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METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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Legal Opinion 2005-003

To: Diane Neighbors, Chair
Metropolitan Councilmember-at-Large
Budget and Finance Committee

Date: June 16, 2005

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

Question

- Is the Metropolitan Government precluded by the Tennessee Constitution or Tennessee statutes from adopting a property tax relief program for senior citizens based on making grants funded by sales tax revenue?

Short Answer

- No. Under the proposal, all residential property will be assessed equally and uniformly and all taxes on residential property will be collected. The Metropolitan Government has authority under both its Charter and State law to provide assistance to low-income senior citizens. The assistance to senior citizens serves a county purpose as required by the Constitution. There is no express or implied preemption by the Tennessee Constitution or by a Tennessee statute that prevents the Metropolitan Government from making grants of this nature.

Background

In accordance with the Metropolitan Charter, the Mayor of the Metropolitan Government submitted his proposed operating budget for the 2005-2006 fiscal year to the Metropolitan Council along with his message explaining the budget and describing the important features and the proposed financial policies. Metropolitan Charter § 6.04. As part of the proposed budget, the Mayor has proposed an appropriation for a Property Tax Relief

Program.[1] The information provided about the program specifies that the program will consist of grants to senior citizens who reside within the area of the Metropolitan Government and pay local taxes. The grant program will be based on financial hardship and one component for determining the amount of the grant will be the amount of property taxes paid.

Analysis

Metropolitan Charter.

The Metropolitan Government was created pursuant to the authority of Tennessee Code Annotated, Title 7. The Metropolitan Government has all the powers of a city and a county. *T.C.A.* § 7-2-108(a)(1); *Metropolitan Charter* § 2.02. The Metropolitan Charter provides that the Metropolitan Government has the power to adopt all ordinances necessary for the health, safety and general welfare of its residents. *Metropolitan Charter* § 2.01(40); *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988). Tennessee case law supports a broad construction to the grant of authority to a local government when it enacts an ordinance pursuant to its "general welfare" authority. *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706, 713 (Tenn. 2001) In the *Southern Constructors* case, the Supreme Court stated:

> Further, courts have not taken a narrow view of local governmental power when the General Assembly has conferred general welfare authority to protect the citizens' health, convenience, and safety. In the same decision that recognized Dillon's Rule as a rule of construction in this state, this Court stated that where the legislature grants local governments broad authority to provide for the general welfare, Dillon's Rule cannot be used to challenge the exercise of that authority as beyond the scope of the delegated power. *See Linck*, 80 Tenn. (12 Lea) at 509-10. Because the very nature of general police powers demands that such authority receive a broad construction to accomplish its purposes, the *Linck* Court held that so long as ordinances adopted under a grant of general welfare authority are not "unreasonable or oppressive[,] they are valid, and will be maintained." *Id.* at 510; *see also McKelley v. City of Murfreesboro*, 162 Tenn. 304, 310, 36 S.W.2d 99, 100 (1931). We continue to concur in that assessment.

Southern Constructors, Inc. v. Loudon County Board of Education, 58 S.W.3d at 713.

Tennessee Constitution & Tennessee Statutes

The Constitution of the State of Tennessee specifies the way that residential property is to be assessed and the principals that must be applied in taxing residential property. Tenn.

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[1] The Mayor's Budget provides funding for a tax relief program and his budget message proposes to cap the tax burden for senior citizens to provide that they will not pay more than 5 percent of their income in local taxes.

Const. Art. II, § 28. The applicable portions of Article II, Section 28 of the Tennessee Constitution provide:

> ... (A)ll property real, personal or mixed shall be subject to taxation ...
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> ...
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> Real Property shall be ... assessed as follows:
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> ...
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> (c) Residential Property, to be assessed at twenty-five (25%) percent of its value ...
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> ...
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> The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns.
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> ...
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> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

In summary, the section requires that:

- all real property be subject to taxation,
- residential property be assessed at twenty-five (25%) percent of its value,
- the ratio of assessment to value of property in each class be equal and uniform throughout the state,
- the legislature direct the manner for determining the value and definition of residential property, and
- each respective taxing authority apply the same tax rate to all property within its jurisdiction.

