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METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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Legal Opinion No. 2006-03

To: Executive Committee of the Metropolitan Council
Room 204 Metropolitan Courthouse
Nashville, Tennessee 37201

Date: December 8, 2006

Question

You have requested a legal opinion from the Department of Law on the following question:¹

Whether the amendment to the Metropolitan Charter adopted by the November 7, 2006, referendum is valid. That amendment requires a Council approved increase in the maximum tax rate for real property to also be approved by the voters.

Short Answer

No, it is the opinion of the Department of Law that a court is likely to find this provision of the Metropolitan Charter is invalid because the Tennessee Constitution has vested the General Assembly with the power to authorize counties to impose an ad valorem tax on property, the General Assembly has authorized the county legislative body to levy the tax and required the county legislative body to determine the amount of the tax. The General Assembly has not authorized the charter of a consolidated government to limit or restrict this authority of the local legislative body.

¹ **Rule 5, Rules of the Metropolitan Council.** The executive committee of the Council shall consist of the Vice Mayor, the chair of all standing committees of the Council, and the president pro tem of the Council. Each member thereof shall be entitled to one vote regardless of the number of positions a Council member may hold. The executive committee shall meet at least once every quarter, and at such other time as necessary as called by either a majority of the executive committee or by the Vice Mayor. The executive committee shall report back to the Council in a timely manner as to the action taken by the executive committee.

BACKGROUND

In November, 2006, the voters approved an amendment to the Metropolitan Charter of the Metropolitan Government by referendum. Prior to the referendum, section 6.07 provided:

The council shall levy an annual tax on real and personal property and merchants' ad valorem in the general services district, and the tax levy ordinance shall be the next order of business of the council after the adoption of the operating budget. The tax rate set by such ordinance shall be in two (2) parts; the general tax rate and the school tax rate.

The general tax rate set by such ordinance shall be such that a reasonable estimate of revenue from the levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated with the exception of the amount appropriated for schools and to provide in addition, a reasonable amount of working capital for each of the several funds.

The school tax rate set by the ordinance shall be such that a reasonable estimate of revenue from the levy shall at least be sufficient, together with other anticipated revenues, fund balances, and applicable reserves, to equal the total amount appropriated for schools and to provide in addition, a reasonable amount of working capital.

After the council has approved the annual operating budget of the urban services district, said council shall determine and declare the amount of revenue which must be produced from a tax levy upon the real and personal property and merchants' ad valorem within the urban services district. The urban council shall thereupon convene and it shall have a mandatory obligation by resolution to levy a property tax adequate with other available funds to finance the budget for urban services, as determined by the council; subject, however, to the requirements of section 1.04 of this Charter with respect to the tax on property in the newly annexed areas.

Metropolitan Charter § 6.07.

The amendment to this Charter section did not delete any of this language. The amendment added the following paragraph to the end of section 6.07:

The willingness and ability of citizens to bear the burden of tax increases should always be considered. Therefore, notwithstanding any provisions above, real property tax rates shall not exceed the maximum rates approved by the voters of the county in a referendum. Such referendum may be authorized either by the Mayor or by a majority vote of the Council no more than once each calendar year pursuant to Tennessee Code Annotated section 2-3-204. The referendum shall read "The maximum real property tax rates for Davidson County shall be

increased to:" followed by a list of rates. Voters shall be provided the two choices of FOR and AGAINST. The real property tax rates in effect as of November 7, 2006 shall be the maximum rates allowed until the first referendum occurs.

ANALYSIS

I. TENNESSEE CONSTITUTION – TAXING AUTHORITY

The Tennessee Constitution provides that all real property "shall be subject to taxation." Tenn. Const. Art. II, § 28. The Tennessee Constitution grants to the General Assembly the power to authorize counties and incorporated towns to impose taxes on real property.

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, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation.

Tenn. Const. Art. II, § 29.

