

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-034

Constitutionality of Property Tax Levy for County Schools in Unincorporated Areas Only

QUESTION

Is Senate Bill No. 888, which would allow counties to levy property taxes outside of cities, towns, or special school districts for the payment of school bonds, provided that the revenue is dedicated solely to the county school system, constitutional?

OPINION

Yes, the bill is constitutional.

ANALYSIS

Article II, Section 28 of the Tennessee Constitution requires, in its subsection (c), that “[t]he ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.” The equal and uniform clause was amended in 1972, altering the language of the 1870 constitution (which had read: “All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state”) to that which is quoted above. *Albert v. Williamson County*, 798 S.W.2d 758, 759 (Tenn. 1990).

This Office has addressed several times the constitutionality of schemes which exempt property lying inside the boundaries of municipalities from paying taxes in support of school bond issues, so long as the proceeds of the bond issue are not used for the benefit of any municipal or special school district within the county. These arrangements are authorized by Tenn. Code Ann. § 49-3-1005(b), and because “Article II, Section 29 of the Tennessee Constitution empowers the General Assembly to authorize counties and cities ‘to impose taxes for county and corporation purposes, respectively, in such manner as shall be prescribed by law,’” it has long been the opinion of this Office that such schemes are constitutional under the equal and uniform clause. Op. Tenn. Att’y Gen. No. U79-162 (June 4, 1979). See also Op. Tenn. Att’y Gen. No. U80-113 (March 31, 1980); Op. Tenn. Att’y Gen. No. 84-105 (March 26, 1984).

This is because [Tenn. Code Ann.] § 67-5-102 authorizes counties to levy an ad valorem property tax for county general purposes, contemplating that the county general tax levy is separate from levies for other purposes. For county general purposes the taxing jurisdiction of a county is coextensive with the territorial limits of the county, while for other purposes, including schools, the taxing jurisdiction of the county is governed by statutes authorizing tax levies for those purposes.

Op. Tenn. Att’y Gen. No. 84-105. Tenn. Code Ann. § 49-3-1005(b) is such a statute, and the proposed amendment to Tenn. Code Ann. § 49-2-101 would be as well. The 1984 opinion quoted above goes on to distinguish § 49-3-1005(b) schemes based in part upon Tenn. Code Ann. § 67-5-102(a)(3)’s express exclusion of “debt service and sinking funds from the definition of ‘county general purpose.’” Op. Tenn. Att’y Gen. No. 84-105. “Accordingly, with respect to county school bonds, the statutes authorizing their issuance and providing for debt service and a sinking fund govern the county’s jurisdiction with respect to tax levies for these purposes.” *Id.* Tenn. Code Ann. § 49-3-1005 of course governs the payment of school bonds and so its subsection (b) is controlling on the issue of the appropriate taxing jurisdiction under this analysis. Tenn. Code Ann. § 67-5-102(a)(3) also excludes “schools” from county general purposes as well, and this would seem to clearly bring any school financing program under this analysis.

This Office’s interpretation of the equal and uniform clause as permitting some flexibility in defining the relevant jurisdiction for taxing purposes was reinforced by the Supreme Court in the *Albert* case. Prior to the amendment of Article II, Section 28 in 1972, it was well-settled in Tennessee that the legislature had discretion in determining the extent of taxing jurisdictions under the equal and uniform clause. The Tennessee Supreme Court upheld a 1911 Act of the legislature which authorized Sullivan County to issue bonds for the construction of pike roads outside the limits of the city of Bristol and to levy taxes throughout the county to pay for these bonds, even though residents of Bristol were subject to the tax. *King v. Sullivan County*, 128 Tenn. 393 (1913). Shortly after, however, the Court upheld the opposite of that scheme, a 1917 Act authorizing Greene County to issue bonds to raise funds for road improvements in that county and to pay off these bonds by a tax levied on property in the county, except as to “the property located within ‘incorporated municipalities where a street tax [was] levied and collected for the purpose of keeping up and maintaining their streets.’” *Earnest v. Greene County*, 138 Tenn. 442, 444, 448 (1917), *citing* 1917 Tenn. Priv. Acts, Ch. 100 §§ 1-2, 5.

Although the Office had opined after the 1972 amendment to the equal and uniform clause that discretion similar to that contemplated in *King* and *Earnest* was constitutional in the school bond context in the opinions cited above, the plaintiff in *Albert v. Williamson County* argued that this amendment altered the equal and uniform clause enough to overrule those cases. *Albert* at 759. The taxing scheme at issue in *Albert* was essentially identical to that in *Earnest*, with the county levying taxes on all property not within municipalities for the purpose of constructing roads outside of those municipalities. *Id.* The Supreme Court disagreed, and after analyzing *King* and *Earnest*, interpreted them to

hold that there are three territorial entities in every county in Tennessee, within the contemplation of sections 28 and 29, Article II of our Constitution[,] for the application of the equal and uniform clause thereof, to-wit, incorporated towns, the county including incorporated towns and the county excluding incorporated towns; that our legislature has the discretion of equalizing tax burdens between the citizens of the three respective territories, imposed for the construction and maintenance of streets and highways, provided that uniformity in rate, assessment and valuation is maintained with respect to property within the territorial limits of each of the respective entities.

Id. at 761. In other words, owing to the nature of the relationship between counties and the municipalities contained therein, the Supreme Court has held that the term “jurisdictions” in Article II, Section 28 is essentially equivalent to one of these “territories” or “entities” identified in *Albert*, with the legislature retaining the discretion and authority to shift the tax burden between them as it sees fit.

In deciding *Albert*, the Supreme Court relied only on Sections 28 and 29 of Article II, without directly relying on the “general county purpose” distinction in Tenn. Code Ann. § 67-5-102, even though § 67-5-102(a)(3) also excludes “roads” from general county purposes. The *Albert* decision therefore stands as a powerful reinforcement of the constitutionality of defining taxing jurisdictions as a more flexible concept than entire counties alone.

Finally, although the *Albert*, *King*, and *Earnest* decisions all involved tax schemes designed to support a bond issue intended to finance road construction or improvement, there is nothing to indicate that this is the controlling factual distinction for applying this interpretation of the equal and uniform clause, or that the principles are not applicable to the financing of schools. Although the court in *Earnest* acknowledged the holistic nature of the system there (roads, which it identified as continuing into and out of the city limits as a single network), the underlying rationale of the court in *Earnest* focused on the constitutional legitimacy of allowing the legislature the “discretion to equalize burdens between the two corporate entities in the construction and maintenance of a single system of highways.” *Earnest* at 450-51. While the various schools within a county might not be viewed to be a single, uninterrupted system in the way that roads are, such systems present an equally compelling basis for excluding certain portions of a county from taxation to support institutions that will primarily benefit other portions of that county, so that the territorial entities within counties only have to bear the burden for those systems that primarily benefit them.

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