STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

August 14, 2014

Opinion No. 14-76

Special School District Tax Rate

QUESTIONS

1. If a private act creating a special school district levies a property tax at a specific rate, under what circumstances may the district set a lower tax rate than that set forth in the act?

2. Can the language of a private act be tailored to allow a special school district to set a tax rate less than that authorized or within a numerical range of "not less than nor in excess of" that authorized by the act?

OPINIONS

1. A special school district does not have authority to vary from the tax rate set forth in the applicable private act. In the event of a property reappraisal, the State Board of Equalization has the authority to revise the district's tax rate pursuant to Tenn. Code Ann. § 67-5-1704.

2. No. The General Assembly must establish a single specific tax rate for a special school district in the private act and may not delegate its taxing power by granting rate-setting discretion to a special school district.

ANALYSIS

1. The principle is well established that special school districts are creatures of the General Assembly, with powers and duties strictly limited to those set forth in private acts. A special school district does not have authority or discretion to set tax rates.

> It is settled beyond dispute that only the General Assembly can levy taxes in a special school district it has created. While the Constitution, at Article II, Section 29, allows cities and counties, upon legislative authorization, to impose taxes, this power does not extend to special school districts. *See West Tennessee Flood Control District v. Wyatt*, 193 Tenn. 566, 247 S.W.2d 56 (1952); *Williamson v. McClain*, 147 Tenn. 491, 249 S.W. 811 (1922); *Smith v. Carter*, 131 Tenn. 1, 173 S.W. 430 (1914).

> Article II, Section 28, of the Constitution vests the power of taxation in the General Assembly. This power cannot be delegated, except to counties and cities as specifically mentioned in Section 29. *See Ballentine v. Mayor of Pulaski*, 83 Tenn. 633 (1885); *Luehrman v. Taxing District*, 70 Tenn. 425 (1879). Thus, the legislature must impose taxes for special school districts; it cannot permit such districts to set their own tax rates.

Tenn. Att'y. Gen. Op. 83-195 (Apr. 20, 1983). *See Gibson Cnty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544, 549 (Tenn. 1985); *City of Humboldt v. McKnight*, No. M2002-02639-COA-R3-CV, 2005 WL 2051284, at *24 (Tenn. Ct. App. Aug. 25, 2005), *perm. app. denied* (Tenn. Feb. 21, 2006); *see also* Tenn. Att'y. Gen. Op. 02-043 (Apr. 9, 2002) (proposed bill allowing special school district to set and change tax rate without legislative approval is constitutionally suspect); Tenn. Att'y. Gen. Op. 01-034 (Mar. 12, 2001) (private act permitting special school district to set a tax rate below but not exceeding that established in the act is an unconstitutional delegation of General Assembly's taxing power).

Tenn. Code Ann. § 67-5-1704 provides for the adjustment of a special-school-district tax rate, "as established in any . . . general law or private act," upon a reappraisal of property as determined by the State Board of Equalization.

> (a)(1) Notwithstanding the provisions of the general law or a private act to the contrary which creates a special school district, upon a general reappraisal of property as determined by the state board of equalization, the tax rate as established in any such general law or private act shall be adjusted to provide the same ad valorem revenue for such special school district as was levied during the previous year prior to such general reappraisal.
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> (2) The county assessor of property shall certify to the appropriate county trustee the total assessed value of taxable property within the jurisdiction of the special school district.
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> (3) The assessor shall also furnish such county trustee an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the previous assessment roll.
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> (4) Exclusive of such new construction, improvements and deletions, the county trustee, in the event of a general reappraisal as determined by the state board of equalization, shall determine and certify the adjusted tax rate pursuant to this section.
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> . . . .

Tenn. Code Ann. § 67-5-1704(a). This Office has previously opined that this procedure does not amount to an improper delegation of taxing authority because the trustee's role does not involve the exercise of any discretion in setting tax rates—the trustee merely carries out the ministerial function of performing mathematical calculations. *See* Tenn. Att'y. Gen. Op. 83-195.

2. Because the legislature may not delegate its taxing power to a special school district, it also may not craft the language of a private act in such a way as to allow a special school district to set a tax rate lower than, or within a numerical range of "not less than nor in excess of," that authorized by the act. Legislative language conferring such rate-setting discretion upon a special school district would run afoul of Sections 28 and 29 of Article II of the Tennessee Constitution, as discussed above.

In the event taxes have been collected on behalf of a special school district at a rate that varies from either the rate established by private act or the adjusted rate set pursuant to Tenn. Code Ann. § 67-5-1704, the county trustee should return to the rate established by the private act or § 67-5-1704, as applicable.

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