The General Assembly has authorized counties to impose an ad valorem tax on all property subject to that form of taxation. T.C.A. §67-5-102². It has directed the county legislative body to fix the amount of tax. T.C.A. §67-5-102(a) (2). (*See also T.C.A. § 49-2-101(5) directing the county legislative body to levy taxes necessary for school purposes.*)³ Additionally,

² T.C.A. § 67-5-102

- (a)(1) For county general purposes, the various counties are authorized to levy an ad valorem tax upon all property subject to this form of taxation.
- (2) The amount of such tax shall be fixed by the county legislative body of each county.
- (3) "County general purpose levy" means a levy for all county purposes except roads, bridges, schools, debt service, sinking funds and levies pursuant to special tax laws not included in the above.
- (b) Taxes on property for county purposes shall be imposed on the value thereof, as the same is ascertained by the assessment for state taxation.
- (c) All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses, or a combination of the two (2), whether imposed by general or private act, or home rule charter, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are hereby repealed effective January 1, 1973. (emphasis added)

³ T.C.A. § 49-2-101. The duties of the county legislative body shall be to:

- (1) – (4) ...
- (5) Levy such tax as may be necessary to pay interest on bonds and provide a sinking fund to retire the same at maturity
- (6) Levy such taxes for county elementary and county high schools as may be necessary to meet the budgets submitted by the county board of education and adopted by the county legislative body;
- (7) Levy sufficient taxes or provide funds by bond issues by the voters for the purchase of school grounds, the erection and repair of school buildings, and for equipping the same; provided, that the

the General Assembly has repealed all existing restrictions on the maximum tax rate. *T.C.A.* § 67-5-102(c). The General Assembly has also authorized municipalities to impose taxes on property for municipal purposes. *T.C.A.* §67-5-103⁴. This statute dealing with municipalities is silent on the manner in which the amount of the tax is determined but also repeals the existing restrictions on the maximum tax rate.

II. TENNESSEE CONSTITUTION – CONSOLIDATED GOVERNMENT

The Tennessee Constitution permits the General Assembly to provide for the consolidation of a city and county government. *Tenn. Const. Art. XI, § 9, ¶ 9*. That paragraph provides:

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

The General Assembly did provide for the creation of a consolidated government. *Tenn. Code, Title 7, Chapters 1 through 3*. The legislation adopted that permits the creation of a consolidated government includes a section requiring certain provisions to be in the charter of a metropolitan government. *T.C.A.* § 7-2-108. In part, that section requires the charter of a metropolitan government to provide:

same shall have been provided for by the county legislative body, or that the county legislative body shall have approved the authorization of the same by the county board of education. ...

⁴ *T.C.A.* § 67-5-103

- (a) Taxes on property for municipal purposes shall be imposed on the value thereof as the same is ascertained by the assessment for state taxation, and shall be collected by the same officers at the time and in the manner prescribed for the collection of the state revenue, except as provided in this section.
- (b) All existing limitations and restrictions, whether restrictive as to total dollar amount or restrictive as to specific uses or a combination of the two (2), whether imposed by general or private act, or home rule charter, upon the maximum rate or amount of any county, municipality or metropolitan government ad valorem tax levy, are hereby repealed effective January 1, 1973.
- (c) With respect to municipalities which fund all or part of the cost of waste disposal by special assessment to the property owner, as authorized in § 6- 2-201(19), the special assessment may be billed in the same manner as municipal real property taxes and the special assessment may be billed on the real property tax notices, but shall not constitute a lien on any affected property or accrue any penalties or interest for late payment. Any municipality that exercises the option of the above method of waste disposal by special assessment shall bear all costs of system modifications necessary to prepare property tax notices.

(a) The proposed metropolitan charter shall provide:

(1) For the creation of a metropolitan government vested with:

(A) Any and all powers that cities are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter; and

(B) Any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, as fully and completely as though the powers were specifically enumerated in the Constitution and general laws of the state of Tennessee, except only for such limitations and restrictions as are provided in chapters 1-6 of this title or in such charter;

...

