

June 29, 2016

City of Shelbyville, Tennessee
Mr. Jay Johnson
City Manager
201 N. Spring Street
Shelbyville, Tennessee 37162

VIA ELECTRONIC MAIL

Dear Mr. Johnson:

You have asked the following three questions:

- (1) Whether a county highway department is restricted in spending its gas tax revenues to only outside municipalities;
- (2) Whether a county can legally earmark a portion of county property taxes collected within a municipality to roads outside the municipality; and
- (3) Whether a county is required to have a public hearing before final passage of the budget.

In responding to these questions, the advice of Legal Consultant Elisha Hodge was consulted.

- (1) Use of county funds on roads in the city – Tenn. Op. Att. Gen. No. 99-166 opines that a county, under T.C.A. § 54-4-103, may not use county-designated gas tax funds to maintain roads that are located within the corporate limits of a municipality. A copy of the referenced opinion is enclosed.

However, T.C.A. § 54-7-202 (d) provides in part as follows:

... the county governing body has the authority to authorize the county road department to perform work for other governmental entities; provided, that the cost of the projects so authorized is to be reimbursed to the county road department...

So a county is not authorized to spend its state-shared county aid highway funds within a municipality, and is also precluded from spending local funds within a municipality unless the cost of such work is reimbursed by the city.

- (2) County property tax for county roads – A county is authorized to levy a property tax for roads (T.C.A. § 67-5-102). Based upon the language in *King v. Sullivan County*, 160 S.W. 847 (Tenn. 1913), *City of Greenfield v. Butts*, 582 S.W. 2d 80 (Tenn. Ct. App. 1979), and Tenn. Op. Atty. Gen No. 84-106, it is Ms. Hodge's opinion that a county can legally use funds collected from taxes on properties within a municipality for roads outside of the municipality. Furthermore, county road taxes must be imposed at the same rate throughout the county and within its municipalities in accordance with Article II, Section 28 of the Tennessee Constitution. Each of these documents are attached.

Mr. Jay Johnson
June 29, 2016
Page 2

Relatedly you will be interested in knowing that the Bedford County Highway Fund levy was \$0.04 per one hundred dollars of assessed valuation in fiscal 2016.

- (3) County budget public hearing requirement – It is our understanding that Bedford County operates under the County Financial Management System of 1981 (T.C.A. § 5-21-101 *et seq.*) Within that act is a requirement that a public hearing be held on the budget, by the budget committee, prior to its adoption. Any citizen of the county has the right to appear and comment before the budget committee upon five days' written request. (T.C.A. § 5-21-111(a)(2).

Page 5 from the Bedford County Financial Management Policies and Procedures Manual is enclosed that speaks to the requirement to hold a public hearing (Section 3.2)

Please let me know if you have further questions regarding these matters.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

Cc: Elisha Hodge

Tenn. Op. Atty. Gen. No. 99-166 (Tenn.A.G.), 1999 WL 728640

Office of the Attorney General

State of Tennessee
Opinion No. 99-166
August 19, 1999

Inability of County to Use Gas Tax Funds to Maintain Municipal Roads and Bridges

*1 The Honorable Curry Todd
State Representative
204 War Memorial Building
Nashville, TN 37243-0195

QUESTIONS

1. What is the definition of “county road” as it is used in [Tenn. Code Ann. §§ 54-4-101](#) and [54-4-103](#)?
2. In the absence of reimbursement from a municipality, can Shelby County use county-designated gas tax funds to maintain municipal roads and bridges even though the municipality receives its own gas tax revenues?

OPINIONS

1. A “county road” is “a road dedicated to the use of the public and accepted by the county as part of its road system,” and which is “outside the corporate limits of a municipality and is not a part of the state system.”
2. No. Shelby County may not, under [Tenn. Code Ann. § 54-4-103](#), use county-designated gas tax funds to maintain roads and bridges that are located within the corporate limits of a municipality.

ANALYSIS

1. [Tenn. Code Ann. §§ 54-4-101\(a\)](#) reads as follows:

All state moneys appropriated or allotted for the maintenance and improvement of county systems shall be known as “county aid funds,” to be paid over by the commissioner of finance and administration to the trustees of the several counties in the proportion hereinafter directed, to be used by the county highway authorities in building and/or maintaining county roads and bridges; provided, that any such county highway may be taken over and constructed, improved or maintained as a hard surface road by the department of transportation out of its own funds.

The instant question involves the definition of the term “county road” in this statute.

The Tennessee Code does not provide an explicit definition for the term “county road.” This Office, however, has previously opined that, within the context of allocating and spending county aid funds, a county road is “a road dedicated to the use of the public and accepted by the county as part of its road system.” Op. Tenn. Atty. Gen. of October 10, 1958.