The section of the Constitution also provides that the Legislature may provide tax relief to "elderly low income taxpayers" as long as that action does not "impose" an "obligation" upon the local government.

The Legislature did adopt legislation providing tax relief to senior citizens. T.C.A. § 67-5-702.[2] As noted in recent law review articles, tax relief for elderly home owners is commonly provided throughout the United States and courts uphold such provisions.

> Courts around the country have found this special treatment of the elderly to be permissible, and even desirable. The Supreme Court of Illinois stated in *Doran v. Cullerton* that 'the classification of individuals on the basis of under and over 65 years of age is rational and reasonable, for at this age many persons retire and their sole financial support may be derived from social security or private pensions.' The court went on to say that '[i]n these times of increasing real estate taxation and rising prices, the benefits conferred by many retirement plans may not provide adequate income.' The Supreme

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[2] **T.C.A. § 67-5-702. Aged persons; low-income taxpayers**

(a)(1) There shall be paid from the general funds of the state to certain low-income taxpayers sixty-five (65) years of age or older the amount necessary to pay or reimburse such taxpayers for all or part of the local property taxes paid for a given year on that property which the taxpayer owned and used as the taxpayer's residence as provided in this part.

(2) For tax year 1996, the taxpayer's annual income from all sources shall not exceed ten thousand five hundred fifty dollars ($10,550). Thereafter, such annual income limit shall be adjusted to reflect the cost of living adjustment for social security recipients as determined by the social security administration and shall be rounded to the nearest ten dollars ($10.00). The income attributable to the applicant for tax relief shall be the income of all owners of the property and the income of any owner of a remainder or reversion in the property if the property constituted such person's legal residence at any time during the year for which tax relief is claimed. Any portion of social security income, social security equivalent railroad retirement benefits, and veterans entitlements required to be paid to a nursing home for nursing home care by federal regulations shall not be considered income to an owner who relocates to a nursing home.

(3) Such reimbursement shall be paid on the first eighteen thousand dollars ($18,000), or such other amount as set forth in the general appropriations act, of the full market value of such property.

(b)(1) In determining the amount of relief to a taxpayer, the effective assessed value on the first eighteen thousand dollars ($18,000), or such other amount as set forth in the general appropriations act, of full market value shall be multiplied by a tax rate which has been adjusted to reflect the relationship between appraised value and market value in that jurisdiction, as determined by the state board of equalization.

(2) The effective assessed value shall be determined by multiplying the full market value of the property up to eighteen thousand dollars ($18,000), or such other amount as set forth in the general appropriations act, by twenty-five percent (25%).

(3) The full market value of the property shall be determined by adjusting the appraised value of the property as shown on the records of the assessor of property by a factor which reflects the relationship between appraised value and market value in that jurisdiction, as determined by the state board of equalization.

(c) Taxpayers who become sixty-five (65) years of age on or before December 31 of the year for which application is made for property tax relief and are otherwise eligible shall be qualified as elderly low-income homeowners.

> Court of Wisconsin, in *Harvey v. Morgan*, found that a property tax relief plan of credits and refunds targeted at the sixty-five and older population is permissible and stated that the 'special legislative treatment . . . is reasonable [because] [t]he age of sixty-five is commonly accepted and recognized as that at which a large number of persons retire.'
> . . .
> Some method of property tax relief has been made available to elderly homeowners in every state and the District of Columbia."

Matthew J. Meyer, J.D., Note, *The Hidden Benefits of Property Tax Relief for the Elderly,* 12 Elder L.J. 417, 421-422 (2004); *see also,* John D. Perovich, J.D., Annotation, *Construction of Statute or Ordinance Giving Property Tax Exemption or Favorable Tax Rate to Older Persons,* 45 A.L.R.3d 1153 (2004)

The Legislature also adopted legislation authorizing counties to make grants to residents who have a low income and are senior citizens. T.C.A. § 5-9-112.[3]

Amendments to Article II, Section 28 of the Tennessee Constitution

> **1973 Amendment.** Prior to 1973, Article II, Section 28 provided, in part:
>
> ... All property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value. ... (*emphasis added*)

Evans v. McCabe, 11 Smith 672, 52 S.W.2d 159, 160 (Tenn. 1932). Effective January 1, 1973, Article II, Section 28 of the Constitution of Tennessee was amended. That section of the Constitution then read, in part:

> In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, ... For

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[3] **T.C.A. § 5-9-112. Aged persons**

(a) The legislative body of each county is authorized to appropriate funds for the purpose of providing assistance to low-income elderly residents of the county.