(5) For two (2) service districts within the geographical limits of the metropolitan government, a general services district and an urban services district, as to both of which districts the metropolitan government shall have jurisdiction and authority. The general services district shall consist of the total area of the county. The urban services district shall consist originally of the total area of the principal city at the time of the filing of the proposed charter with the county election commission, together with such area of any smaller cities as may be specified in an appendix duly ratified and adopted under § 7-2-107. ...;

...

(7) For the functions of the metropolitan government that shall be performed throughout the entire general services district and the governmental services that shall be rendered in such district;

(8) That the tax levy for the general services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of all governmental services that are provided generally throughout or on behalf of such district;

...

(10) That the tax levy for the urban services district shall be set so as to be sufficient, with other available funds and grants, to defray the cost of municipal-type governmental services that are provided within such district;

(11) For a metropolitan council, which shall be the legislative body of the metropolitan government and shall be given all the authority and functions of the governing bodies of the county and cities being consolidated, with

such exceptions and with such additional authority as may be specified elsewhere in chapters 1-6 of this title;

- (12) For the size, method of election, qualification for holding office, method of removal, term of office and procedures of the metropolitan council, with such other provisions with respect to the council as are normally related to the organization, powers and duties of governing bodies in cities and counties;

...

- (15) That the urban services district shall be and constitute a municipal corporation with a three-member urban council, whose sole function shall be a mandatory obligation to levy a property tax adequate with other available funds to finance the budget for urban services, as determined by the metropolitan council. The proposed metropolitan charter shall provide the method of selecting the urban council;

...

T.C.A. § 7-2-108 (emphasis added).

The Metropolitan Government of Nashville and Davidson County (“Metropolitan Government”) was created pursuant to the provisions of Title 7, Chapters 1 through 3 of the Tennessee Code. The Metropolitan Charter contains the statutorily mandated provisions that the tax rates for both the general services district and the urban services district will be set “so as to be sufficient, with other available funds and grants, to defray the cost of” all governmental services provided. *Metropolitan Charter* § 6.07. The Charter provides that setting the tax rate “shall be the next order of business of the council after the adoption of the operating budget.” *Metropolitan Charter* § 6.07. Additionally, that section provides that the rate set for schools must be able to generate sufficient revenue to equal the total amount appropriated for schools and to provide a reasonable amount of working capital. *Metropolitan Charter* § 6.07. This Metropolitan Charter section as originally adopted provides that the Metropolitan Council, the chief legislative body of the Metropolitan Government, is solely responsible for setting the tax rate. See *Metropolitan Charter* § 6.07 (page 2, above) and *Metropolitan Charter* § 1.06.

III. TAXING AUTHORITY OF METROPOLITAN GOVERNMENT

The fundamental legal question is whether the authority to determine the tax rate on real property given to the county legislative body by the General Assembly through a general statute may be restricted by the charter of a consolidated government.⁵ The legislation authorizing the

⁵ As a consolidated government, the Metropolitan Government has the attributes of a county as well as a municipality. *Metropolitan Charter* § 2.02. McQuillin’s treatise, *Municipal Corporations*, discusses the significance of a municipal charter. It provides:

Unless additional powers are conferred by statute or by the state constitution, a municipal corporation created by charter derives all its powers from the charter under which it acts as a body

creation of a consolidated government provides that it is remedial legislation and is to be liberally construed to achieve its purposes. *T.C.A.* § 7-1-102(b). The stated purpose for the creation of the Metropolitan Government is for the consolidation of the county and municipal

corporate and politic. Charters have been called bills of right. Also, municipal charters are sometimes mentioned as constitutions, that is, fundamental or organic laws of municipal corporations.

The city is a miniature state, the council is its legislature, the charter is its constitution. In other words, the city charter represents the supreme law of the city, subject only to conflicting provisions in the state and federal constitutions, or to preemptive state or federal law. The charter supersedes all municipal laws, ordinances, rules or regulations that are inconsistent with its provisions.

