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

March 18, 2013

Opinion No. 13-22

Election of Utility District Commissioners

QUESTION

Does the provision of Senate Bill 513/House Bill 691 of the 108th Tennessee General Assembly, Sess. 1 (2013) (hereinafter "SB513"), which provides that commissioners of a water utility district in a county within a narrow population bracket must be elected by a plurality of the customers of the district, violate article XI, section 8, of the Tennessee Constitution by unlawfully suspending a general law?

OPINION

No. Pursuant to Tenn. Code Ann. § 7-82-307(a)(2), commissioners in single-county and multi-county utility districts selected by a plurality vote of customers as of July 1, 2011, will continue to be selected by that method and the General Assembly is authorized to approve this method of selection for other utility districts. For this reason, SB513, if enacted into law as currently proposed, would not violate article XI, Section 8, of the Tennessee Constitution by unlawfully suspending a general law.

ANALYSIS

SB513 states, in relevant part, that any water utility district having less than 1,600 customers in any county with a population of not less than 41,800 nor more than 41,900 under the 2010 census or any subsequent federal census is to be governed by a five-member board of commissioners elected by a plurality vote of the customers of the utility district.[1]

The election of utility district commissioners is governed by Tenn. Code Ann. § 7-82-307. Subsection (a) of this provision was rewritten in 2012, to be effective on January 1, 2013. 2012 Tenn. Pub. Acts, ch. 538, § 1. This statute now provides in pertinent part:

> (A) Each utility district shall select board members using the selection method set forth in subdivisions (a)(4) or (a)(5).

[1] This Office is unaware of any amendments to SB513 as of this date.

> (B) The commissioners of any single-county utility district using a selection method other than appointment by a county mayor as provided in subdivision (a)(4) on May 6, 2004, shall be appointed by the county mayor ***unless, on July 1, 2011, or hereafter approved by the general assembly, the selection method used by a single county utility district is a plurality vote of customers of the utility district voting in an election held by the utility district*** or the single-county district is located in a county with a metropolitan form of government and the selection method is by appointment by a county probate judge.

Tenn. Code Ann. § 7-82-307(a)(2)(A) & (B) (emphasis added). The term "single-county utility district" refers to a utility district with a service area located in only one county. A multi-county utility district has a service area in more than one county and is generally incorporated under Tenn. Code Ann. §§ 7-82-601 to -609.

The General Assembly's intent was to create a uniform general law for filling vacancies on a utility district board. The statute provides in this regard that:

> The method of filling vacancies set forth in subdivisions (a)(2), (4) and (5) is the uniform method created by the legislature for the filling of vacancies on a utility district board of commissioners. ***It is the legislature's intent to create a uniform general law of statewide application for selecting utility district commissioners.***

Tenn. Code Ann. § 7-82-307(a)(7) (emphasis added).

The question posed is whether, in light of Tenn. Code Ann. § 7-82-307(a)(7), the provision of SB513 providing for the popular election of utility district commissioners in certain utility districts violates article XI, Section 8, of the Tennessee Constitution. This section provides in relevant part:

> **General laws only to be passed. C** The Legislature shall have no power to suspend any **general law** for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

Tenn. Const. art. XI, § 8 (emphasis added). In order to trigger application of article XI, section 8, a statute must contravene some general law that has mandatory statewide application. *Riggs v. Burson,* 941 S.W.2d 44, 78 (Tenn.), *cert. denied*, 522 U.S. 982.

In this case, Tenn. Code Ann. § 7-82-307, while creating a law of statewide application for selecting utility district commissioners, does not dictate that all utility districts must follow a single method of selecting commissioners. Commissioners in single-county utility districts will generally be selected by the county mayor from a list of nominees. Tenn. Code Ann. § 7-82-307(a)(4). But single-county utility districts electing commissioners by a plurality vote of

customers as of July 1, 2011 must continue to do so even after the effective date of 2012 Tenn. Pub. Acts, ch. 538. Tenn. Code Ann. § 7-82-307(a)(2)(B). Further, Tenn. Code Ann. § 7-82-307(a)(2)(B) expressly authorizes the General Assembly to allow other utility single-county districts to use this method of selecting directors, which is exactly what SB513 seeks to accomplish. Additionally, utility district commissioners in a single-county utility district located in a county with a metropolitan form of government and whose method of selection as of July 1, 2011 was by a county probate judge will continue to be selected by that method.[2] For this reason, SB513, if enacted into law as proposed, would not violate article XI, section 8, of the Tennessee Constitution by unlawfully suspending a general law. *Id.*

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Ken Yager
State Senator
6 Legislative Plaza
Nashville, Tennessee 37243-0212

[2] Under Tenn. Code Ann. § 7-82-307(a)(9), the board of any utility district excepted from the requirement of selecting utility district directors by the county mayor under Tenn. Code Ann. § 7-82-307(a)(2) may submit to the utility management review board a resolution changing its present method of selection to appointment by a county mayor or mayors under Tenn. Code Ann. § 7-82-307(a)(4) or (a)(5). The utility management review board must approve the resolution before the change can become effective. *Id.*