STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 4, 2018

Opinion No. 18-41

County Debt Financing

Question

If a local government rescinds a resolution authorizing the issuance of general obligation bonds—on which a referendum election would have been required—and instead adopts a different debt financing plan—on which a referendum election would not normally be required—must the local government hold an election?

Opinion

No.

ANALYSIS

The Local Government Public Obligations Act of 1986 requires a local government to hold a referendum election on a resolution authorizing the issuance of general obligation bonds if a protest petition signed by ten percent of the registered voters is filed within twenty days of the publication of the resolution. See Tenn. Code Ann. § 9-21-207(b); Tenn. Att'y Gen. Op. 13-87 (Nov. 6, 2018). This Office has opined, however, that when "the resolution authorizing the issuance of the general obligations bonds has been rescinded," the local government is not required to hold an election. Tenn. Att'y Gen. Op. 13-87, at 3.

As explained in that opinion, Tenn. Code Ann. § 9-21-209 requires the governing body of a local government to adopt an election resolution only "[i]f it is necessary to hold an election on the proposition to issue general obligation bonds." Tenn. Att'y Gen. Op. 13-87 at 2 (emphasis added). When the governing body has rescinded the resolution authorizing the issuance of general obligation bonds, it is no longer "necessary" to hold an election on that proposition. Id. at 3. Accordingly, if the governing body of a local government rescinds a resolution authorizing the issuance of general obligation bonds, it need not hold a referendum election, even if a protest petition that satisfies the requirements of § 9-21-207(b) has been filed. Id.

The fact that a local government has adopted a new debt financing plan after rescinding the original resolution does not alter this analysis. If the resolution on which an election would have been required has been rescinded, an election is no longer necessary within the meaning of § 9-21-209, even if the governing body has adopted a new debt financing plan. Of course, if the new debt financing plan adopted by the local government itself is subject to or triggers an election requirement, then the governing body would be required to hold an election. See, e.g., Tenn. Code Ann. § 9-21-905 (subjecting a particular type of general obligation refunding bonds to the notice and election requirements for general obligation bonds in §§ 9-21-207 and 9-21-209). But that

analysis depends wholly on the new debt financing plan and would not be affected by the prior adoption and rescission of the general obligation bond resolution or the filing of the protest petition.

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