This definition is further elaborated on in Op. Tenn. Gen. of February 29, 1972, stating that a “county road” is “any road outside the corporate limits of a municipality ... [that] ... is not a part of the state system.” It is, then, the opinion of

this Office that a “county road” is, for the purposes of [Tenn. Code Ann. §§ 54-4-101](#) and [54-4-103](#), “a road dedicated to the use of the public and accepted by the county as part of its road system,” and which is “outside the corporate limits of a municipality and is not a part of the state system.”

2. As previously noted, [Tenn. Code Ann. § 54-4-101](#) states that “all state moneys appropriated or allotted for the maintenance and improvement of county systems shall be known as ‘county aid funds.’” Gas tax revenues received by the counties are, therefore, “county aid funds.” See [Tenn. Code Ann. § 67-3-2008](#).

*2 [Tenn. Code § 54-4-103](#) states that county aid funds are “to be used by the county highway authorities in the building, repairing and improvement of county roads and bridges....” Presumably, a “county bridge” should be defined by a paraphrase of the “county road” definition; i.e., as “a... [bridge]... dedicated to the use of the public and accepted by the county as part of its road system... [and which is]... outside the corporate limits of a municipality and is not a part of the state system.”

It is true that, under [Tenn. Code Ann. § 54-11-207](#), the counties are authorized to build *bridges*, although not roads, within the limits of municipal corporations. Such construction, however, may be financed only by a county-levied property tax, a bond issue, or “any moneys or funds in the county treasury not otherwise appropriated.” See [Tenn. Code Ann. §§ 54-11-208](#) and [54-11-209](#). The State gas tax revenues are, of course, allocated and disbursed by the means and for the purposes specifically set forth by the Legislature in Chapter 4 of Title 54 of the Tennessee Code Annotated; [Tenn. Code Ann. § 54-11-208](#) cannot, then, be seen, by itself, as authorizing counties to utilize *state gas tax* revenues to build or repair bridges located within a municipal corporation.

It is axiomatic that counties possess only the powers granted to them by the legislature. See [Knox County ex rel. Kessel v. Knox County Personnel Board, 753 S. W.2d 357 \(Tenn. Ct. App. 1988\)](#). The General Assembly has granted to counties the power to expend county aid funds on “county roads and bridges,” rather than on roads or bridges in general. If a road or bridge is not a “county road” or “county bridge,” then a county may not, under [Tenn. Code Ann. § 54-4-103](#), expend county aid funds, such as county-designated gas tax funds, in its construction, repair, or maintenance. As a road or bridge located within the corporate limits of a municipality cannot be a county road or bridge within the meaning of [Tenn. Code Ann. § 54-4-101](#), as this Office has previously opined, counties are precluded from expending county aid funds on such roads or bridges. Sec Op. Tenn. Att. Gen. of October 10, 1958.

Paul G. Summers
Attorney General and Reporter
Michael E. Moore
Solicitor General
Sean D. Clancy
Assistant Attorney General

Tenn. Op. Atty. Gen. No. 99-166 (Tenn.A.G.), 1999 WL 728640

128 Tenn. 393
Supreme Court of Tennessee.

KING
v.
SULLIVAN COUNTY et al.

Nov. 22, 1913.

Appeal from Chancery Court, Sullivan County; Will D. Wright, Chancellor, sitting by interchange with Hal H. Haynes.

Bill in equity by Samuel L. King against Sullivan County and others. From a decree dismissing the bill, complainant appeals. Affirmed.

West Headnotes (2)

- [1] **Counties**
🔑 Levy for Special Purposes
Taxation
🔑 Local Taxes, and Uniformity as to Same
Locality

Acts 1909, c. 169, and Acts 1911, c. 620, authorizing issuance of bonds by county and levy of taxes on all property in the county including that within municipalities to build roads, held not to violate Const. art. 2, § 28, requiring taxes to be equal and uniform in view of section 29.

[11 Cases that cite this headnote](#)

- [2] **Taxation**
🔑 Constitutional Requirements and Operation
Thereof

The uniformity in taxation required by Const. art. 2, § 28, is limited to uniformity in rate, assessment, and valuation of the particular tax, and has no reference to a uniformity of the sum total of taxes which a citizen is required to pay.

[6 Cases that cite this headnote](#)

Attorneys and Law Firms

*847 Harr & Burrow, of Johnson City, for appellant.

Powell, Price & Shelton and St. John & Gore, all of Bristol, for appellees.

Opinion

LANSDEN, J.

The complainant filed this bill as a citizen and taxpayer of Sullivan county to enjoin an issue of bonds by that county for the purpose of building pike roads in the county outside the corporate limits of the city of Bristol.

