STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 4, 2011

Opinion No. 11-1

Validity of Petition for Referendum on County "Wheel Tax"

QUESTION

A petition for a referendum election on a county "wheel tax" pursuant to Tenn. Code Ann. § 5-8-102 has been submitted by certain citizens of Decatur County. Is this petition valid such that the referendum election should be held?

OPINION

Yes, all of the statutory requirements for a referendum election have been met and such election should be held by the Decatur County Election Commission.

ANALYSIS

The Decatur County legislative body has passed a resolution authorizing a "wheel tax." This resolution passed by a two-thirds vote on second reading on October 11, 2010. On November 9 and 10, 2010, certain citizens of Decatur County filed a petition with the Decatur County Election Commission calling for a referendum election on the "wheel tax." The petition states as follows:

> DECATUR COUNTY COMMISSION
>
> We the undersigned registered voters and tax payers of Decatur County Tennessee, respectfully petition the duly elected officials of the County Commission of Decatur County to re-consider and put to popular vote on the upcoming general election docket the premise of the last wheel-tax increase, that above mentioned county officials passed in the previous October meeting. As we are opposed to said wheel-tax increase.

The Decatur County Election Commission has certified that this petition contains the signatures of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election. You have asked whether this petition is valid, and if so, is the Decatur County Election Commission required to hold the referendum election.

Tenn. Code Ann. § 5-8-102(b) authorizes each Tennessee county "to levy for county purposes by action of its governing body a motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county." As this Office has previously opined, the statute provides two methods by which a motor vehicle privilege tax can be approved: (1) by a two-thirds vote of the county legislative body at two (2) consecutive, regularly scheduled meetings or (2) by approval of the majority of qualified voters in a referendum election. *See* Op. Tenn. Att'y Gen. Nos. 08-171 (Nov. 5, 2008); 90-85 (Sept. 17, 1990); and 83-409 (Dec. 14, 1983).

Like here, if the wheel tax is approved by a two-thirds vote of the county legislative body at two consecutive, regularly scheduled meetings, a referendum election may still be held if a petition is filed with the county election commission. Specifically, Tenn. Code Ann. § 5-8-102(c)(2)(A) provides:

> (A) Except as provided in subdivision (c)(2)(B), if there is a petition of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election that is filed with the county election commission within thirty (30) days of final approval of such resolution by the county legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with the provisions of this section.[1]

Thus, pursuant to this statute, the only requirements that a petition must meet in order to successfully call for a referendum election are that (1) the petition must be filed within thirty (30) days of final approval of the resolution by the county legislative body and (2) the petition must contain the signatures of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election. Here, the resolution authorizing the wheel tax was approved on second reading on October 11 and the petition was submitted on November 9-10, and accordingly, the petition was timely submitted to the county election commission. Additionally, you have indicated that the Decatur County Election Commission has certified that the petition contains the signatures of registered voters amounting to at least ten percent (10%) of the votes cast in the county in the last gubernatorial election. Thus, it would appear that all statutory requirements have been met and the petition calling for a referendum election is a valid petition and that the Decatur County Election Commission must call for such election.[2] Furthermore, this Office has previously opined that when an election is called by the election commission pursuant to petition of the voters, the election commission must set the date of the election for a day not less than forty-five (45) days nor more than sixty (60) days after the

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[1]Tenn. Code Ann. § 5-8-102(c)(2)(B) carries a special provision applicable by population bracket to Shelby County, but the procedure it specifies is exactly the same as that for other counties.

[2]The petition states that it is directed toward the "Decatur County Commission" even though the petition was filed with the Decatur County Election Commission. Additionally, the petition requests that the referendum be held as part of the general election on November 2, even though the petition was not filed until November 9 and 10. Nothwithstanding these discrepancies, the petition has satisfied all of the statutory requirements and therefore a referendum election must be held.

petition is filed with the commission. *See* Op. Tenn. Att'y Gen. No. 08-171 (Nov. 5, 2008); Tenn. Code Ann. § 2-3-204(a).

ROBERT E. COOPER, JR.
Attorney General and Reporter

BARRY TURNER
Deputy Attorney General

JANET M. KLEINFELTER
Deputy Attorney General

Requested by:

The Honorable Steve K. McDaniel
State Representative
115 War Memorial Building
Nashville, TN 37243-0172