A constitution being established by the people becomes the organic law of the state; so a municipal charter framed and adopted by local electors as authorized under certain of the state constitutions, providing for home-rule charters, becomes the organic law of the people promulgating it in all matters pertaining to the local civil government of the municipality ... Also, except as to certain constitutional charters in some of the states, municipal charters ordinarily are construed as constituting a grant, and not a limitation of power. On the other hand, charters are generally construed to restrict the powers contained in them to the subjects enumerated with such implications of powers as fairly and reasonably arise from those subjects, within the recognized principles of judicial interpretation.

...

Generally speaking, the municipal charter creates the body politic and corporate, contains the municipal powers and gives the form of municipal organization, locates the corporate boundaries and wards or other subdivisions, classifies, and distributes the powers and duties of the various departments, boards and officers, and provides the manner in which the several powers shall be exercised. ...

It is usual to give the name of the corporation in the charter, but omission in this respect will not invalidate it. The charter sometimes prescribes the qualification of voters and specifies the time and mode of electing municipal officers, and, sometimes provides punishment by removal or suspension of officers who become derelict in their duties. However, these matters are often provided in the constitution or general statutes of the state. Modern city charters usually include provisions for direct action by the electors, as legislation by the initiative and referendum and the recall of officers, which provisions have been sustained by the courts as constitutionally valid against the contention that they constitute a departure from a republican form of government required by organic laws.

The precise limits of power that may be conferred by charter are impossible of definition. They will be sustained insofar as they relate to matters of local self-government and administration, but they are ineffective ordinarily so far as they relate to matters of state concern. In deciding whether a matter is a municipal affair or of statewide concern, the legislature's declared intent to preempt all local law is important but not determinative. However, a home-rule city looks to the legislature only to ascertain whether that body has limited the city's constitutional power. ... Municipal charters present the widest variation both in form and substance and preclude practical classification. Some charters deal mainly with the fundamentals of structure and function leaving the details to ordinances. Others specify more or less completely the municipal organization and the powers, duties, and responsibilities of the officers, subordinates, and agents. ... (emphasis added)

functions in one government in order to fulfill the unique and urgent needs of a modern metropolitan area. *Tenn. Const.* Art. XI, § 9, ¶ 9; *T.C.A.* § 7-1-102(a)

The courts of Tennessee have ruled on several cases arising out of the creation of the Metropolitan Government, the provisions in its Charter, and the Charter's relationship to the general statutes of the State. The holdings in these cases are:

- *Frazer v. Carr* - the first case - held that the enabling statutes providing for the establishment of a metropolitan government by consolidation of governmental and corporate functions of cities and counties above a certain population were not void as being an unconstitutional delegation of legislative power; it approved the Charter provision establishing a consolidated school system even though there was a general statute establishing county school systems because the consolidated government has its "peculiarities" and needs a school system that is different from that provided by general law and as is provided by its Charter "for the operation of the schools ... of this distinctly new and distinctly different governmental entity." *Frazer v. Carr*, 210 Tenn. 565, 583, 360 S.W.2d 449, 456 (1962).
- *Winter v. Allen* - approved the Charter provisions which transferred the duties of assessing merchant's ad valorem taxes from the county court clerk where they had been lodged by general statute, to the tax assessor of the Metropolitan Government. *Winter v. Allen*, 212 Tenn. 84, 367 S.W.2d 785 (1963).
- *Robinson v. Briley* - approved the transferal of certain functions and duties from the county trustee, lodged there by general statute, to the Metropolitan Treasurer. *Robinson v. Briley*, 212 Tenn. 418, 374 S.W.2d 382 (1963).
- *Glasgow v. Fox* - found that neither the Legislature (by the Consolidation Act of 1957 - *T.C.A.* § 6-3701 et seq.) nor the Metropolitan Charter abolished the office of constable (or any other constitutional office) and that the abolishment of the office of constable was not necessary to the success of achieving the purposes of a consolidated government. *Glasgow v. Fox*, 18 McCanless 656, 383 S.W.2d 9 (Tenn. 1964)
- *Metropolitan Government v. Poe* - the Tennessee Supreme Court noted that although the office of sheriff is a constitutional one, the duties of the sheriff are prescribed by general statute and that, in light of the purpose of the consolidated form of government to "eliminate duplication and overlapping of duties and services by which economic savings to taxpayers will be realized," there was no "constitutional infirmity against" transferring a duty from the sheriff to the chief of police as is provided in the Metropolitan Charter. *Metropolitan Government of Nashville and Davidson County v. Poe*, 19 McCanless 53, 383 S.W.2d 265, 276 (Tenn. 1964).
- *Hill v. State ex rel. Phillips* - held that the enabling legislation for the Metropolitan