[1] The complainant is a citizen of Sullivan county residing in the city of Bristol, and is a taxpayer to both the county and city. Chapter 620 of the Acts of 1911, and chapter 169, Acts of 1909, authorize the county of Sullivan to issue coupon bonds to build pike roads, and to levy and collect taxes on all property in the county "including that within the corporate limits of any municipality," *848 to pay the interest, and to create a sinking fund to pay the principal of the bonds.

The question made against the validity of the act is that a levy of taxes on property in the city of Bristol to build and keep up streets and roads inside the corporate limits as is required by the charter of the city, and a levy of taxes upon property located within the city to build pike roads in the county and outside the city limits, is unequal and unjust taxation, and is not uniform, and is in violation of section 28 of article 2 of the state Constitution. It is said that this is so because property located outside of the city limits is not taxed to build roads and streets within the city. It is also said that the state requires the city of Bristol to levy and collect taxes for the purpose of maintaining its streets, and by this act permits the county to levy and collect taxes on the same property to build pike roads outside the city limits.

Section 28 of article 2 of the Constitution, requiring that "all property shall be taxed according to its value, *** so that taxes shall be equal and uniform throughout the state," must be construed in respect of the acts in

controversy in connection with section 29 of the same article, which is as follows:

“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.”

It was determined by this court in *Malone v. Taylor*, decided at the April term, 1908, that the taxation of property within the corporate limits of the city of Memphis to build public roads outside the city and within the county of Shelby is not a contravention of section 8 of article 1 of the Constitution.

The tax authorized by chapter 370 of the Acts of 1907, the validity of which was involved in that case, was identical with the tax authorized by the statutes brought in controversy here, and the court held that such a tax “is clearly for a public county purpose, and leviable on all the property situated within the county, although its expenditure is limited to the improvement of public roads outside the city of Memphis. We think this principle is well settled by numerous adjudications of this court. *L. & N. R. R. v. County Court of Davidson County*, 1 Sneed, 637 [62 Am. Dec. 424]; *Nichol v. Nashville*, 9 Humph. 268; *Adams v. M. & L. R. O. Co.*, 2 Cold. 656; *McCallie v. Chattanooga*, 3 Head, 322; *Shelby County v. Exposition Co.*, 96 Tenn. 658 [36 S. W. 694, 33 L. R. A. 717]; *Edmondson v. Board of Education*, 108 Tenn. 558 [69 S. W. 274, 58 L. R. A. 170]. The foregoing authorities also establish the proposition that the road tax in question is not only a county purpose, but it is also a municipal purpose.”

[2] The uniformity required by section 28 of article 2 is limited to uniformity in rate, assessment, and valuation of the particular tax involved. It has no reference to a uniformity of the sum total of taxes which a citizen is required to pay; that is, it does not require that the total taxes assessed against property situated in a municipality shall not exceed the sum total of taxes assessed against

property located outside of a municipality. It does require that there shall be uniformity of valuation and assessment of property for purposes of taxation, and that the tax levy for any given purpose shall be uniform throughout the territory to which it is applied.

In this particular case, it would not be competent to authorize a levy of taxes on property inside the city of Bristol at a rate of taxation more or less than the same levy upon property outside the corporation.

It being established that the tax is levied for a proper county purpose, and the complainant's property being located within the county, he is liable for the tax. If this were not so, the school system, the bridges across the waters of the state, the through roads in the various sections of the state maintained and built, each of them, by general levy of taxation, would have to fall because similar taxes are levied in the various municipalities. The extra taxation which a citizen of an incorporated town must pay is to support his municipal government. It has no relation to the duty he owes to contribute to the support of the state and county governments which afford him and his property equal protection with every other citizen, whether they reside within the municipality or not. It is an extra burden which the citizen of a municipality bears for the benefit he derives from the municipal government. The right of free locomotion is fully preserved by our Constitution, and as no citizen is required to reside or own property within a municipality, and as there is plenty of room on the outside, it would seem that the burden complained of is optional with the citizen to be borne or cast off as he may choose.

The decree of the chancellor dismissing the bill is affirmed.

All Citations

128 Tenn. 393, 160 S.W. 847, 1 Thompson 393

582 S.W.2d 80
Court of Appeals of Tennessee, Western Section.

CITY OF GREENFIELD et al.,
Plaintiffs-Appellants,
v.
Charles T. **BUTTS** et al., Defendants-Appellees.

Feb. 12, 1979.

Certiorari Denied by Supreme Court May 7, 1979.

