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Opinion No. 13-40

Wilson County Domestic Animal Tax and Tennessee Anti-Rabies Law

QUESTIONS

1. Does Tenn. Code Ann. §§ 68-8-101 to -113 (hereinafter the "Tennessee Anti-Rabies Law" or "the Anti-Rabies Law"), adopted in 2004, repeal Chapter 242 of the 1980 Tennessee Private Acts (hereinafter "Private Act 242")?

2. Does the Tennessee Anti-Rabies Law, which authorizes counties to charge a fee for the registration of cats and dogs that becomes part of the county or municipality rabies control fund for the purposes listed in Tenn. Code Ann. § 68-8-104(d), supersede the collection of the tax allowed by Chapter 242?

3. Under Tenn. Code Ann. § 68-8-105(b), the Anti-Rabies Law does not apply to any county "that has or hereafter may enact private laws governing the control of rabies in that county, that meet the minimum requirements of this chapter." Does Chapter 242 meet the minimum requirements of the Law so that the Law would not apply in Wilson County?

4. If the Anti-Rabies Law supersedes Chapter 242, must the Wilson County Commission take any steps to nullify Chapter 242?

5. Assuming Chapter 242 remains valid, may Wilson County pay the proceeds of the tax collected under Chapter 242 to any organization other than "The Humane Association of Wilson County, Inc."?

6. If The Humane Association of Wilson County, Inc., no longer uses the funds it receives under Chapter 242 for "animal control," is the Association using the funds as required by Chapter 242?

7. Assuming Chapter 242 is still valid, how may it be amended?

8. Could the Wilson County Commission, by resolution, cease to collect the tax levied under Chapter 242?

9. Assuming Chapter 242 is still valid, may the Wilson County Commission establish a registration program and levy a fee under Tennessee Anti-Rabies Law?

10. Assuming Chapter 242 is still valid, may the Wilson County Commission increase the fee for animal control imposed by the Tennessee Anti-Rabies Law and assign the funds to a rabies or animal control program operated directly by the County?

OPINIONS

1. No. Chapter 242 authorizes Wilson County to levy a tax on cats and dogs and distribute the proceeds to The Humane Association of Wilson County, Inc., "for its use in animal control." The Tennessee Anti-Rabies Law does not irreconcilably conflict with Chapter 242 and thus did not repeal the Chapter 242.

2. No.

3. No. Because Chapter 242 does not meet the minimum requirements of Tenn. Code Ann. §§ 68-8-101 to -113, within the meaning of Tenn. Code Ann. § 68-8-105(b), the Anti-Rabies Law applies to Wilson County.

4. This question is pretermitted because there is no conflict between the Tennessee Anti-Rabies Law and Chapter 242.

5. The proceeds of the tax collected under Chapter 242 must be distributed to The Humane Association of Wilson County, Inc. for its use in animal control. If The Humane Association of Wilson County, Inc. still legally exists and is engaged in animal control in the county but is operating under a different name, then the clerk must still pay the tax proceeds to The Humane Association of Wilson County, Inc. or its successor.

6. Chapter 242 specifies that tax distributed must be used by the Humane Association of Wilson County, Inc. for "animal control."

7. Generally, a private act must be amended by the Tennessee General Assembly. Under Article XI, Section 9, of the Tennessee Constitution, such an amendment, being of local application, must provide for local approval either by the local governing body or by local referendum.

8. Yes. The County Commission may, by resolution, cease collecting the tax authorized under Chapter 242.

9. Given no conflict exists between the Tennessee Anti-Rabies Law and Chapter 242, Wilson County may establish a registration program and levy a fee as authorized under Tenn. Code Ann. § 68-8-104.

10. Yes. Wilson County may impose and distribute the fees authorized by the Anti-Rabies Law for a rabies or animal control program given there is no conflict between the Anti-Rabies Law and Chapter 242.

ANALYSIS

Chapter 242 authorizes the Wilson County Commission to impose an annual tax on cats and dogs, providing in relevant part:

> That whoever vaccinates domestic animals shall collect the Two Dollar ($2) domestic animal tax, and pay the same over to the County Clerk, who shall in turn pay the same over to The Humane Association of Wilson County, Inc., for its use in animal control.