Government did not include the authority for the Charter to transfer jurisdiction of state offenses to the Metropolitan traffic court. *Hill v. State ex rel. Phillips*, 20 McCanless 503, 510, 392 S.W.2d 950, 953 (Tenn. 1965).

These cases consistently uphold the validity of the Metropolitan Charter provisions – even though they are contrary to the general statutes - when those Charter provisions support the purpose of the Constitutional amendment and enabling legislation for creation of a consolidated government. Of particular importance is the holding in *Hill v. State ex rel. Phillips*. In that case, the Supreme Court found it necessary to determine whether the purposes for consolidation were sufficient to support the transfer of the jurisdiction of state court matters to the Metropolitan traffic courts as was provided by the Metropolitan Charter. The Court found that another Constitutional provision,⁶ Article VI, Section 1, gave the Legislature the authority to vest the jurisdiction of the corporate courts. The Court determined that the legislature had not provided a consolidated government with the authority to change the jurisdiction. Therefore, the Charter provision transferring the jurisdiction was invalid.

It must be remembered that the Constitution states in Article 6, § 1 that the Legislature may also vest such jurisdiction in corporate courts as may be deemed necessary. This authority runs to the Legislature and since the Legislature failed to provide in said general enabling act for such jurisdiction, and since it only provided that municipal courts created by the charters of the principal city and smaller cities may be provided for, consolidated or abolished by the charter for metropolitan government as courts thereof, we are unable to find that the court in question had authority to try and dispose of the instant case. The trying of violations of State statutes is not a municipal corporate function in the traditional sense of the word under the established law of this State.

Hill v. State ex rel. Phillips, 20 McCanless at 511, 216 Tenn. at 511, 392 S.W.2d at 953.

While the legislation authorizing the creation of a consolidated government will be construed liberally by the courts, legislation that is in derogation of the sovereign power of the state will be strictly construed. *City of Nashville v. State Bd. of Equalization*, 210 Tenn. 587, 594, 360 S.W.2d 458, 461 (1962). The power to levy and impose taxes is a sovereign power of the state. *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684, 693, 43 S.W. 115, 117, (1897); *Evans v. McCabe*, 164 Tenn. 672, 675, 52 S.W.2d 159, 160 (1932); *Roane-Anderson Co. v. Evans*, 200 Tenn. 373, 397, 292 S.W.2d 398, 408 (1956). The Tennessee Supreme Court has described the taxing authority as follows:

⁶ Article VI, § 1 (Enumeration of courts - Judicial Department) of the Tennessee Constitution provides: The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established.

“Taxes are the life blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state, and essential to the perpetuity of its institutions; consequently he who claims exemption must justify his claim by the clearest grant of organic or statute law.” *Knoxville & O. R. Co. v. Harris*, 99 Tenn. 684, 693, 43 S.W. 115, 53 L.R.A. 921.

City of Nashville v. State Bd. of Equalization, 210 Tenn. at 595.

The taxing power is an essential incident of sovereignty. The only limitations upon it must be sought in the organic law. It is not conferred by constitutions--but we look to them only for the limitation upon it. If they do not exist in the Constitution they do not exist at all, and the State is left to measure the exercise of this tremendous power by its necessities alone.

