STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

February 5, 2016

Opinion No. 16-04

Application of Proceeds from Bradley County's Tourist Accommodation Tax

Question

May the General Assembly provide by private act that no proceeds from Bradley County's tourist accommodation tax may be distributed to or on behalf of any city located in the county?

Opinion

Yes.

ANALYSIS

Article II, section 29, of the Tennessee Constitution states: "The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation purposes respectively . . . ." Thus, when the General Assembly authorizes a county to levy a tourist accommodation tax, the tax revenues must be devoted to a county purpose, and nothing in the Tennessee Constitution or otherwise requires that the county allocate a portion of these tax proceeds to municipalities or other governmental entities within the county.

Chapter 19 of the 1991 Private Acts ("the 1991 Act") authorized Bradley County, Tennessee, "to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in the amount of four percent (4%) of the consideration charged by the operator." The proceeds of that tax were to be "retained by the county and allocated as follows":

(1) Twenty-five percent (25%) for the county general fund;

(2) Twenty-five percent (25%) for the support of tourism in the county;

(3) Twenty-five percent (25%) for the support of industrial recruitment in the county; and

(4) Twenty-five percent (25%) for the support of the newly proposed agri-business center. If sufficient state funds are not available for the new agri-business center, this twenty-five percent allocation shall be deposited in the county general fund.

1991 Tenn. Priv. Acts, ch. 19, § 3. The 1991 Act specified that Tenn. Code Ann. § 67-4-1425 would apply for any tax levied under the Act. Section 67-4-1425(a) essentially limits the ability of a county and a city each to levy a tourist accommodation tax on the same hotel. Nothing in

§ 67-4-1425 prevents the General Assembly from specifying how proceeds of a county's tourist accommodation tax may be distributed, and certainly nothing requires that revenues from such a tax be allocated to municipalities within the county.

Chapter 66 of the 2004 Tennessee Private Acts ("the 2004 Act") amended the 1991 Act to increase Bradley County's tourist accommodation tax from four percent (4%) to five percent (5%) and to direct that the new increased tax "shall be retained by the county and allocated as follows":

(1) Twenty percent (20%) for the county general fund;

(2) Twenty-seven and one half percent (27.5%) for the support of tourism in the county;

(3) Twenty-seven and one half percent (27.5%) for the support of industrial recruitment in the county; and

(4) Twenty-five percent (25%) for the support of Tri-State Exhibition Center.

2004 Tenn. Priv. Acts, ch. 66, § 3. No part of the 2004 Act required that any proceeds of the levied tax be distributed to or on behalf of any particular city within the county. Moreover, no other Tennessee private or public act imposes such a requirement or entitles a city to the proceeds of such a county tax.

In sum, the Tennessee Constitution requires that taxes authorized by the General Assembly and levied by a county be used for county purposes and no constitutional or statutory provision requires that a tourist accommodation tax authorized by the General Assembly and levied by a county be distributed to or on behalf of a municipality within the county. It follows that the General Assembly may enact legislation regarding the application of Bradley County's tourist accommodation tax, so long as the legislation is consistent with Article II, section 29, of the Tennessee Constitution.

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