S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

February 1, 2013

Opinion No. 13-08

Constitutional Permissibility of Property Transfer Between Davidson and Wilson Counties

QUESTION

Would the Tennessee Constitution prohibit the General Assembly from authorizing the transfer of several properties from Davidson County to Wilson County under the following circumstances: the properties sought to be transferred are more than eleven miles from the courthouse for the Metropolitan Government of Nashville and Davidson County, the proposed property transfer would leave more than 500 square miles within Davidson County, and the governing legislative bodies for both counties approve the property transfer by resolution?

OPINION

No. The aforementioned circumstances meet the requirements set forth in the Tennessee Constitution, Article X, Section 4, and therefore the General Assembly, through passage of an act by the Senate and House of Representatives with approval by the Governor, may authorize the transfer of these properties between the counties.

ANALYSIS

The General Assembly has the power to establish counties and to determine and alter county lines, within the specific criteria set forth in Article X, Section 4 of the Tennessee Constitution. *Giles County v. Marshall County*, 133 Tenn. 414, 181 S.W. 308, 308-09 (1915); *see, e.g.*, Tenn. Att'y Gen. Op. 98-035 (Feb. 9, 1998) ("Alteration of Gibson-Obion County Line to Place City of Kenton Entirely in Gibson County"); Tenn. Att'y Gen. Op. 94-049 (April 6, 1994) ("County Boundaries – Whether Municipality Can Secede from Its County and Join Neighboring County"); Tenn. Att'y Gen. Op. 83-196 (April 20, 1983). In placing property within a different existing county, the General Assembly is constitutionally constrained only by the criteria specified in Article X, Section 4, which provides in pertinent part that "no line of such County shall approach the County Courthouse of any old county from which it may be taken nearer than eleven miles, nor shall such old County be reduced to less than five hundred square miles." Although this language applies to the creation of a new county, it has also been

applied to the alteration of the boundary between existing counties. *Giles County v. Marshall County,* 181 S.W. at 308-09; Tenn. Att'y Gen. Op. 98-035 at 1-2.

The provision of Article 10, Section 4, of the Tennessee Constitution, which specifies that "[n]o part of a County shall be taken off to form a new County or part thereof without the consent of two-thirds of the qualified voters in such part taken off," does not apply when part of an existing county is added to another already existing county. *Giles County v. Marshall County,* 181 S.W. at 308; Tenn. Att'y Gen. Op. 98-035 at 2.

The request specifies that all of the properties that are proposed to be transferred from Davidson County to Wilson County are more than eleven miles from the courthouse for the Metropolitan Government of Nashville and Davidson County and the transfer of these properties will not cause Davidson County to fall below five hundred square miles in size. Accordingly, the constitutional requirements have been met for the General Assembly to be able to authorize the transfer of these properties between already existing counties.

Notably, in addition to the foregoing requirements of the Tennessee Constitution, Tenn. Code Ann. § 5-2-104 requires:

> (a) All applications for legislation changing county lines shall be accompanied by:
> (1) An accurate survey and plat, showing the changes asked for, and giving courses and distances of the county line as it will be left after such change should be made; and
> (2) A resolution approved by two thirds (⅔) of the county commissioners of all counties affected by such boundary line change.
> (b) No bill providing for such change shall be in order unless so accompanied.

These legislative procedures as set forth in the foregoing statute should be followed in regard to any proposed legislation to authorize the transfer of these properties between Davidson and Wilson Counties. *See* Tenn. Att'y Gen. Op. 99-101 (May 5, 1999) ("Legislative Procedures for Changing County Lines").

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

STEVEN A. HART
Special Counsel

Requested by:

Honorable Darren Jernigan
State Representative
24 Legislative Plaza
Nashville, TN 37243