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Opinion No. 11-27

Setting tax rates for special school districts

QUESTIONS

1. What procedures must the board of education of a special school district follow in requesting that the General Assembly set a tax rate for the school district?

2. If the board of education is required to request a change in its tax rate by means of a resolution, would the failure of the board to approve the minutes of the meeting at which the resolution was adopted before transmitting the resolution to the General Assembly have any effect on an act of the General Assembly that set a tax rate for the special school district?

3. Must the board of education of a special school district request in writing the specific tax rate that is to be set?

4. After a general reappraisal of property in the county in which a special school district is located, may the General Assembly, under Tenn. Code Ann. § 67-5-1704, set a tax rate for the special school district that is higher than either the certified tax rate or the previous tax rate?

5. Does Article XI, Section 9, of the Constitution of Tennessee require the board of education of a special school district to approve an act of the General Assembly setting a tax rate for the district before such act becomes effective?

OPINIONS

1. Tennessee statutes do not set forth any particular procedures for the board of education of a special school district to request that the General Assembly set a tax rate for the school district that exceeds the rate imposed by the existing legislative act.

2. In light of our response to Question 1 above, the board of education is not required to request a change in its tax rate by means of a resolution.

3. Tennessee statutes do not set forth how such request should be made.

4. Yes.

5. No.

ANALYSIS

1. Tenn. Code Ann. § 49-3-1007 provides:

> **49-3-1007. Special school districts; tax rate; adjustment**
>
> If any special school district has bonds outstanding payable from taxes levied by special act of the general assembly, and if at any time the amount on deposit in the special fund created solely for the purpose of paying principal of and interest on the bonds is equal to at least two hundred percent (200%) of the amount of the principal and interest coming due on the bonds in the next twelve (12) months next succeeding, excluding any portion of principal and interest budgeted at the beginning of each fiscal year to be paid from sales tax revenues, BEP funds, or a combination of sales tax revenues or BEP funds, hereinafter referred to as annual debt service requirements, *the special district by resolution may, on or before September 1 of any year, certify to the county trustee the special school district tax rate, not to exceed the rate imposed by existing legislative act, necessary to raise the amount of taxes that must be collected in order to maintain the special fund during the succeeding year in an amount equal to at least two hundred percent (200%) of annual debt service requirements, and the county trustee shall collect only the taxes based on the rate so certified.*

(Emphasis added).

Neither this nor any other Tennessee statute sets forth any particular procedures for the board of education of a special school district to request that the General Assembly set a tax rate for the school district that exceeds the rate imposed by the existing legislative act. Therefore, the board of education should follow its own internal policies and procedures in carrying out the business of the board. From a practical standpoint, some form of communication reflecting that it represents the board's position should be forwarded to the representatives for the special school district in both the House and Senate regarding a request for legislative action.

2. In light of our response to Question 1 above, the board of education is not required to request a change in its tax rate by means of a resolution. The remaining portion of this question is therefore pretermitted.

3. Neither Tenn. Code Ann. § 49-3-1007 nor any other Tennessee statute sets forth how such a request should be made. To preserve a record of the request, a written request could be made with a copy of the resolution attached. Other alternatives may also be acceptable, however.

4. The General Assembly may set a tax rate for the special school district that is higher than either the certified top rate or the previous tax rate after a general reappraisal of property under Tenn. Code Ann. § 67-5-1704(c):

> (c) If additional revenue is required in a special school district following such general reappraisal and the adjustment to the tax rate under the provisions of this section, the General Assembly shall by general law or private act set the tax rate for such special school district at a level to generate the ad valorem revenue necessary for such special school district.

The power to tax belongs to the Tennessee legislature and cannot be delegated unless the Tennessee Constitution expressly allows such delegation. *B.O. Keesee v. Civil District Bd. of Educ.*, 46 Tenn. 128 (1868). Article II, Section 29, of the Constitution allows the legislature to delegate its taxing powers to counties and towns. The Tennessee Supreme Court has held that this delegation of taxing power does not extend to special school districts. *Gibson Co. Special School District v. Palmer*, 691 S.W.2d 544, 549 (Tenn. 1985); *Williamson v. McClain*, 249 S.W. 811 (Tenn. 1923).

5. Article XI, Section 9, of the Tennessee Constitution does not require the board of education of a special school district to approve an act of the General Assembly setting a tax rate for the district before such act becomes effective.

Article XI, Section 9, of the Tennessee Constitution referred to as the "Home Rule Amendment," provides, in pertinent part:

> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, *and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.*

(Emphasis added). The Home Rule Amendment requires that laws local in effect and application shall be void unless the law is conditioned upon approval by a two-thirds vote of the electorate. In relation to special school districts, however, the Tennessee Supreme Court has specifically held that a special school district does not fall within the definition of a municipality as contemplated in the Home Rule Amendment. *Gibson Co Special School District,* 691 S.W.2d at 550; *Perritt v. Carter*, 204 Tenn. 611, 614, 325 S.W.2d 233, 234 (Tenn. 1959). Consequently, legislation setting a tax rate for a special school district does not prompt the need for a referendum because the Home Rule Amendment applies to municipalities and counties only. *Id*.

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