

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 1, 2015

Opinion No. 15-29

Change in County Wheel Tax Rates by County Commission

Question 1

Does Tenn. Code Ann. § 5-8-102(c)(1) require a vote by two-thirds majority on two consecutive, regularly-scheduled meetings for a county commission to change the rate of an existing motor vehicle privilege tax, also known as the wheel tax?

Opinion 1

Yes. When a county has imposed a motor vehicle privilege tax under the authority of Tenn. Code Ann. § 5-8-102, the rate of that tax may be increased or decreased only by following the procedure set out in § 5-8-102(c).

Question 2

If not, can the rate of the wheel tax, once enacted by the county in accordance with Tenn. Code Ann. § 5-8-102(c)(1), be changed by a simple majority vote of the county commission?

Opinion 2

No. As stated above, the county commission may change the wheel tax rate only by a two-thirds majority vote at two consecutive, regularly-scheduled meetings.

ANALYSIS

1. Pursuant to Article II, § 29, of the Tennessee Constitution, the General Assembly has the “power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes respectively, in such manner as shall be prescribed by law.” Thus, a county’s power to levy a tax must be granted to it by the General Assembly, *Kivett v. Runions*, 191 Tenn. 62, 67, 231 S.W.2d 384, 386 (1950), and that power is “strictly limited to the scope of the delegation.” *State ex rel. Anderson County v. Aycock*, 193 Tenn. 157, 160, 245 S.W.2d 182, 184 (1951) (quoting *State ex rel. Campbell County v. Delinquent Taxpayers*, 183 Tenn. 64, 70, 191 S.W.2d 153, 155 (1945)). *See also* Tenn. Att’y Gen. Op. 82-25 (Jan. 20, 1982).

The General Assembly has authorized each county to levy a “motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county.”¹ Tenn. Code Ann. § 5-8-102(b). This tax is known as the wheel tax. Under this authority, a county may levy a wheel tax by either of two procedures. First, a resolution levying the tax may be “approved by a majority of the number of qualified voters of the county voting in an election on the question of whether or not the tax should be levied.” Tenn. Code Ann. § 5-8-102(c)(1). Second, the county commission may approve a resolution levying the tax by a vote of two-thirds or more “at two (2) consecutive, regularly scheduled meetings.” *Id.* However, a resolution approved by the county commission is subject to the approval of county voters by referendum if “a petition of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election . . . is filed with the county election commission within thirty (30) days of the [resolution’s] final approval.” Tenn. Code Ann. § 5-8-102(c)(2)(A).

The General Assembly’s grant of the power to levy the wheel tax necessarily includes the power to set the rate of the tax and, accordingly, also necessarily includes the power to increase or decrease the rate of the tax at a later time. The statute does not expressly address a later change in the tax rate, *see* Tenn. Code Ann. § 5-8-102(b)-(d), but the legislative history of 1983 Tenn. Pub. Acts, ch. 409, § 1, the act that empowered county commissions to approve a county wheel tax, shows a legislative intent that a county commission, having authorized a wheel tax, can then increase the tax rate, decrease the tax rate, or repeal the tax entirely. H.B. 197, *House Comm. on Finance, Ways & Means*, 93rd Gen. Assembly, First Regular Session (March 15, 1983) (statement of Rep. Bragg that the bill would allow county commissions to levy wheel taxes, “increase them, decrease them, [or] do away with them”); H.B. 197, *House Comm. on Cal. & Rules*, 93rd Gen. Assembly, First Regular Session (March 22, 1983) (statement of Rep. Bragg that the bill would give county commissions the “authority to levy, increase, decrease, or cancel a wheel tax”).

Neither does the statute expressly include a procedure for changing the tax rate or for eliminating the tax. But the legislative history again reveals a legislative intent that changing the tax rate or entirely eliminating a wheel tax requires the same two-thirds vote and voting procedure as does levying a wheel tax. H.B. 197, *House Session*, 93rd Gen. Assembly, First Regular Session (May 12, 1983) (statement of Rep. Bragg that the bill would give county commissions the power to “institute, cancel, or change a wheel tax on a two-thirds vote . . . at two consecutive, regularly-scheduled meetings,” subject to a referendum after the timely filing of the 10% petition).

The fact that the statute provides no separate procedure for changing the tax rate supports what both logic and the legislative history dictate: to increase or decrease a wheel tax rate, a county must follow one of the two alternate statutory procedures for levying a wheel tax. Thus, a resolution changing the wheel tax rate must be approved either by county voters in an

¹ The General Assembly has also authorized wheel taxes for particular counties through private acts. The private acts and their procedures for imposing the wheel tax may be different from the procedures set forth in Tenn. Code Ann. § 5-8-102(b)-(d). The procedures of Tenn. Code Ann. § 5-8-102(b)-(d) are the subject of this opinion, not the procedures of the private acts.

election or by the county commission by at least a two-thirds vote at two consecutive, regularly-scheduled meetings, with that resolution being subject to approval of county voters if a referendum is called by petition of 10% or more of the voters.

2. For the reasons explained above, the county commission must approve any change in the wheel tax rate by a vote of two thirds or more at two consecutive regularly-scheduled meetings. The rate cannot be changed by a simple majority of the county commission.

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