1980 Tenn. Private Acts, ch. 242, § 5. Chapter 242 collects these funds for the general use of "animal control," which is an undefined term. *Id.*

Initially, in 1981, this Office opined that Chapter 242, in authorizing Wilson County to impose a $2 per head tax on the vaccination of domestic animals, was constitutionally suspect as special legislation under Article XI, Section 8, of the Tennessee Constitution. Tenn. Att'y Gen. Op. 81-46 (Jan. 22, 1981).[1] That opinion concluded that Chapter 242 conflicted with the general law, specifically Tenn. Code Ann. § 5-8-102(a) and Tenn. Code Ann. § 5-8-103. The provisions of Tenn. Code Ann. § 5-8-102(a) provide that "[e]ach county is empowered to levy privilege taxes upon merchants and such other vocations, occupations or businesses as are declared to be privileges, not exceeding in amount that levied by the state for state purposes," and Tenn. Code Ann. § 5-8-103 states that "[t]he property and privileges that are taxable or exempt from taxation, for county purposes, are the same that are taxable or exempt from taxation for state revenue." Opinion 81-46 concluded Chapter 242 conflicted with these general laws and, given that conflict, Tennessee law required there must be a special reason justifying the creation of this special classification for Wilson County. *See* Tenn. Att'y Gen. Op. 81-46 at 1. Opinion 81-46 stated this Office was unaware of any reason supporting the classification created by Chapter 242. *Id.* In the absence of such a reason, Chapter 242 was deemed constitutionally suspect. *Id.*

Upon further review, this Office now concludes the more persuasive position is that Chapter 242 is defensible from a constitutional challenge under Article XI, Section 8. Under the law of Tennessee, private acts designating a county by name are not per se unconstitutional. *See Harwell v. Leech*, 672 S.W.2d 761, 762 (Tenn. 1984). Opinion 81-46 reviewed the constitutionality of Chapter 242 under Article XI, Section 8 of the Tennessee Constitution, which states:

> 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.

[1] This opinion is referenced as 81-46, which is the number it was assigned by Westlaw. The opinion is reported at 1981 WL 142930. The opinion was unpublished when originally issued by this Office and was labeled U81-018.

The review of the validity of a private act such as Chapter 242 under Article XI, Section 8 is necessarily a two-step process. As the Tennessee Supreme Court has explained:

> Our cases make a clear distinction between (1) Private Acts which confer special benefits and impose special burdens on the citizens of one county, when there is no general statute, and when before the Private Act, there was only the common law, and (2) those Private Acts which undertake to amend or abrogate a prior general statute in its application to a particular county or class of counties. Private Acts of the former class have been upheld, and those of the latter class struck down [unless there is at least a reasonable basis to justify the Private Act's classification].

Harwell v. Leech, 672 S.W.2d at 762-63 (quoting *Sanford v. Pearson*, 190 Tenn. 652, 657-58, 231 S.W.2d 336, 338 (1950)). *See also Smith County v. Enoch*. No. M1999-00063-COA-R3-CV, 2003 WL 535914 at *3-4 (Feb. 26, 2003) (stating that if "Article XI, § 8 is implicated, a challenged private act must do more than differ with the general law, it must flatly contravene a generally applicable statewide statute"). Applying this test, Opinion 81-46 concluded that Chapter 242 contravened a general law and that no reasonable basis existed to support allowing Wilson County to collect a $2 tax on the vaccination of domestic animals in contravention of the general law.

Applying this test to Chapter 242, the more persuasive position is that no Tennessee general law conflicts with Chapter 242 and, even if such a general law existed, a reasonable basis likely exists to support the classification created by Chapter 242 from a constitutional challenge under Article XI, Section 8. First, because there is no general law governing the taxation of the vaccination of domestic animals, Article XI, Section 8, does not prevent the General Assembly from authorizing this special tax in Wilson or any other county. Following the issuance of Opinion 81-46, the Tennessee Supreme Court has unambiguously affirmed that, where there is no general law, a private act does not implicate the provisions of Article XI, Section 8. *First Utility District of Carter County v. Clark*, 834 S.W.2d 283 (Tenn. 1992); *Civil Service Merit Board v. Burson*, 816 S.W.2d 725 (Tenn. 1991). The general laws relied upon by Opinion 81-46, Tenn. Code Ann. §§ 5-8-102(a) and 5-8-103, have been essentially replaced by the business tax codified at Tenn. Code Ann. § 67-4-701 to -730. These provisions imposed taxes on many scores of merchants, vocations, occupations, and businesses. But the tax authorized by Chapter 242 is not a tax on a merchant, vocation, occupation, or business, but on the vaccination of a domestic animal. It would be unreasonable to continue to assume that the taxation system in Tenn. Code Ann. §§ 5-8-102 and -103, which had been largely supplanted by the business tax when Chapter 242 was enacted, renders it impermissible for a county to address its animal control problem in part through a local tax on vaccinations, unrelated to any business endeavor. An imposition of such a tax does not interfere with the State's general scheme of taxation of businesses. Moreover, over the years, extensive systems of local taxation with no State counterparts have grown up through the adoption of private acts for counties and cities imposing taxes on hotels and motels and road usage (wheel taxes). Tennessee courts today would likely not strike down these provisions under Tenn. Code Ann. § 5-8-103. And, of course, merely because a tax has not been imposed on a privilege does not mean that the privilege is "exempt