Municipalities within county brought action to have county quarterly court restrained from assessing and collecting taxes against property owned by residents of the municipalities as long as streets and roads within the municipalities were excluded from any benefit derived from collection of real property taxes authorized by Act providing for working and maintenance of public roads and authorizing levying of tax for such purposes, or, in the alternative, the municipality sought to have the county quarterly court and county board of highway commissioners ordered to remit to the municipalities' pro rata share of all revenues derived from the taxes. The Chancery Court, Weakley County, William H. Inman, Chancellor, dismissed the case, and appeal was taken. The Court of Appeals, Summers, J., held that: (1) Act providing for working and maintenance of public roads and authorizing lessening tax for such purposes did not apply to all roads within boundaries of county and certain portion of road tax collected by county should not have been distributed to municipalities of the county for benefit of streets and roads lying within corporate limits of the municipalities, and (2) the Act was constitutional and did not violate equal protection clause on basis that county highway commission refused to apply any of road tax revenues collected under authority of the Act for benefit of streets and roads lying within corporate limits of the municipalities.

Affirmed.

West Headnotes (2)

[1] **Highways**
Disposition of Proceeds

Act providing for working and maintenance of

public roads and authorizing levying tax for such purposes did not apply to all roads within boundaries of county and certain portion of road tax collected by county should not have been distributed to municipalities of the county for benefit of streets and roads lying within corporate limits of the municipalities. Priv.Acts 1949, c. 640; Const. art. 1, § 8.

[1 Cases that cite this headnote](#)

[2] **Constitutional Law**
Construction and Maintenance
Highways
Constitutional and Statutory Provisions

Act providing for working and maintenance of public roads and authorizing levying tax for such purpose was constitutional and did not violate equal protection clause on basis that county highway commission refused to apply any of road tax revenues collected under authority of the Act for benefit of streets and roads lying within corporate limits of the municipalities. Priv.Acts 1949, c. 640; U.S.C.A.Const. Amend. 14.

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

*81 Robert L. Hearn, **Greenfield**, David H. Welles, Dresden, William Michael Maloan, Harold T. Brundige, Martin, George C. Thomas, Jr., George C. Thomas, III, Dresden, for plaintiffs-appellants.

Harry Max Speight, Dresden, for defendants-appellees.

Opinion

SUMMERS, Judge.

This action was brought by five municipal corporations located in Weakley County, in conjunction with other

citizens and residents of the municipalities, in the Chancery Court of Weakley County, Tennessee. The suit sought to have the Quarterly Court of Weakley County restrained and enjoined from assessing and collecting taxes against the property owned by residents of the municipalities as long as the streets and roads within the municipalities were excluded from any benefit derived from the collection of real property taxes authorized by Chapter 640 of the Private Acts of the Tennessee General Assembly which were passed in 1949. In the alternative, they asked that the Quarterly Court of Weakley County and the Board of Highway Commissioners be ordered to remit to the municipalities their pro rata share of all revenues derived from the taxes levied under the private act. The plaintiffs further prayed that the court declare the method of collecting and using county road taxes with regard to the **city** property owners a violation of the Constitutions of the United States and of the State of Tennessee.

Section 6 of Chapter 640, Private Acts of 1949, contains the following wordage:

Section 6. Be it further enacted, That said Board of Highway Commissioners shall have complete management and control of All public roads and bridges, (excluding highways which are a part of the State Highway System) in said County. . . . (Emphasis supplied)

The plaintiffs stated that persons living within the municipalities are taxed under the act at the same rate as persons living outside the municipalities, and the County Highway Commission has refused to apply any of the tax revenues collected under the authority of the act for the benefit of the streets and roads lying within the corporate limits of the municipalities.

The chancellor dismissed the plaintiffs' case, and this appeal resulted. The plaintiffs assigned as errors:

I. Appellants contend that the Chancellor erred in not holding that the application of Chapter 640 of the Private Acts of 1949 is unconstitutional as a violation of the equal protection clause of the United States Constitution. T.R. pp. 28-30.

II. Appellants aver that the Chancellor erred in construing that Chapter 640 of the Private Acts of 1949 does not apply to all roads within the boundaries of Weakley County, Tennessee, and that a certain portion of the road tax collected by the County of Weakley should not be distributed to the **cities** of Weakley County, Tennessee.

T.R. pp. 28-30.

^[1] After reviewing the entire record, we adopt as a portion of our opinion the chancellor's memorandum opinion which applies to the second assignment of error:

The five municipalities of Weakley County filed this action against Weakley County and others to enjoin the collection of taxes assessed against property owned by municipal residents "so long as the municipalities are excluded from sharing in the tax revenues."

