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

November 6, 2013

Opinion No. 13-87

County Bond Referendum

QUESTION

If a county commission authorizes the issuance of general obligation bonds, a petition protesting issuance of the bonds is filed, and the county commission then rescinds its resolution authorizing the bonds, is the county still required to hold an election on the proposition to issue the bonds?

OPINION

No.

ANALYSIS

The Tennessee General Assembly has enacted a comprehensive statutory framework authorizing local governments to issue various types of bonds. Tenn. Code Ann. §§ 9-21-101 to -1104. Any local government is authorized to issue general obligation bonds for a public works project. Tenn. Code Ann. § 9-21-201. Prior to the issuance of any such general obligation bonds, the governing body of the local government "shall adopt a resolution determining to issue the general obligation bonds." Tenn. Code Ann. § 9-21-205. This resolution, identified as the "initial resolution," is to be published in full in a newspaper of general circulation in the local government along with the following notice:

> The foregoing resolution has been adopted. Unless within twenty (20) days from the date of the publication hereof, a petition signed by at least ten percent (10%) of the registered voters of the local government, (or the portion thereof being taxed for the bonds) shall have been filed with the (official charged with maintaining the records of the local government) protesting the issuance of the general obligation bonds, such bonds will be issued as proposed.

Tenn. Code Ann. § 9-21-206.

If a petition protesting the issuance of general obligation bonds signed by at least ten percent of the registered voters is filed within twenty days from the date of the publication of the initial resolution, then the statute provides that "no general obligation bonds shall be issued without the assent of the majority of the registered voters in the local government or a portion of

the local government, if applicable, voting upon a proposition for the issuance of the general obligations bonds in the manner provided by §§ 9-21-209 and 9-21-210." Tenn. Code Ann. § 9-21-207(b).

A local government may also decide to issue general obligation bonds for a public works project and concurrently decide to hold an election "for ascertaining the will of the electorate." Tenn. Code Ann. § 9-21-208. Under these circumstances, the local government is not required to adopt and publish an initial resolution but instead is required to adopt an election resolution in accordance with Tenn. Code Ann. § 9-21-209 and thereafter to hold an election. Tenn. Code Ann. § 9-21-208. A local government may also hold an election after the adoption and publication of an initial resolution, even if no petition protesting the issuance of the bonds has been filed. *Id.*

The provisions governing the adoption of a resolution to call an election provide in pertinent part that

> *[i]f it is necessary to hold an election on the proposition to issue general obligation bonds* or if the governing body decides to hold an election to ascertain the will of the electorate even if no petition has been filed, then the election shall be called by the governing body of the local government. Such election shall be held as an election on a question by the county election commission pursuant to § 2-3-204. The governing body shall adopt a resolution (herein called "election resolution") which shall supersede by its adoption, and immediately upon its adoption, the initial resolution, if any.

Tenn. Code Ann. 9-21-209 (emphasis added). Per the opinion request, the Lewis County Commission passed a resolution in March 2013 authorizing the issuance of up to $6 million in general obligation bonds for a county jail project. Thereafter, a group of citizens signed a petition protesting the issuance of the bonds. The Lewis County Election Commission subsequently certified the petition as containing the requisite number of signatures and otherwise meeting all the necessary requirements under Tennessee law pursuant to Tenn. Code Ann. § 9-21-207(b). After the petition was certified, the Lewis County Commission met and rescinded the resolution authorizing the issuance of bonds for the county jail project. The question posed is whether Lewis County is still required to conduct an election on the bond issue because the petition was "filed and certified" with the Lewis County Election Commission.

Initially, Tenn. Code Ann. § 9-21-207(b) requires that the petition be filed with the "official charged with maintaining the records of the local government within twenty (20) days from the publication of the initial resolution." After such petition has been filed, the county election commission is required to certify to the local government within fifteen days of receipt "the total number of registered voters as of the date of publication of the notice and the total number of valid signatures of registered voters signing the petition." Tenn. Code Ann. § 9-21-207(b). The county election commission has no authority to call or otherwise conduct the election unless and until the governing body of the local government adopts an election resolution, as the authority to call for the election is specifically vested in the governing body under the provisions of Tenn. Code Ann. § 9-21-209.

A governing body is required to adopt an election resolution only "[i]f it is necessary to hold an election on the proposition to issue general obligation bonds." Tenn. Code Ann. § 9-21-209. Under the circumstances described in the opinion request, however, there is no valid proposition to issue general obligation bonds, because the initial resolution authorizing the issuance of such bonds has been rescinded by the governing body. Thus, it is no longer "necessary" to hold an election on the proposition. Where the resolution authorizing the issuance of the general obligations bonds has been rescinded there is nothing for the electorate to approve or reject, and thus any such referendum election would be simply advisory. This Office has previously opined that there is no general provision in the Constitution or statutes of Tennessee that authorize a local government to hold an advisory or non-binding referendum election. *See* Tenn. Att'y Gen. Op. 95-013 (Mar. 8, 1995). Furthermore, while this Office has also opined that the General Assembly has the constitutional power to authorize local governments to hold such advisory referendum elections, *see* Tenn. Att'y Gen. Op. 00-081 (May 1, 2000), this Office is not aware of any private act authorizing the Lewis County Election Commission to hold an advisory referendum election concerning general obligation bonds for a county jail project.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

JANET KLEINFELTER
Deputy Attorney General

Requested by:

The Honorable Joey Hensley, M.D.
State Senator
309 War Memorial Building
Nashville, Tennessee 37243