Friedman Brothers v. Mathes, 55 Tenn. 488, 492 (1872). In the *Knoxville & O.R. Co.* case, the Tennessee Supreme Court cited with approval the following language from the United States Supreme Court:

“This court on several occasions has held that the taxing power of a state is never presumed to be relinquished, unless the intention to relinquish is declared in clear and unambiguous terms.” *Philadelphia & W.R. Co. v. Maryland*, 51 U.S. 376, 393 (1850)

Knoxville & O. R. Co. v. Harris, 99 Tenn. at 693, 43 S.W. at 117. *See also, U.S. v. Winstar Corp.*, 518 U.S. 839, 874, 116 S.Ct. 2432, 2455 (1996) (The government’s sovereign right to tax will not be surrendered unless expressed in terms “too plain to be mistaken” as discussed in a case involving the government’s right to contract.).

The power of taxation is one that belongs to the State in its sovereign capacity. The exercise of the power is legislative. The Legislature has no authority to delegate this power of taxation, except in such cases as the constitution authorizes. *Marr v. Enloe*, 1 Yer. 452; *Keese v. The Civil District Board of Education*, 5 Col. 127. The Constitution provides that 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. But no authority can be found for delegating this power to any other corporation, and this is a subject upon which the Constitution should receive a strict construction. The power of taxation is one of too grave and important a character to be delegated or exercised except strictly within the limits of the Constitution.

Waterhouse v. Board of Cleveland Public Schools, 9 Baxt. 398, 68 Tenn. 398 (1876) “The delegation of sovereign power is, in itself, an act of sovereignty, and can only be made by the constituent body in whom the original power resides, or by its express authority.” *State v. Armstrong*, 3 Sneed 634, 35 Tenn. 634, 1856 WL 2475 *10 (1856); *Wright v. Cunningham*, 7 Cates 445, 115 Tenn. 445, 91 S.W. 293 (Tenn. 1905) (“... under our Constitution, no legislative act can be so framed as that it

must derive its efficacy from a popular vote.”) Based on these cases, it is the opinion of the Department of Law that the courts will strictly construe the Constitutional provision granting the General Assembly the power to authorize the counties to impose taxes, the General Assembly’s legislation granting that authority to the county’s legislative body, and the General Assembly’s legislation authorizing a consolidated government as that legislation relates to the authority to tax.⁷

In *Gibson County Special School District v Palmer*, 691 S.W.2d 544 (Tenn. 1985), the Tennessee Supreme Court considered the constitutionality of a private act that levied a tax on property in the two Special School Districts in Gibson County. One of the constitutional disputes in this case was whether the private act constituted an improper delegation of the legislature’s taxing power because the legislature first set the tax rate but then restricted its effectiveness, requiring approval by a referendum to become effective thus delegating the legislature’s taxing power to the voters in the special school districts. *Gibson County* at 549. In considering the legislation’s delegation of its taxing power, the Court initially stated, “No principle of organic law is more firmly imbedded in the jurisprudence of Tennessee ... than the principle that the legislature cannot delegate the taxing power beyond the extent expressly designated by the constitution.” *Gibson County* at 549, quoting, *B.O. Kessee v. The Civil District Board of Education*, 46 Tenn. 128 (1868). The Court then observed that Article II, § 29 of the Tennessee Constitution permits the legislature to delegate its taxing powers to counties and towns. *Gibson County* at 549. The Court next noted that the legislation in controversy did not merely delegate taxing authority to the special school districts, but went one step further by making the levy of the tax increase hinge upon a popular vote of the voters in each special school district. In short, the legislature was attempting to delegate its taxing authority to citizens in a special school district. *Gibson County* at 549. There being no express provision in the Tennessee Constitution that permits the legislature to delegate its taxing authority to voters in a special school district, the Court found the legislation in controversy unconstitutional. *Gibson County* at 550.⁸