Chapter 640 of the Private acts of 1949 controls. The validity of this Act is unquestioned. It provides for the creation and maintenance of a public road system in Weakley County; vests the Board with management and control of all public roads and bridges, excluding those in the State Highway system; and authorizes a tax levy for the purpose of "securing funds for the proper construction, operation, and maintenance of the road system. . . ."

***82** This tax is levied upon all property in Weakley County, and the plaintiffs insist that a portion of the revenues thereby derived should be allocated to the towns for the repair and maintenance (sic) of their streets. It is insisted that the town residents are being denied equal protection of the law since they are required to help defray the costs of maintaining town streets. It is also insisted that the Act does not exclude town streets, and that the language used "all public roads and bridges" should be interpreted to include town streets.

If town streets are to be included within the ambit of the Act, the Board of Highway Commissioners of Weakley County would be responsible for the repair and maintenance of them, to the exclusion of the several town street departments, and County residents would then present the same argument presently advanced; it seems clear that it was not the legislative intent to require the Board to repair and maintain town streets. Apparently recognizing this fact, plaintiffs seek an allocation of funds, or alternatively, to enjoin taxation of town property for county purposes.

It must be remembered that in Tennessee the County is the basic unit of government. As stated in [Earnest Vs. Greene County, 138 Tenn. \(442\) 450 \(198 S.W. 417\)](#), the real estate constituting . . . a **city** or town . . . is yet also a part of the County. Acts comparable to Chapter 640 have been uniformly (sic) upheld, [King Vs. Sullivan County, 128 Tenn \(393\) 396 \(160 S.W. 847\)](#), and cases cited. In King, the County was authorized to levy taxes on all property in the County for the purpose of building roads outside Corporate limits, which is essentially the

issue presently posed. The Court held that the taxation of property within corporate limits to build roads outside the city did not contravene Article I, Section 8 of the Constitution. To the same effect is the holding in Malone Vs. Taylor. A town resident has the same duty to support county government as does a non-town resident; each is a county resident. As stated in King, “if this were not so, the school system . . . maintained . . . by tax levy . . . would . . . fall because similar taxes are levied by the various municipalities. The extra taxation which a citizen of an incorporated town must pay is to support his municipal government. It has no relation to the duty he owes to contribute to the support of the County Government which affords him equal protection with every other citizen whether they reside within or without a municipality.

“It is an extra burden which the citizen of a municipality bears for the benefit he derives from the municipal government.”

Finally, it should be noted that assuming a degree of equity in plaintiffs’ insistence upon allocation of tax revenues, the Act does not provide for allocation and the Court knows of no way, absent legislative action, that these revenues may be allocated.

Complaint dismissed.

/s/ W. H. Inman

/s/ Designated Chancellor

King and Earnest, supra, have well answered the question of the authority of the county to levy taxes on all property in the county for the purposes of building roads and highways outside the corporate limits.

A county is a creation of the general assembly, and in the case at bar the state delegated to the counties authority to completely manage and control all public roads and bridges. It is well settled in this state that the county does not have the power to lay off roads through towns. This is not the intention of the private act. The cases in Tennessee reflect that all public thoroughfares within the cities are referred to as Streets and in the counties as Roads or Highways.

In looking to the definitions, the legal dictionaries are very clear on the distinction between Streets and Roads and/or highways. In Bouvier’s Law Dictionary, Eighth

Edition, we find the following:

*83 Street. A public thoroughfare or highway in a city or village. It differs from a county highway;

Road. A passage through the country for the use of the people. . . .

In Black’s Law Dictionary, Revised Fourth Edition, the definition is more distinct:

Street. An urban way or thoroughfare; a road or public way in a city, town, or village, generally paved, and lined or intended to be lined by houses on each side. . . .

Road. A highway; an open way or public passage; a line of travel or communication extending from one town or place to another; a strip of land appropriated and used for purposes of travel and communication between different places. . . .

The Chancellor properly held that the road tax collected by the County of Weakley should not be distributed to the municipalities in the County of Weakley. There is a great deal of difference in the general make-up of a county and a municipal corporation in the operations of their Roads and Streets. It was held in Cowan’s Case 1 Tenn. (1 Overt.) 331, that the county court has no power to lay off roads through incorporated towns or direct that they be laid off in lots, streets or alleys. In City of Winchester v. Finchum, 201 Tenn. 604, 301 S.W.2d 341 (1957), the court spoke and said:

The general rule is that a city holds its public ways, not in its governmental, but in its proprietary or corporate capacity, and it owes an absolute duty to exercise reasonable care to keep its streets and sidewalks safe for use in the ordinary modes by persons exercising reasonable care. City of Memphis v. McCrady, 174 Tenn. 162, 164, 124 S.W.2d 248, (249); Vinson v. Fentress, 33 Tenn.App. 359, 370, 232 S.W.2d 272; City of Nashville v. Brown, 25 Tenn.App. 340, 345, 157 S.W.2d 612 (615) and cases there cited.