from taxation for state revenue." There are many exemptions in Tennessee's revenue laws, but the failure to extend a tax to an activity is not the same as exempting it.

Furthermore, even if a rational basis were required to uphold such a local tax, there may be many conceivable bases that might justify legislation pertaining to animal control in Wilson County that would justify the special classification created by Chapter 242. Because Chapter 242 specifically addresses Wilson County by name rather than by a population bracket, in defending the act one would attempt to identify any feature pertinent to that county that might justify the special taxing authority, not only those tied to a population range. *See Harwell v.* Leech, 672 S.W.2d at 762. Because this Office has no way of knowing all of the possible reasons to justify such a tax, the Office cannot conclude whether or not it is suspect, even if Article XI, Section 8, were applicable, which is not the situation here.

For the reasons stated above, this Office concludes Chapter 242 is constitutionally defensible. Thus Opinion 81-46 no longer represents the view of this Office.

Turning to the Tennessee Anti-Rabies Law, this Law is codified at Tenn. Code Ann. §§ 68-8-101 to -113. Under Tenn. Code Ann. § 68-8-103, dogs and cats six months of age or older must be vaccinated against rabies. Tenn. Code Ann. § 68-8-104(a) authorizes local governments to adopt local laws or ordinances to require the registration of cats or dogs.[2] This authority is, "[i]n addition to, but not as a substitute for or in any way detracting from the vaccination requirements of this chapter." Tenn. Code Ann. § 68-8-104(a). Local animal registration laws or ordinances must include methods for collecting a registration fee to establish and maintain a rabies control program, "also commonly known as an animal control program." Tenn. Code Ann. § 68-8-104(b). Under Tenn. Code Ann. § 68-8-104(d):

> All fees collected for registration shall become part of the county or municipality rabies control fund and shall be disbursed by the appropriate trustee in a manner prescribed by the local legislative body for the sole purpose of the payment of salaries, for the establishment and operation of an animal shelter, for the establishment and operation of an animal control program, or for other expenses incidental to the enforcement of this chapter in the jurisdiction to which the registration requirement applies.

Tenn. Code Ann. § 68-8-104(d). The Anti-Rabies Law exempts certain counties from its provisions, stating:

> (a) Any county or municipality maintaining a program for the control of rabies shall be exempt from the operation of this chapter so long as such rabies program meets the minimum requirements of this chapter.

[2] Counties are generally authorized, by resolution of the county commission, to license and regulate dogs and cats, establish and operate shelters and other animal control facilities, and regulate, capture, impound and dispose of stray dogs, stray cats, and other stray animals. Tenn. Code Ann. § 5-1-120.

> (b) This chapter shall not apply to any county that now has or hereafter may enact private laws governing the control of rabies in that county, that meet the minimum requirements of this chapter.

Tenn. Code Ann. § 68-8-105.

Vaccinated dogs must wear a rabies vaccination tag. Tenn. Code Ann. § 68-8-106. A stray dog or cat picked up by animal control cannot be released without proof that the animal has been vaccinated against rabies. Tenn. Code Ann. § 68-8-107. The Anti-Rabies Law establishes procedures for the observation, confinement, or quarantine of an animal suspected of having rabies. Tenn. Code Ann. § 68-8-109. The Tennessee Commissioner of Health is authorized to promulgate rules to enforce the Anti-Rabies Law. Tenn. Code Ann. § 68-8-112.

