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Opinion No. 09-79

Distribution of Local Option Sales Tax

QUESTION

May Rhea County retain all revenues collected pursuant to a one-half percent local option sales tax increase specifically designated for the purpose of capital improvements to Rhea County School facilities and equipment and payments on bonds to fund the same without sharing any portion of such sales tax revenues with any municipalities in the said county which do not operate separate municipal school systems without being in conflict with Tenn. Code Ann. § 67-6-712?

OPINION

No. Pursuant to Tenn. Code Ann. § 67-6-712(a)(2)(B), any incorporated cities and towns in Rhea County are entitled to receive one-half of the local option tax proceeds that arise from privileges exercised in those cities and towns. Absent the agreement of the cities and towns, Rhea County may not retain all revenues collected pursuant to a one-half percent local option sales tax increase.

ANALYSIS

Pursuant to Tenn. Code Ann. § 67-6-702, "[a]ny county, by resolution of its county legislative body," is authorized to levy a local option sales tax in an amount not to exceed two and three-fourths percent (2.75%). Although levied by the county, the tax is collected and administered by the Commissioner of Revenue, who "shall collect such tax concurrently with the collection of the state [sales] tax" and "shall remit the proceeds of the tax to the county, . . . levying the tax," less a reasonable administration fee. Tenn. Code Ann. § 67-6-710(b) (Supp. 2008).

A county levying and receiving local option sales taxes is required to expend and distribute one-half of the proceeds "in the same manner as the county property tax for school purposes." Tenn. Code Ann. § 67-6-712(a)(1) (Supp. 2008). With regard to the other one-half, if the proceeds represent "[c]ollections for privileges exercised in unincorporated areas," the county legislative body is authorized to distribute the proceeds "to such fund or funds of the county as [it] shall direct." Tenn. Code Ann. § 67-6-712(a)(2) (A) (Supp. 2008). On the other hand, if the proceeds represent "[c]ollections for privileges exercised in incorporated cities and towns," the county is required to distribute the proceeds to the city or town in which the privilege is exercised." Tenn. Code Ann. § 67-6-712(a)(2)(B) (Supp. 2008). A city or town may

agree, pursuant to a contract with the county, to "provide for other distribution" of these proceeds; however, a city or town is not required to agree to such an alternate distribution. *See id*.

The foregoing statutory scheme contains no authorization for a county, in enacting a local option sales tax or increasing the amount of such tax, to allocate one hundred percent of the proceeds to a specific purpose, such as schools, to the detriment of the city or town that would be entitled to share in such proceeds. Rather, pursuant to Tenn. Code Ann. § 67-6-712(a)(2)(B), the city or town is entitled to one-half of the proceeds that may be attributed to that particular city or town. *See also* Tenn. Att'y Gen. Op. No. 95-113 (Nov. 21, 1995). While a city or town may contractually agree to a plan that would allocate one hundred percent of a local option sales tax increase to the county school system, the city or town is under no legal obligation to enter into such an agreement.

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