The second assignment of error is, therefore, overruled.

^[2] The first assignment of error addresses itself to the proposition that the private act is unconstitutional as a violation of the equal protection clause found in the 14th Amendment to the United States Constitution. We find no

merit in this argument.

The County of Weakley applies a uniform tax rate on the real property regardless of whether it is inside or outside the corporate boundaries. The tax is uniformly applied to all county residents for the purpose of maintaining roads. The citizens of the municipalities are also citizens of the County of Weakley, and the citizens of Weakley County are responsible for the maintenance of the public roads and highways and bridges of Weakley County. The citizens of the municipalities are responsible for the streets in their individual municipality.

In *Smith v. Dunn*, 381 F.Supp. 822 (M.D.Tenn., 1974), the court speaks in regard to legislation in question as it applies to two classifications of citizens in Tennessee. Judge Morton defines the applicable test necessary and the distinctions therein:

(5) In deciding the constitutionality of this distinction it is, of course, accepted that under the Fourteenth Amendment States need not treat all classes of persons identically. *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); *Carrington v. Rash*, supra (380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675); *Manson v. Edwards*, 482 F.2d 1076 (6th Cir. 1973). The validity of state classifications under the equal protection clause is assessed with reference to one of two established standards of review. The traditional standard, or “rational basis test,” “requires that a state classification be upheld unless there is no rational relationship between the classification imposed by the state and the state’s reasonable goals.” *Robinson v. Board of Regents*, 475 F.2d 707, 710 (6th Cir. 1973). In applying this standard courts recognize that “(l)egislatures are presumed to have acted constitutionally . . . and their statutory classifications will be set aside only if no grounds can be conceived *84 to justify them.” *McDonald v. Board of Election*, 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969).

The second and more recent standard, the compelling

state interest test, calls for a stricter standard of review where a classification, such as race, is inherently “suspect,” or where a fundamental right of the complaining class is at stake. Under this standard a state must go beyond merely showing that its classification has a rational basis and establish that it is justified by a compelling state need. Among the fundamental interests calling for stricter scrutiny are the right to vote, *Dunn v. Blumstein*, supra (405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274); the right to interstate travel, *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1960); and the right to procreate, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

In choosing the appropriate standard in the instant case, we conclude that the statute under review must be upheld if it can be justified under the rational basis standard of equal protection review. . . .

This court can find no invidious discrimination upon the residents of the five municipalities in Weakley County, and, therefore, we hold that the application of Chapter 640 of the Private Acts of 1949 is constitutional and does not violate the equal protection clause of the United States Constitution. The first assignment of error is overruled.

The judgment of the Chancery Court of Weakley County is affirmed in all things, and the costs of the appeal will be paid by the appellants.

MATHERNE and NEARN, JJ., concur.

All Citations

582 S.W.2d 80

Tenn. Op. Atty. Gen. No. 84-106 (Tenn.A.G.), 1984 WL 186228

*1 Office of the Attorney General

State of Tennessee
Opinion No.

84

–

106

March 26, 1984

MUNICIPAL CORPORATIONS: Public Works Projects: Taxing Power:

Authority of Loudon **County** Commission to set different property **tax** rate for Lenoir City than remainder of **county**; authority of Loudon **County** Commission to levy taxes and appropriate funds for **county** roads to the exclusion of streets within City of Loudon. [Tenn. Const. Art. II, § 28](#); T.C.A. §§ 5-11-119, 49-3-1005, 54-7-101 et seq. 67-5-102; Pr.A.1976, Ch. 265.

COUNTIES: Appropriations/Disbursements of funds: Commission/Commissioners/Legislative Bodies: Executives: Public Works Projects: Services: Taxing Power:

Authority of Loudon **County** Commission to set different property **tax** rate for Lenoir City than remainder of **county**; authority of Loudon **County** Commission to levy taxes and appropriate funds for **county** roads to the exclusion of streets within City of Loudon. [Tenn. Const. Art. II, § 28](#); T.C.A. §§ 5-11-119, 49-3-1005, 54-7-101 et seq. 67-5-102; Pr.A.1976, Ch. 265.

TAXATION: Ad Valorem: Constitutional Provisions: Exemptions: General Revenue Tax: Property Tax:

Authority of Loudon **County** Commission to set different property **tax** rate for Lenoir City than remainder of **county**; authority of Loudon **County** Commission to levy taxes and appropriate funds for **county** roads to the exclusion of streets within City of Loudon. [Tenn. Const. Art. II, § 28](#); T.C.A. §§ 5-11-119, 49-3-1005, 54-7-101 et seq., 67-5-102; Pr.A.1976, Ch. 265.