1. The Tennessee Anti-Rabies Law does not explicitly or implicitly repeal Chapter 242. Courts require as a rule of statutory construction that statutes on the same subject should be construed together so they do not conflict. *In re Akins*, 87 S.W.3d 488, 493 (Tenn. 2002). The General Assembly is presumed to be aware of other statutes relating to the same subject matter. *Shorts v. Bartholomew*, 278 S.W.3d 268, 277 (Tenn. 2009). Thus, unless a more recent statute expressly repeals or amends an older one, "the new provision is presumed to be in accord with the same policy embodied in the prior statute." *Id.* Repeals by implication are not favored in Tennessee and will be recognized "only when no fair and reasonable construction will permit the statutes to stand together." *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995). A court will hold a later statute to have repealed an earlier statute by implication only when the conflict between the statutes is irreconcilable. *Id. See also Hayes v. Gibson County*, 288 S.W.3d 334, 337-38 (Tenn. 2009).

The Tennessee Anti-Rabies Law does not conflict with Chapter 242. Chapter 242 authorizes the Wilson County Commission to levy a tax on domestic animals, to be paid when the animal is vaccinated. Chapter 242 §§ 1 & 5. The tax is to be collected by whoever vaccinates the animals and then paid to the county clerk. *Id*. at § 5. The clerk must pay the proceeds to The Humane Association of Wilson County, Inc., "for its use in animal control." *Id*. Chapter 242 does not specify any regulatory standards for the animal control program operated by The Humane Association, nor does it establish a registration system for cats and dogs. *See id*. at §§ 1-7.

By contrast, the Anti-Rabies Law requires animals to be vaccinated against rabies. Tenn. Code Ann. § 68-8-103. The Anti-Rabies Law specifically states that its provisions do not apply to any county that has or may enact private laws governing the control of rabies that meet the minimum requirements of the act. Tenn. Code Ann. § 68-8-105(b). The Anti-Rabies Law also authorizes local governments to adopt local laws or ordinances requiring the registration of dogs and cats, to charge a registration fee, and to use proceeds of the fee for specific purposes. Tenn. Code Ann. § 68-8-104. These provisions do not irreconcilably conflict with the county's authority under Chapter 242 to levy the tax referenced in Chapter 242 and use the proceeds to support the local humane association. For these reasons, the Anti-Rabies Law did not repeal Chapter 242.

2. Specifically, Chapter 242 does not conflict with Tenn. Code Ann. § 68-8-104(d) of the Tennessee Anti-Rabies Law. The Anti-Rabies Law generally authorizes counties and cities to establish registration requirements for dogs and cats and allows for the collection of registration fees, stating:

> Any local laws or ordinances implementing animal registration shall include methods for the collection of registration fees and shall require the expenditure of these funds to establish and maintain a rabies control program, also commonly known as an animal control program. In addition to various animal control activities, the rabies control program shall ensure that dogs and cats are properly vaccinated in accordance with this chapter and that biting animals or rabies suspects are observed or confined in accordance with this chapter and rules of the department [the Tennessee Department of Health].

Tenn. Code Ann. § 68-8-104(b). The distribution of these registration fees is addressed by Tenn. Code Ann. § 68-8-104(d), which provides:

> All *fees collected for registration* shall become part of the county or municipality rabies control fund and shall be disbursed by the appropriate trustee in a manner prescribed by the local legislative body for the sole purpose of the payment of salaries, for the establishment and operation of an animal shelter, for the establishment and operation of an animal control program, or for other expenses incidental to the enforcement of this chapter in the jurisdiction to which the registration requirement applies.

(Emphasis added).

Chapter 242 authorizes Wilson County to levy a tax for a specified amount with the proceeds to be used to sustain an animal control program. By contrast, Tenn. Code Ann. § 68-8-104(d) addresses the collection and use of registration fees set by the local government as part of a rabies control fund. While these laws both address matters related to animal control, they are not in irreconcilable conflict given they serve different and distinct purposes. *See Shorts v. Bartholomew*, 278 S.W.3d at 277; *Cronin v. Howe*, 906 S.W.2d at 912.

3. The enactment of Chapter 242 does not preclude Wilson County from coverage under the Tennessee Anti-Rabies Law. The Anti-Rabies Law does not apply to "any county that now has or hereafter may enact private laws governing the control of rabies in that county, *that meet the minimum requirements of this chapter*." Tenn. Code Ann. § 68-8-105(b) (emphasis added). Chapter 242 authorizes the Wilson County Commission to levy an annual tax of $2 on domestic animals in the county. While Chapter 242 provides that the tax is collected by whoever vaccinates the animal, Chapter 242 does not require that the animals be vaccinated or impose any other regulatory requirements regarding rabies vaccination in the county. For these reasons, Chapter 242 does not meet the minimum requirements of the Tennessee Anti-Rabies Law, within the meaning of Tenn. Code Ann. § 68-8-105(b), and thus Wilson County is not excluded from compliance with the Anti-Rabies Law.