(b) If a county chooses to provide assistance, such funds shall be appropriated on an annual basis based on the particular needs of eligible persons, as determined by the county legislative body.

(c) The county legislative body is authorized to develop guidelines for eligibility and participation in applying for assistance authorized pursuant to this section. 1990 Pub.Acts, c. 882, § 1.

> purposes of taxation, property shall be classified into three classes, to wit: Real Property, Tangible Personal Property and Intangible Personal Property.
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> ...
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> The Legislature shall provide tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities or Towns; provided, that such tax relief for the years 1973 through 1977 shall be not less than an amount equal to the State, County and Municipal Taxes on Five Thousand ($5,000) Dollars worth of the full market value (or One Thousand Two Hundred Fifty ($1,250) Dollars of the assessed value) of property used for a residence by any taxpayer over sixty-five (65) years of age for a period of one (1) year prior to the date of assessment; provided further, that such relief shall not extend to persons having a total annual income from all sources in excess of Four Thousand Eight Hundred ($4,800) Dollars.
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> ...
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> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. ... (*emphasis added*)

1982 Amendment. In 1982, this section was again amended to its present form. The paragraph on elderly tax relief was amended by deleting the language indicted below (with the strike-through formatting) and by adding the underlined language and punctuation, as follows:

> The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns. ~~; provided, that such tax relief for the years 1973 through 1977 shall be not less than an amount equal to the State, County and Municipal Taxes on Five Thousand ($5,000) Dollars worth of the full market value (or One Thousand Two Hundred Fifty ($1,250) Dollars of the assessed value) of property used for a residence by any taxpayer over sixty-five (65) years of age for a period of one (1) year prior to the date of assessment; provided further, that such relief shall not extend to persons having a total annual income from all sources in excess of Four Thousand Eight Hundred ($4,800) Dollars~~

Equal and Uniform: Ratio of Assessment to Value of Property

One of the Constitutional questions related to Article II, Section 28 applicable to the proposed tax assistance program is whether the ratio of assessment to value of property will remain equal and uniform throughout the State.[4] The earlier constitutional requirements that all property be taxed and that taxes be equal and uniform throughout the state were repealed by the 1972 amendment. (See above)

> ... (T)he earlier constitutional mandate that all property be taxed was repealed by this amendment. Instead all property was made *subject to* the taxing power, but the amendment did not compel or mandate that the General Assembly exhaust that power. It gave general directions concerning classifications and assessment ratios, and if the General Assembly exercised its taxing power through the use of these classifications, the ratios of assessment to value were required to be used. (emphasis added)

Sherwood Co. v. Clary, 734 S.W.2d 318, 321-22 (Tenn. 1987). The Tennessee Supreme Court analyzed this "equal and uniform" language in a 1979 opinion. *Metropolitan Development and Housing Agency v. Leech*, 591 S.W.2d 427 (Tenn. 1979) (upheld the Constitutionality of the statutes authorizing tax increment financing (TIF)).