BONDS/NOTES: Counties: Municipal: Note Funds:

Authority of Loudon **County** Commission to set different property **tax** rate for Lenoir City than remainder of **county**; authority of Loudon **County** Commission to levy taxes and appropriate funds for **county** roads to the exclusion of streets within City of Loudon. [Tenn. Const. Art. II, § 28](#); T.C.A. §§ 5-11-119, 49-3-1005, 54-7-101 et seq. 67-5-102; Pr.A.1976, Ch. 265.

William H. Russell
Loudon City Attorney
Suite One Colony Building
Post Office Box 314
Loudon, Tennessee 37774

Dear Mr. Russell:

You have requested the opinion of this office with respect to the following matters:

QUESTIONS

(1) Can the Loudon **County** Commission set a different property **tax** rate for Lenoir City than it sets for the remainder of the **county**?

(2) Can the Loudon **County** Commission levy taxes and appropriate funds for the **county** roads to the exclusion of streets within the City of Loudon?

OPINIONS

(1) Yes. The **county** property **tax** rate may differ between Lenoir City and the rest of Loudon **County**, only because the difference is based on a rural school bond issue.

(2) Yes. Taxes for **county** roads must be levied at a uniform rate throughout Loudon **County**, including property within the City of Loudon. The revenues from such **tax** must be expended on the **county** roads and cannot be allocated to the City of Loudon for the maintenance of city streets.

ANALYSIS

(1)

*2 The general principle underlying **county** taxation in Tennessee is that property taxes must be equal and uniform throughout the **county**. This principle derives from the plain directive of [Article II, section 28 of the Constitution](#), which states, “Each respective **taxing** authority shall apply the same rate to all property within its jurisdiction.” See also [Jones v. Memphis, 101 Tenn. 188, 47 S.W. 138 \(1898\)](#). Application of this doctrine becomes more difficult, however, because of the multiplicity of **taxing** authorities that may exist within one **county** insofar as schools are concerned.

Your inquiry particularly concerns the practice in Loudon **County** of imposing a higher overall **county tax** rate on property outside Lenoir City than on property within Lenoir City. The difference arises because the rate in most of the **county** includes a rural school bond fund. This school bond levy is not imposed in Lenoir City, apparently because that **municipality** operates its own city school system and does not benefit from the rural school bonds as does the rest of the **county**.

[T.C.A. § 49-3-1005\(b\)](#) [formerly § 49-715] allows for the type of **tax** differential that currently exists in Loudon **County**. Under that statute, a **county** commission may provide for school bonds to be paid from taxes levied only upon property lying outside incorporated **municipalities** and special school districts operating their own schools. See also [T.C.A. § 5-11-119](#). In such instances the proceeds of the bond issue may not be used to aid the **municipal** or special district schools.¹ This arrangement has previously been upheld by this office as complying with [Article II, section 28](#). See Opinion of June 4, 1979 to Mike Lawson. This is because [T.C.A. § 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.

[T.C.A. § 67-5-102](#) excludes debt service and sinking funds from the definition of “**county** general purpose.” 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. Since under [T.C.A. § 49-3-1005\(b\)](#) a **county** may choose to restrict the area of its **taxing** jurisdiction for these purposes, no conflict arises under the uniformity requirement to [Article II, section 28](#).

In essence, the jurisdiction of a **county** for school purposes may be limited to the area of the **county** outside incorporated towns and special school districts. This part of the **county** then becomes a separate **taxing** authority for school bond purposes. The **county** commission may impose a **tax** rate on property in this area to fund a school bond issue, without levying it on the areas that have their own separate school systems. This has been the practice in Loudon **County**.

*3 The principle of equality embodied in [Article II, section 28](#) is very broad, and the funding of school bonds presents a special case because of the peculiar function of the **county** school system when **municipalities** within that **county** run their own schools. Thus it is the opinion of this office, in accordance with [T.C.A. § 49-3-1005\(b\)](#) and as previously announced, that Loudon **County** may exempt property lying inside Lenoir City from obligation for the rural school bond issue, while

taxing the remainder of the **county** for the indebtedness, if none of the bond proceeds inure to the benefit of the Lenoir City schools.

(2)

County road taxes are subject to the requirement of [Article II, Section 28](#) that they be imposed at the same rate throughout each **county**. Thus the road **tax** levied in Loudon **County** must be the same in Lenoir City and the other **municipalities** as in rural Loudon **County**. See Opinion of February 14, 1983 to Fred L. Myers, Jr. Property owners within the City of Loudon are subject to this uniform road **tax** burden.