4. Because, as discussed above, Chapter 242 and the Anti-Rabies Law do not conflict, question four regarding steps the Wilson County Commission could take in the event of such a conflict is pretermitted.

5. Chapter 242 only authorizes Wilson County to pay the proceeds of the tax collected to "The Humane Association of Wilson County, Inc." The goal of statutory construction is to give the fullest possible effect to the General Assembly's intent and purpose. *Knox County ex rel. Environmental Termite & Pest Control, Inc. v. Arrow Exterminators, Inc.*, 350 S.W.3d 511, 524 (Tenn. 2011). When a statute's language is clear and unambiguous, courts need not look beyond the statute itself and must simply enforce the statute as written. *Id.* Chapter 242 authorizes the county clerk to pay the proceeds of the tax only to The Humane Association of Wilson County, Inc. for its use in animal control. The statute does not specify any alternate or successor organization. If The Humane Association of Wilson County, Inc. still legally exists and is engaged in animal control in the county, then the clerk may still pay the tax proceeds to that organization, even if it is operating informally under a different name. But, under the current law, the clerk may not pay the proceeds to a legal entity or organization other than The Humane Association of Wilson County, Inc.

6. The Humane Association of Wilson County, Inc., must use any funds distributed under Chapter 242 for "animal control." Chapter 242 at § 5. Chapter 242 expressly states that the tax authorized is to be paid to this organization "for its use in animal control." *Id.* Therefore, the organization must use the funds for this purpose. *See, e.g., Chapman v. DaVita, Inc*., 380 S.W.3d 710, 714 (Tenn. 2012); *Rich v. Tennessee Bd. of Medical Examiners*, 350 S.W.3d 919, 926 (Tenn. 2011) (both cases stating the general rule of statutory construction that court look to the natural and ordinary meaning of the language used in a statute without adopting any forced or subtle construction that would inappropriately extend the statute's meaning). The opinion request does not specify the activities the organization currently funds with the tax proceeds. Since Chapter 242 contains no definition of the term "animal control," it is possible that the organization's current activities may fall within the term. Any such determination would require an analysis of the facts surrounding the current use to which the funds are being put.

7. Generally, a private act such as Chapter 242 must be amended by the General Assembly. *See* Tenn. Const. art. II, § 17. *See also Rector v. Griffith*, 563 S.W.2d 899, 903 (Tenn. 1978) (observing that "the General Assembly has enacted thousands of private acts dealing with various aspects of local government"). Under article XI, section 9, of the Tennessee Constitution, an act of local application must provide for local approval either by the local legislative body or by local referendum before the act becomes effective.

8. The Wilson County Commission may, by resolution, cease to impose the domestic animal tax authorized by Chapter 242. Section 1 of Chapter 242 provides that "the Wilson County Commission be and is hereby authorized to impose a $2 per head domestic animal tax." Chapter 242, § 1. Thus, Chapter 242 authorizes but does not require Wilson County to impose the tax. For this reason, the County Commission may, by resolution, cease to impose and collect this tax.

9. Chapter 242 does not preclude Wilson County from establishing a registration program and levying a fee as authorized under Tenn. Code Ann. § 68-8-104. As discussed above, Chapter 242 does not conflict with Tenn. Code Ann. § 68-8-104. Chapter 242 authorizes the Wilson County Commission to levy a tax and pay the proceeds to a privately chartered corporation "for its use in animal control." By contrast, Tenn. Code Ann. § 68-8-104 authorizes a county to establish a registration system and collect registration fees. Thus, Wilson County may establish a registration program and levy a fee as authorized under Tenn. Code Ann. § 68-8-104.

10. Wilson County is prohibited from increasing the fee for animal control under Chapter 242 and may not assign the funds derived from the Act to a rabies or animal control program operated directly by the county. Again, the Act limits this tax to $2 per domestic animal. Chapter 242 §§ 1 & 5. Therefore the Wilson County Commission may not increase the tax to more than $2 unless the General Assembly amends Chapter 242. However, per the above analysis, Chapter 242 does not preclude Wilson County from establishing a registration program and fee for a rabies or animal control program as authorized by the Tennessee Anti-Rabies Law.

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