⁷ “It must be conceded that the provisions above named confer upon chartered cities powers that are not only purely local and purely municipal, but purely governmental. Taxation has always been recognized as a power of sovereignty. It is a function that is vital to the state, keeps it alive, and prevents its dissolution. The state as the imperium must concern itself with all its agencies, not only its municipalities, but also its counties, townships, villages, and school districts. The sovereign people of the state may yield a part of its sovereignty by a constitutional provision; but whatever rule of construction may otherwise apply, wherever the contention is made that the state has yielded to a community a part of the sovereign power, the rule of liberal construction does not apply, but it must clearly and unambiguously appear that the state has done so by apt words contained in its Constitution.” *State ex rel. City of Toledo v. Cooper, County Auditor*, 97 Ohio St. 86, 91, 119 N.E. 253, 254, 15 Ohio Law Rep. 551, 15 Ohio Law Rep. 485 (1917)

⁸ There are three Attorney General Opinions, ones in 1994, 2003, and 2005, on this topic. The first determined that a county could not amend its charter to require a referendum to approve a tax increase; the next determined that a municipal charter could require a referendum to approve a tax increase; and the last concluded that the legislature could by general law authorize a county legislative body to increase that

Applying these principals to the Charter provision in question, the referendum requirement for increasing the maximum tax rate, it is the opinion of the Department of Law that:

- The Constitution of the State of Tennessee has designated the General Assembly as the agency with the authority to determine the way in which the exercise of the sovereign power of taxation is to be carried out. *Metropolitan Gov't of Nashville v. Hillsboro Land Co.*, 222 Tenn. at 452, 436 S.W.2d at 859 (Tenn.1968).
- The General Assembly has, by general statute, placed the responsibility for setting the tax rate on real property with the county legislative body. T.C.A. § 67-5-102(a)(2).
- The legislation authorizing the creation of the Metropolitan Government is remedial in nature and construed liberally on issues related to the purposes of consolidation, but statutes in derogation of the state's sovereignty, such as the power to tax, will be strictly construed. *City of Nashville v. State Bd. of Equalization*, 210 Tenn. at 595; C.J.S, *Statutes*, § 380.
- The Tennessee Courts will strictly construe the Tennessee Constitution and the legislation of the General Assembly in determining the county legislative body's authority to tax and will not find that the taxing authority can be delegated or limited in the absence of clear and express language. *Knoxville & O. R. Co. v. Harris*, 99 Tenn. at 693, 43 S.W. at 117; *City of Nashville v. State Bd. of Equalization*, 210 Tenn. at 595.
- The enabling legislation for a consolidated government did not authorize the Metropolitan Government to place a limitation on the authority of the Metropolitan Council to set the rate of taxes in the general services district or the urban services district. T.C.A. § 7-2-108 and Tenn. Code, Title 7, Chapters 1 through 3. (There is no provision authorizing the charter of a consolidated government to restrict the Council's authority to set the maximum tax rate by delegating approval to the voters.)

Conclusion

It is the opinion of the Department of Law that the Tennessee Constitution has vested with the General Assembly the power to authorize a county to impose an ad valorem tax on real property; that by a general statute the General Assembly has authorized the county legislative body to fix the amount of the tax; that the power to tax is a sovereign power and will not be restricted or limited in the absence of express authority in the Constitution and legislation; that the legislation authorizing the creation of a consolidated government does not include an authorization to limit the taxing authority of the Metropolitan Council; that no other legislation

county's property tax rate by submitting the proposed rate increase to a referendum election. *Gibson County Special School District v Palmer* is not discussed. See Attorney General Opinion No. 94-008, Attorney General Opinion No. 03-019, and Attorney General Opinion No. 05-027.

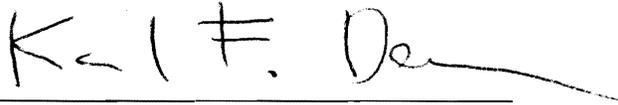
has given the Metropolitan Government the authority to limit the taxing authority; and that a provision in the Metropolitan Charter that purports to limit the Council's taxing authority by requiring a referendum to raise the maximum rate is not authorized under the Tennessee Constitution or legislation of the General Assembly and is not valid.

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY



Sue B. Cain
Deputy Director

APPROVED BY:



KARL F. DEAN
Director of Law

cc: Mayor Bill Purcell
Vice Mayor Howard Gentry
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B-007981