

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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March 21, 2005

Opinion No. 05-027

General Legislation Authorizing Referenda on Increases in County Property Tax Rates

QUESTION

Does proposed legislation which authorizes any county legislative body to increase the county property tax rate by submitting the proposed rate increase to a referendum election violate the Tennessee Constitution?

OPINION

No. Legislation authorizing any county legislative body to increase the county property tax rate by submitting the proposed rate increase to a referendum election does not violate the Tennessee Constitution.

ANALYSIS

A county's power to impose taxes is limited to that authorized by the General Assembly pursuant to Article II, Section 29 of the Tennessee Constitution. This Office previously has opined that, in the absence of a general law authorizing such a procedure, a county legislative body may not hold a public referendum to establish the county property tax rate. *See* Op. Tenn. Att'y Gen. No. 04-125 (Aug. 10, 2004); Op. Tenn. Att'y Gen. No. 94-008 (Jan. 14, 1994); Op. Tenn. Att'y Gen. No. 81-571 (Oct. 21, 1981). In accordance with this principle, we concluded that a private act allowing a specific county to call for a referendum establishing the county property tax rate was unconstitutional. *See* Op. Tenn. Att'y Gen. No. 81-571 (Oct. 21, 1981). We similarly concluded that a county could not amend its charter to require that any increase in the county property tax rate be approved by referendum. *See* Op. Tenn. Att'y Gen. No. 94-008 (Jan. 14, 1994). The rationale for our prior opinions was that a county "must follow the general law concerning the setting of the county property tax rate, which does not allow for submitting a rate increase to the voters" by referendum. *Id.*

On the other hand, this Office has observed that "a public act permitting any county commission in this State to call for a binding referendum that would establish the property tax rate in its county would be constitutionally permissible." Op. Tenn. Att'y Gen. No. 81-571 (Oct. 21, 1981). This observation is consistent with the general principle that "the General Assembly may

enact a public act authorizing localities to levy a tax and then condition its implementation upon local approval.” Op. Tenn. Att’y Gen. No. 87-142 (Aug. 21, 1987); *see generally Clark v. State ex rel. Bobo*, 172 Tenn. 429, 113 S.W.2d 374 (1938).

The language of the proposed legislation accompanying your request would specifically authorize any county legislative body to increase that county’s property tax rate by submitting the proposed rate increase to a referendum election. This authority would not supplant the existing procedures for setting the county property tax rate by a majority vote of the county legislative body; instead, it would create an additional mechanism for doing so. As drafted, the legislation would authorize a county legislative body, by resolution adopted by a two-thirds (2/3) vote of the legislative body, to fix the tax rate and hold a public referendum for purposes of approving or rejecting the rate increase. If this legislation became the general law by an act of the General Assembly, a county legislative body would have the authority to submit a rate increase to a public referendum, and such a procedure would not violate the general law or the Tennessee Constitution.

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