STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 8, 2023

Opinion No. 23-005

Uses of Wheel Tax Revenue and Changing the Intended Use

Question 1

What are "county purposes" within the scope of Tenn. Code Ann. § 5-8-102(b), which authorizes counties to levy a motor vehicle privilege tax and to use that tax revenue for "county purposes"?

Opinion 1

"County purposes" within the scope of Tenn. Code Ann. § 5-8-102(b) are the purposes for which the county may appropriate funds as "expressly given by or necessarily implied from state law." *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994).

Question 2

May the intended use of the revenue from the motor vehicle privilege tax levied by a county under Tenn. Code Ann. § 5-8-102(b) be changed, and if so, by what process may the intended use be changed?

Opinion 2

While a county may not change the stated intended use of the motor vehicle privilege tax revenue retroactively, it may change the use prospectively by following the same procedure as the procedure required for levying the tax, which is detailed in Tenn. Code Ann. § 5-8-102(c).

ANALYSIS

1. Use of Wheel Tax Revenue for "County Purposes"

The General Assembly has the "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." Tenn. Const. art. II, § 29. Pursuant to that constitutional power, the General Assembly has authorized counties "to levy for county purposes by action of its governing body a motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county." Tenn. Code Ann. § 5-8-102(b) (2022 Supp.). This tax is known as the wheel tax.

The term "county purposes" is not defined in the wheel tax statute, but it mirrors the term "county purposes" in article II, § 29, of the Constitution which the Tennessee Supreme Court has defined as "purposes [that] meet such charges in the way of expenditure as by law are fixed upon the counties, and appertain to the general administration of county affairs—police duties, the expenses of courts and the like." *Nashville & C. & St. L. R. Co. v. Franklin County*, 73 Tenn. 707, 710 (1880). Also, a county purpose may share the same objective as, or have a common purpose with, a state purpose. *Hancock v. Davidson County*, 171 Tenn. 420, 104 S.W.2d 824, 827 (1937).

Thus, "county purposes" are the purposes for which the county may appropriate funds as "expressly given by or necessarily implied from state law." *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994). For example, the General Assembly has expressly authorized counties to appropriate funds for the purposes specified in Tenn. Code Ann. §§ 5-9-101, *et seq.* (2015 and 2022 Supp.), and §§ 5-9-201, *et seq.* (2015). But the ability of counties to use revenue from the tax may be limited by other law. For example, this Office has opined that revenue from the wheel tax could not be used to pay the costs of a waste disposal pick-up service within the county but outside the municipalities under Tenn. Code Ann. §§ 5-19-101, *et seq.*, because the tax was not one of the permissible means of financing stated in Tenn. Code Ann. § 5-19-109(b). Op. Tenn. Att'y Gen. 99-137, at 2 (July 22, 1999). Also, counties may not use tax revenue for school purposes "without specific statutory authorization." *City of Harriman v. Roane County*, 553 S.W.2d 904, 907 (1977).

2. Changing the Intended Use of Wheel Tax Revenue

A county may not *retroactively* change the stated intended use of revenue from the wheel tax. Once the revenue has been raised for a stated use, that revenue must be put to that use. As this Office has opined, "tax revenues raised by a county for stated public purposes may not be diverted for other uses." Op. Tenn. Att'y Gen. 84-121, at 5 (Apr. 10, 1984) (noting the decisions of the Tennessee Supreme Court summarized in *State ex rel. Conger v. Madison County*, 581 S.W.2d 632, 637-638 (Tenn. 1979)). County tax revenues "must be used for the purposes for which they were raised." Op. Tenn. Att'y Gen. 92-41, at 2 (May 6, 1992) (citing *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136, 136 S.W. 427, 429 (1911), and *City of Harriman*, 553 S.W.2d at 907).

But a county may change the stated intended use *prospectively*. And if a county chooses to do so, it would be required to effect the prospective change through the same procedure as the procedure required by Tenn. Code Ann. § 5-8-102(c) for levying the wheel tax. Although the wheel tax statute does not provide a separate procedure for changing the intended *use* of the wheel tax, as this Office opined in the analogous context of changing the *rate* of the wheel tax,

> [t]he fact that the statute provides no separate procedure for changing the tax rate supports what both logic and the legislative history dictate: to increase or decrease a wheel tax rate, a county must follow one of the two alternate statutory procedures for *levying* a wheel tax.

Op. Tenn. Att'y Gen. No. 15-29, at 2 (Apr. 1, 2015)(emphasis added). Accordingly, a prospective change in the stated use of the wheel tax revenue must be approved as provided in Tenn. Code Ann. § 5-8-102(c), which details the ways in which imposition of the wheel tax may be approved.

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