

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

March 10, 2016

Opinion No. 16-10

Scope of a County's Authority to Charge a Privilege Tax on Litigation

Question

Does Tenn. Code Ann. § 67-4-601(b) permit a county to levy a litigation tax of \$10 under subsection (b)(1) in addition to the \$25 litigation tax permitted by subsection (b)(5) and the \$25 litigation tax permitted by subsection (b)(6)?

Opinion

Yes.

ANALYSIS

Counties are authorized by statute “to levy a local litigation tax.” Tenn. Code Ann. § 67-4-601(a). Specifically, Tenn. Code Ann. § 601(b)(1) authorizes a county to levy a \$10 litigation privilege tax “in addition to all other such privilege taxes authorized by law”:

- (1) Notwithstanding any other law to the contrary, each county by resolution of its legislative body, adopted by two-thirds ($\frac{2}{3}$) majority vote, may levy a privilege tax on litigation in all civil and criminal cases instituted in the county, other than those instituted in municipal courts, in addition to all other such privilege taxes authorized by law. Any tax levy adopted under this subsection (b) shall not exceed ten dollars (\$10.00) per case; and the proceeds shall be used exclusively for the purposes of jail or workhouse construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation.

Subsection 601(b)(5) authorizes a \$25 litigation tax:

- (5) Notwithstanding any law to the contrary, upon the adoption of a resolution by a two-thirds ($\frac{2}{3}$) majority vote of a county legislative body, a privilege tax on litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars (\$25.00) per case.

And subsection 601(b)(6) authorizes another \$25 litigation tax:

- (6) Notwithstanding any law to the contrary, upon the adoption of a resolution by a two-thirds ($\frac{2}{3}$) majority vote of a county legislative body, a privilege tax on

litigation in all civil and criminal cases may be levied in an amount not to exceed twenty-five dollars (\$25.00) per case, to be used exclusively for court house security, in addition to those purposes identified in subdivision (b)(1).

Subsection 601(b)(7)(A) makes it clear that, “[n]otwithstanding any other law to the contrary, a county may adopt the privilege tax in subdivision (b)(5) or (b)(6), or both.”

Thus, subsections 601(b)(1), (b)(5), and (b)(6) permit counties to levy three separate taxes on the privilege of litigation. Each of those subsections begins with the language “[n]otwithstanding any law to the contrary,” which in effect grants counties the authority to impose each subsection’s tax independently of the others. Furthermore, subsection (b)(1) explicitly states that a county “may levy a [\$10] privilege tax on litigation . . . *in addition to* all other such privilege taxes authorized by law.” (Emphasis added.) Since the \$25 litigation privilege taxes authorized by subsections (b)(5) and (b)(6) are “other such privilege taxes authorized by law,” the \$10 litigation tax authorized by subsection (b)(1) may be levied in addition to either or both of the \$25 litigation taxes.

In sum, the plain language of Tenn. Code Ann. § 67-4-601 permits counties to levy all or any of the three litigation taxes authorized under Tenn. Code Ann. §67-4-601(b)(1), (b)(5), and (b)(6), so long as each tax is adopted and its proceeds are used in accordance with the applicable statutory requirements.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JAMES P. URBAN
Assistant Attorney General

Requested by:

The Honorable Pat Marsh
State Representative
G-19A War Memorial Building
Nashville, Tennessee 37243