

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

**June 9, 2015**

**Opinion No. 15-51**

**Wilson County Domestic Animal Tax**

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**Question**

Can the Wilson County Commission, consistent with the provisions of Chapter 242 of the 1980 Tennessee Private Acts approved by a majority of the number of qualified voters of Wilson County, cease imposition and collection of the tax that Chapter 242 authorizes the Wilson County Commission to impose?

**Opinion**

Yes.

**ANALYSIS**

Chapter 242 of the 1980 Tennessee Private Acts (the Act) provides “that the Wilson County Commission be and is hereby authorized to impose a \$2.00 per head domestic animal tax” to be collected by whoever vaccinates domestic animals. 1980 Tenn. Priv. Acts, ch. 242, §§ 1-6. The Act is not effective unless and until it is approved by a majority of the qualified voters of Wilson County. *Id.*, § 6. The Act was duly approved by the voters on May 6, 1980, and the Secretary of State has certified that Chapter 242 “was properly ratified and approved.”

According to the opinion request, the tax authorized by the Act was in fact imposed and collected until the end of 2013 when the Wilson County Commission voted to stop the collection of the tax. The Wilson County Commission apparently took this action in reliance on Tennessee Attorney General Opinion 13-40, which states in relevant part:

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.

Tenn. Att’y Gen. Op. 13-40, at 7 (May 23, 2013).

As Opinion No. 13-40 points out, the Act “authorizes” the Wilson County Commission to impose the tax, but does not require that the tax be imposed. “Authorize” means to “give legal authority,” “empower,” or “sanction.” Merriam Webster Collegiate Dictionary (10th ed.). It does

not, however, include a requirement that the authority or the power be exercised. That would be accomplished, for example, if the Act had said “that the Wilson County Commission be and is hereby required to impose a \$2.00 per head domestic animal tax.”

When the voters of Wilson County voted their approval, they were approving the Act; they were voting only “on the question of whether or not the act should be approved.” 1980 Tenn. Priv. Acts, ch. 242, § 6. They approved the Act, and the Act that the voters approved gives the County Commission the authority—the power, the legal ability—to impose the specified tax if the Commission so decides. In other words, approval of the Act was a vote to authorize the tax, not a vote to impose the tax. By approving the Act, the voters were not imposing the tax, rather, they were giving the Wilson County Commission the power—the discretion—to impose (or not impose) the tax. Apparently, the Commission exercised that discretion in favor of imposing the tax until the end of 2013 when it exercised its discretion against imposing the tax.

The authorization to decide to impose the tax necessarily includes the power to decide to rescind or to not impose the tax at some later date. *See Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001), quoting *Merriam v. Moody’s Ex’r*, 25 Iowa 163, 170 (1868) (noting that Dillon’s Rule, a canon of statutory construction, provides that a local government has any power “necessarily implied or necessarily incident to the powers expressly granted”).

The Wilson County Commission’s 2013 decision to no longer impose this tax does not affect the continued viability of the Act. The Act remains the law of Tennessee until it is repealed or amended by the Tennessee General Assembly. *See Biggs v. Beeler*, 180 Tenn. 198, 206, 173 S.W.2d 144, 147 (1943); *Demoval v. Davidson County*, 87 Tenn. 214, 224, 10 S.W. 353, 356 (1889). *See also* Tenn. Att’y Gen. Op. 04-167 at 1 (Nov. 19, 2004) (“[a] county is not authorized to repeal a private act”); Tenn. Att’y Gen. Op. 00-059 at 82-270 at 1 (Oct. 23, 1978) (“[s]ince the City of Benton was created pursuant to private act . . . it is clear that the only method by which the [Benton] charter may be abolished is through [the General Assembly] repealing” the private act); Tenn. Att’y Gen. Op. 78-393 at 1 (opining that only the General Assembly could repeal a wheel tax and an education tax imposed by private acts). Accordingly, the Wilson County Commission continues to have the authority, as granted by the Act, to re-impose this tax at a later date.

In sum, the finding in Opinion No. 13-40 that the Wilson County Commission may rescind the tax authorized by Chapter 242 remains the opinion of this Office.

HERBERT H. SLATERY III  
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN  
Solicitor General

WILLIAM E. YOUNG  
Associate Attorney General

Requested by:

The Honorable Mae Beavers  
State Senator  
6 Legislative Plaza  
Nashville, Tennessee 37243