

August 22, 2014

By email to slwilson@robertsonoverbey.com

Sherry Wilson, Esq.
703 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902-1823

Dear Ms. Wilson,

You have asked whether or not a city still has the authority to set and to collect a city litigation tax after the enactment of the Municipal Court Reform Act. In short, we believe cities still retain their authority to do so under T.C.A. §67-4-601(a).

T.C.A. § 67-4-601 (a) states,

“It is the expressed intent of the general assembly that counties and municipalities **shall continue to have the authority to levy a local litigation tax** and that no provision of chapter 488 of the Acts of 1981 shall be construed to limit or repeal such authority.”

Presumably, Public Chapter 488 of the Public Acts of 1981 may have been thought to be potentially repealed by a later law, but in this chapter regulating privilege taxes, the legislature made clear that they did not intend to do so, thus preserving a city’s right to collect a city privilege tax. I attempted to check that chapter online to see if the history suggested otherwise, but the record is archived and not available. Despite that, a further look at the language that concerned you (highlighted in bold below) suggests that the legislature did not attempt to change that authority.

T.C.A. § 16-18-305(c) states,

Notwithstanding the provisions of § 67-4-602, or any other law to the contrary, no other state privilege tax on litigation shall be levied or collected with respect to litigation in a municipal court; provided, however, the provisions of this section shall not be construed to repeal existing authority for the levy of a municipal litigation tax, **nor shall this section be construed to grant new authority for the levy of a municipal litigation tax.** MUNICIPAL COURT REFORM ACT OF 2004, 2004 Tennessee Laws Pub. Ch. 914 (H.B. 3423).

In interpreting this sentence, it appears that the legislature did not wish *this particular section* in Title 16 to be the authorizing statute for any *new* municipal litigation tax. It can be argued that the existing authority remained intact through TCA § 67-4-601(a). Presumably, if the legislature intended to take away a city’s authority to enact a litigation tax, it could have done so through the Municipal Court Reform Act, but did not.

As a recent example, enacted since the Municipal Court Reform Act in 2012 Tennessee Laws Pub. Ch. 1088 (S.B. 2886), the state law changed with respect to Metropolitan governments in Tenn. Code Ann. § 7-3-316. It states,

(4) Upon the forfeiture of a cash bond or other surety entered as a result of a municipal traffic citation, whether considered a fine, a bond or a tax..... 13.75.

This may be useful, persuasive argument that the legislature intended to allow cities to keep their authority to charge such a litigation tax, especially given the amount is identical.

I hope I have answered the question you asked, but often, more questions are raised by the answers. So, please feel free to contact me if I can be of further assistance.

With warmest regards,



Karen Blake
Municipal Court Specialist