> The statutes as amended do not grant the housing authority or the municipality any additional taxing power with respect to the redevelopment property, nor, conversely, do they take such power away from the county. Neither does the statute require that a given parcel contribute "its" taxes to the housing authority. When T.C.A. § 13-817 speaks of allocating a portion of the taxes received from the redeveloped property to the housing authority, it means only that the various taxing entities shall appropriate an amount equal to that specified portion of the taxes received from the subject property to the authority, not that the actual taxes received from that parcel are in any sense to be set aside. Given that money is perhaps the quintessential fungible good, we cannot believe that the legislature intended any other interpretation. Once it is recognized that we are dealing with a mandated appropriation, whose amount is regulated by the taxes received from the subject property, and not with a transfer, direct or indirect, of taxing power, the appellants' argument fails. (*emphasis added*)

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[4] While many of the older Tennessee cases use the language and rely upon the principal that "taxes must be equal and uniform throughout the state", the specific Constitutional language on which that principal was based was removed from the Constitution in 1973 and replaced with the language that the "ratio of assessment to value of property" must be equal and uniform throughout the State. Tenn. Const. Art. II, § 28. Therefore, the "equal and uniform" analysis in some of these older cases is based on Constitutional language that has changed.. *Snow v. City of Memphis*, 527 S.W.2d 55, 66 (Tenn.1975), *appeal dismissed*, 423 U.S. 1083, 96 S.Ct. 873, 47 L.Ed.2d 95 (1976), *rehearing denied*, 424 U.S. 979, 96 S.Ct. 1487, 47 L.Ed.2d 750 (1976); *Sherwood Co. v. Clary*, 734 S.W.2d 318, 321 (Tenn. 1987).

Metropolitan Development and Housing Agency v. Leech, 591 S.W.2d 429-30.

Just as the Court in the 1979 *MDHA* case was dealing with an appropriation whose amount was regulated by the taxes received from the redeveloped property and not with a transfer, direct or indirect, of taxing power, the proposed senior citizen grant will be an appropriation whose amount is regulated, in part, by the taxes received from the senior citizen's property and is not a direct or indirect transfer of taxing power. Just as the Court found that all the redevelopment property would be taxed uniformly according to its value under the challenged TIF statutes, the property considered in determining the amount of a grant to the senior citizen would also be taxed uniformly according to its value.

County and Corporation Purposes

Article II, Section 29, of the Tennessee Constitution provides, in part:

> 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.

In a 1998 opinion, the Tennessee Attorney General provided a succinct analysis of "public purpose" that states:

> What constitutes a "public purpose" is dependent upon the facts of each particular situation. *See Oehmig v. City of Chattanooga*, 168 Tenn. 618, 80 S.W.2d 83 (1935). Generally, a public purpose is anything which promotes the public health, safety, morals, general welfare, security, prosperity, and contentment of the residents within the municipal corporation. *Hays v. City of Kalamazoo*, 316 Mich. 443, 25 N.W.2d 787, 790 (Mich. 1947) and Shelby County v. Exposition Co., 96 Tenn. 653, 36 S.W. 694 (1896). *See also, McQuillin, Law of Municipal Corporations* § 39.19 (3rd. Ed. 1993).
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> In determining whether the expenditure of public funds is for a public purpose, courts have looked to the end or total purpose of such expenditure, and the mere fact that some individual may derive some incidental benefit from the activity does not deprive the activity of its public function, if its primary function is public. *See City of Chattanooga v. Harris*, 223 Tenn. 51, 442 S.W.2d 602 (1969)(a statute requiring cities to provide defense in suits against city policemen and firemen arising out of performance of their official duties and to indemnify them against any judgment rendered served a valid public purpose under Article II, Section 29 even though it also conferred a personal benefit on the policemen and firemen). Otherwise stated, the test of a public purpose is whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit. *McQuillin, Law of Municipal Corporations* § 39.19 (3rd. Ed.1993). In addition, the judgment of the local government of a

> municipality as expressed by its governing body, is generally considered by the courts to be prima facie evidence as to whether an object proposed is a legitimate corporate or public purpose. *See McCallie v. Mayor of Chattanooga*, 40 Tenn. 317 (1859) and *Adams v. Memphis & L.R.R.*, 42 Tenn. 645 (1866). *See also, Op. Tenn. Atty. Gen.* 96-011 (February 6, 1996)(use of Metro funds to develop a sports stadium expressly authorized by state law serves a constitutional public purpose as required under Article II, Section 29).

