, 40 days after its approval by the Governor.

[2]Each of Chapters 692 and 1187 of the 2008 Public Acts added a subsection (b)(7) to Tenn. Code Ann. § 67-4-601. For the purpose of this opinion, it is assumed that subsection (b)(7) of Chapter 1187 will be codified as Tenn. Code Ann. § 67-4-601(b)(7).

> (7) Notwithstanding any other provision of law to the contrary, a county may adopt the privilege tax in subdivision (5) or (6) or both.
>
> (8) Any legislative body which had adopted a resolution by two-thirds (2/3) vote under the provisions of subdivision (5) or (6) of this section prior to the effective date of this act shall not be required to adopt another resolution for this section to continue to apply in such county.

The plain language of Tenn. Code Ann. § 67-4-601(b)(7) (Ch. No. 1187, § 1, 2008 Pub. Acts) provides that "a county may adopt the privilege tax in subdivision (5) or (6) or both." Thus, a county is authorized to adopt and charge two $25.00 privilege taxes on litigation pursuant to subsections (b)(5) and (b)(6), for a total of $50.00. Of course, additional litigation taxes may be imposed under subsections (a), (c), and (d).

2. In 2004, the General Assembly added subsection (b)(5) to Tenn. Code Ann. § 67-4-601 by enacting Chapter 945 of the Public Acts. The language of subsection (b)(5) originally read as follows:

> Notwithstanding any provision of the law to the contrary, in counties having a population of:
>
> | not less than | nor more than |
> |---|---|
> | 11,700 | 11,800 |
> | 15,500 | 15,600 |
> | 16,800 | 16,900 |
> | 25,450 | 25,550 |
> | 25,575 | 25,650 |
> | 24,600 | 24,700 |
> | 44,200 | 44,300 |
> | 28,800 | 28,900 |
>
> according to the 2000 federal census or any subsequent federal census, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars ($25.00) per case.

Tenn. Code Ann. § 67-4-601(b)(5) (Supp. 2004). Prior to 2008, subsection (b)(5) was amended to add more counties. Tenn. Code Ann. § 67-4-601(b)(5) (Supp. 2007).

When read within the context of the entire statute, subsection (b)(5) did not authorize a new litigation tax separate from subsection (b)(1), but instead merely allowed certain counties that were

within the population brackets listed in (b)(5) to increase the (b)(1) tax from a maximum of $10.00 to a maximum of $25.00. For example, unlike the litigation taxes authorized by Tenn. Code Ann. §§ 67-4-601(b)(1), (b)(6), (c), and (d) (Supp. 2007), subsection (b)(5) did not state the percentage of the vote of the county's legislative body required to pass the tax or for what purposes the tax proceeds could be used. For the General Assembly to have specifically limited the (b)(1), (b)(6), (c), and (d) litigation taxes but then have authorized a tax under (b)(5) without any of those limitations would have been unusual, and a review of the legislative history dispels any notion that subsection (b)(5) was meant to be separate from the (b)(1) tax and its limitations. S.B. 2152, *Senate Comm. on Finance, Ways & Means*, 103rd Gen. Assembly, Second Regular Session (April 28, 2004) (statement of Sen. Williams that the bill allows a county "to increase the maximum local litigation tax . . . . from $10.00 to $25.00."); H.B. 2638, *House Comm. on Finance, Ways & Means*, 103rd Gen. Assembly, Second Regular Session (May 18, 2004) (statement of Rep. Hagood that the "bill addresses the option for Jefferson County to increase as amended their litigation fee to $25.00.").

In 2008, the General Assembly enacted Chapter 1187 so that all counties would be authorized to increase the (b)(1) tax. The amended language of subsection (b)(5) now explicitly requires "the adoption of a resolution by two-thirds majority vote of a county legislative body[.]" Tenn. Code Ann. § 67-4-601(b)(5) (Ch. No. 1187, § 1, 2008 Pub. Acts). Thus, pursuant to subsection (b)(5), a two-thirds majority vote is required to increase the subsection (b)(1) tax above $10.00.

3. As discussed in response to the second question, subsection (b)(5) has always been integrally linked to subsection (b)(1). Unlike subsection (b)(6), the plain language of subsection (b)(5) does not provide for a county to use the proceeds of such a tax increase for purposes other than those described in subsection (b)(1). Thus, the proceeds of an increase in the litigation tax under subsection (b)(5) may be used only for those purposes described in subsection (b)(1).

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