The revenues from the road **tax** are for the construction and maintenance of the roads within the jurisdiction of the Loudon **County** Department of Transportation. Chapter 265 of the 1976 Private Acts created the **county** Department of Transportation, to be headed by a **county** Commissioner of Transportation in accordance with the **County** Uniform Road Law, [T.C.A. §§ 54-7-101](#) et seq. The function of this **county** department is to build, maintain, and repair roads, highways, and bridges in Loudon **County**. The **county** has no obligation to support the City of Loudon in maintaining its streets, unless such thoroughfares are State or **county** roads in the first place. The upkeep of the city streets is the duty of the City of Loudon, to be supported by the city's own **tax** revenues.

This issue was directly addressed in [City of Greenfield v. Butts, 582 S.W.2d 80 \(Tenn.App.1979\)](#), cert. denied, May 7, 1979. In that case five **municipalities** in Weakley **County** claimed they were entitled to proportionate shares of the revenues from the **county** road **tax**, to be allocated for the repair and maintenance of city streets. The Court of Appeals forcefully rejected that claim. It noted that **counties** do not have the power to lay off roads through towns, since such is the exclusive duty of those **municipalities**. There is no constitutional or statutory requirement that revenues from a **county**-wide road **tax** be shared among the **municipalities** of that **county**.

Thus the revenues from the road **tax** in Loudon **County** are to be used by the **county** to build and maintain the **county** roads. Such funds may not be expended on the streets of the City of Loudon, the maintenance of which is the duty of that city, to be financed by its own revenues.

Sincerely,

William M. Leech, Jr.
Attorney General & Reporter
William B. Hubbard
Chief Deputy Attorney General
Charles L. Lewis
Assistant Attorney General

Footnotes

¹ An entirely different arrangement applies to regular taxes not connected with a bond issue. In such instances, under [T.C.A. § 49-3-315](#) the **tax** must apply to all property in the **county**, including areas that are incorporated or included in special school districts. The **county** trustee then is obligated to apportion the funds among all school districts and systems within the **county** on the basis of average daily attendance.

Chapter 3
BUDGETING

Section 3.1 Budgeting General: The County Legislative Body adopts the budget as the annual appropriation of the County at or before its July regular meeting. The budget is a *plan* for revenue and expenditure that is adopted in order to provide specific services and, thereby, implement policies of the Board. It is also the legal authority to receive and expend funds. As it is a plan, it is recognized that changing conditions will require budget adjustments. These adjustments will be processed in the form of a Budget Amendment in accordance with the procedures and with approvals as required in Section 3.3 and 3.4 of this Chapter.

The normal budget process starts with a required meeting of the Financial Management Committee prior to the 1st of February (T.C.A. 5-21-110) and results in an approved budget, appropriations, resolutions, and a tax levy resolution no later than the July meeting of the County Legislative Body (T.C.A. 5-21-111).

In the event a budget cannot be adopted in a timely manner as stated above, a Continuing Resolution will be passed by the County Legislative Body at the July meeting to be effective through September (Budgets must be completed by October 1st).

At the January meeting of the Financial Management Committee, the required procedures, forms, calendar, etc. are recommended. Prior to distribution of budget forms to departments, the Committee will recommend guidelines and give direction to the various departments to use in projecting budgeted needs.

Section 3.2 Proposed Annual Budget Schedule:

- | | |
|-------------------------|--|
| Before 2/1 | Financial Management Committee to establish calendar and procedures (T.C.A. 5-21-110). |
| Approx. 2/1
To 3/14 | Budget forms prepared with historical data pertaining to prior and current year expenditures; transmittal letter developed with budget guidelines and instructions. |
| Approx. 2/15 | Budget forms and information distributed to departments and offices. |
| Approx. 3/1 | Departments provided nine-month expenditures to date. |
| Approx. 4/1 | Completed budget request forms due in Director of Finance's Office. |
| Approx. 4/15
To 5/14 | Information received from departments is reviewed and compiled; initial revenue projections are calculated; proposed budget document is prepared. |
| Approx. 5/15 | Proposed budget document is presented to Financial Management Committee. |
| Approx. 5/16
To 5/30 | Budget hearings held by Financial Management Committee. |
| Approx. 7/1 | Publish notice of public hearing and proposed budget at least 10 days prior to July meeting of County Legislative Body including a budget appropriations resolution and a tax levy resolution (T.C.A. 5-21-111). |
| Approx. 7/10 | Financial Management Committee holds final public hearing. |
| Approx. 7/20 | County Legislative Body adopts a budget, resolutions, and tax levy resolution. |