Op. Tenn. Atty. Gen. 98-101 (May 27, 1998). Just as the Tennessee Legislature found that there was a public purpose in providing tax assistance to low-income senior citizens when it adopted T.C.A. § 67-5-702 (see footnote 2) and in authorizing local governments to make grants to low-income senior citizens when it adopted T.C.A. § 5-9-112, it is the opinion of the Department of Law that providing assistance grants to senior citizens that consider the amount of property tax paid by senior citizens serves a public purpose of the Metropolitan Government, such as allowing senior citizens to continue to live within the area of the Metropolitan Government. *See* Meyer, *supra* at 421-422; *see also*, Perovich, *supra* at 1153.

Tax Exemptions

Tax exemptions are created by legislative action and are instances wherein there is an exception to taxation for property that otherwise would be taxed. *Sears, Roebuck & Co. v. Woods*, 708 S.W.2d 374, 383 (Tenn. 1986); "*exemption*" Black's Law Dictionary (8th ed. 2004),

> The taxing power of the state is an attribute of sovereignty and exclusively a legislative function. *Waterhouse v. Public Schools,* 68 Tenn. (9 Baxter) 398, 400 (1876). The legislature alone has the right to determine all questions of time, method, nature, purpose and extent in respect to the imposition of taxes, including the subjects on which the power may be exercised. 84 C.J.S. (Taxation) § 7, pp. 51-55. Among all the institutions of the state, there is no agency vested with authority to restrain the legislative discretion in the exercise of its power in levying taxes. *Nashville, C. & St.L.Ry. v. Carroll County,* 161 Tenn. 581, 33 S.W.2d 69, 70 (1930). Of course, the taxing power is restrained by the federal and state constitutions. 84 C.J.S. (Taxation) § 6, p. 48. The power to exempt property from taxation, like the power to tax, is an attribute of sovereignty exercised by the legislature. Indeed, the selection of any subjects for taxation is an exemption of those subjects not selected. 84 C.J.S. (Taxation) § 216, pp. 414-415. In short, the selection of subjects for tax exemption is a legislative, not a judicial function. *Hulse v. Kirk,* 28 Ill.App.3d 839, 329 N.E.2d 286, 289 (1975).

Sears, Roebuck & Co. v. Woods, 708 S.W.2d at 383. Tax exemptions are construed most strongly against the parties claiming them. *Bob Arum Enterprises, Inc. v. Tennessee Athletic Com'n*, 633 S.W.2d 307, 309 (Tenn. 1982); *Crown Enterprises, Inc. v. Woods,* 557 S.W.2d 491, 493 (Tenn. 1977).

The Court of Appeals analyzed the statute that provides tax assistance from the State to low-income taxpayers 65 years of age and older, T.C.A. § 67-5-702, and determined that the statute is not an exemption statute because the property "remains subject to tax at all times" and the local governments "receive the full benefit of the property tax." *Henderer v. State Bd. of Equalization,* 746 S.W.2d 719, 721 (Tenn.Ct.App. 1987). Therefore, an analysis of whether a tax assistance program through a grant process is valid is not subject to the analysis of a "tax emption" because under the Mayor's proposal the property will remain subject to tax at all times. Further, as the Mayor's proposal specifies that the grant payments will not be paid from property tax revenue, the Metropolitan Government will receive the full benefit of the property tax. Therefore, rather than using a "tax exemption" analysis, the analysis that should be used is whether the general welfare authority of the Metropolitan Government that uses a broad construction allows the Metropolitan Government to provide assistance. This analysis allows the Metropolitan Government to accomplish its purposes of providing for the welfare of its citizens so long as the ordinances it adopts are not unreasonable or oppressive. *Southern Constructors, Inc. v. Loudon County Board of Education,* 58 S.W.3d at 713; *City of Nashville v. Linck,* 80 Tenn. 499, 510 (1883).

Attorney General Opinions.

The Attorney General has consistently opined that local governments lack the authority to provide additional tax relief and that the State lacks the authority to give the local governments the authority. Op. Tenn. Atty. Gen. No. 80-94 (February 14, 1980) (unconstitutional for Legislature to provide rebate of municipal taxes for annexed farm land); Op. Tenn. Atty. Gen. No. 80-164 (March 13, 1980)(Legislature may not authorize local governments to appropriate funds for tax relief to low-income elderly, totally disabled, or disabled veterans); Op. Tenn. Atty. Gen. 96-133 (Nov. 18, 1996)(City cannot refund portion of property tax increase attributable to improvements to home); Op. Tenn. Atty. Gen. 98-034 (Feb. 9, 1998)(local governments cannot supplement the tax relief provided by State); Op. Tenn. Atty. Gen. 99-216 (Oct. 27, 1999)(legislature may not empower local governments to provide tax relief); Op. Tenn. Atty. Gen. 01-172 (December 18, 2001)(Legislature cannot empower other entity with authority to grant tax relief). No Tennessee case is cited in these opinions to support the conclusion that a local government cannot choose to provide tax relief to senior citizens and no Tennessee case has been found that supports the conclusion that local governments are precluded from adopting additional tax relief. The reasoning of the Attorney General Opinions is that such action by the local legislative body results in (1) the local legislative body rebating part of the tax collected thereby failing to receive the full benefit of the taxes imposed and creating an unconstitutional exemption and (2) an unconstitutional rate of taxation because the property is not assessed equally.

The *Henderer* case supports a conclusion that in the Mayor's proposed tax relief program there is no exemption being created as the Metropolitan Government will receive the full benefit of the property taxes imposed because the assistance will be paid from sales tax revenue. That case held that tax relief involving a reimbursement is not an exemption. *Henderer v. State Bd. of Equalization,* 746 S.W.2d at 721. Additionally, as the property taxes are

all being assessed and paid in the proposed assistance program, there is no unequal rate of taxation. Therefore, the Mayor's proposed program is constitutional.

Preemption: Tennessee Constitution or Tennessee Statutes.

While the Metropolitan Government has authority to enact ordinances pursuant to its "general welfare" authority, such ordinances cannot contravene or conflict with applicable state laws.

> While local governments have considerable discretion to act within the scope of their delegated power, they cannot effectively nullify state law on the same subject by enacting ordinances that ignore applicable state laws, that grant rights that state law denies, or that deny rights that state law grants. *See generally State ex rel. Beasley v. Mayor & Aldermen of Fayetteville,* 196 Tenn. 407, 415-16, 268 S.W.2d 330, 334 (1954) (holding that a "city may not pass an ordinance which ignores the State's own regulatory acts, or deny rights granted by the State or grant rights denied by the State"). Thus, local governments must exercise their delegated power consistently with the delegation statutes from which they derive their power. *See Henry v. White,* 194 Tenn. 192, 196, 250 S.W.2d 70, 71 (1952).

421 Corp. v. Metropolitan Government of Nashville and Davidson County, 36 S.W.3d 469, 475 (Tenn.Ct.App. 2000). To determine whether the Metropolitan Government has been preempted or precluded by State law in the area of providing tax relief, a court will likely use an analysis similar to that used by the Tennessee Court of Appeals in a 2001 case. *Pendleton v. Mills,* 73 S.W.3d 115 (Tenn.Ct.App. 2001) (determining that under the Supremacy Clause of the U.S. Constitution, Congress' Prison Litigation Reform Act of 1995 had not preempted the State's statute on grievance procedures for prisoners.) In doing so, a court would use the following principals of statutory construction:

> The premier rule of statutory construction is to ascertain and give effect to the legislative intent. In ascertaining this intent, we are to look to the general purpose to be accomplished by the legislature. The legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used when read in the context of the entire statute and without any forced or subtle construction to limit or extend the import of the language. This court is to reconcile inconsistent or repugnant provisions of the statute and to construe the statute so as to avoid an interpretation that would render any of the language superfluous, void or insignificant. We are to give effect to every word, phrase, clause and sentence of the act in order to derive the legislature's intent. Each section is to be construed so that no section will destroy another.
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> A court will consider "the natural and ordinary meaning of the language used when read in the context of the entire section and without any forced or

> subtle construction to limit or extend the import of the language. (*internal citations omitted*)

Kellogg Co. v. Tennessee Assessment Appeals Com'n, 978 S.W.2d 946, 949 (Tenn.Ct.App. 1998).

First, a court will determine whether there is an express preemption, that is, whether there is explicit preemptive language in the Constitution or State statutes. If there is no express preemption then the court will determine whether there is an implied preemption by determining whether the Constitution or State statutes occupy the entire legislative field leaving no room for local action. Third, implied preemption may still exist, even if neither the Constitution nor the State statutes have occupied the entire field, to the extent there is any "outright or actual conflict" between the Constitution or the State law. *Pendleton v. Mills,* 73 S.W.3d 127; *see Swift v. Campbell,* 159 S.W.3d 565, 576-577 (Tenn.Ct.App. 2004) (refusing to find that federal law preempted Tennessee's public records statutes.) "Implied pre-emption takes two forms. Field pre-emption occurs when the scheme of the federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. Conflict pre-emption arises when compliance with both federal and state law is impossible or when state law presents an obstacle to the accomplishment of the full purposes and objectives of Congress." *Swift v. Campbell,* 159 S.W.3d at 577. To find preemption of a municipal ordinance by a state statute, it is not enough to show merely that the legislature has legislated upon a particular subject. *Parsippany Hills Associates v. Rent Leveling Board of Parsippany-Troy Hills Township,* 194 N.J.Super. 34, 49, 476 A.2d 271, 279 (App.Div.1984) (New Jersey statute requiring rebate to tenants of landlord's property tax decrease did not preempt the Township of Parsippany-Troy Hills' ordinance providing that the landlord must rebate a portion of any reduction in property taxes to the tenant.)

Applying this analysis to the proposed assistance grant program, first, there is no explicit preemption in Article II, Section 28 of the Tennessee Constitution. Nothing explicitly states that a county, city or town cannot also provide tax relief. Additionally, there is no explicit preemption in T.C.A. § 67-5-702 as nothing explicitly states that a county, city or town cannot also provide tax relief.

Second, there is nothing in the language of Article II, Section 28 to make it reasonable to conclude that it intends to leave no room for the local governments to supplement the aid allowed in Section 28. It is more logical to conclude that the purpose of the language is to protect the local governments from the involuntary loss of property taxes at the hands of the Legislature than to preventing local governments from providing assistance - at its own choosing – to elderly low-income residents.

> ... The Legislature shall provide, in such manner as it deems appropriate, tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities, or Towns. ...

Tenn. Const. Art. II, § 28. The use of the words "not be an obligation imposed" underscores this interpretation because, without the phrase, the legislature could create an "obligation" - a legal requirement by the State on the local government- that the local government use its local property tax revenue for tax relief. *See Metropolitan Development and Housing Agency v. Leech*, 591 S.W.2d 429-30. Further, the language, "in such manner as it deems appropriate," was added in 1982 to clarify that the legislature would thereafter be allowed to set the income restrictions and tax relief limits since the 1972 language in the Constitution (detailing for the years 1973 through 1977 the income restrictions and limits of the tax relief) was removed. The analysis of the complete sentence requires that the "obligation" phrase and the "in such manner as it deems appropriate" phrase be considered together. It is the opinion of the Department of Law that this analysis leads to the conclusion that the language is intended to allow the Legislature to provide its own tax relief program with more discretion than formerly provided in the 1973 amendment while continuing to protect local governments from the forced appropriation of their local revenue for such a State mandated program. *Metropolitan Development and Housing Agency v. Leech*, 591 S.W.2d 429 (State could require local government to use its funds to upgrade blighted urban areas); *Gates v. Long*, 8 Beeler 471, 113 S.W.2d 388, 393 (Tenn. 1938)(State had authority to require county to use its funds to hold primary elections); *Kellogg Co. v. Tennessee Assessment Appeals Com'n*, 978 S.W.2d 949 (Courts are to give effect to every word, phrase, clause and sentence).

Neither is there any language of T.C.A. § 67-5-702 to support a conclusion that the statute intends to leave no room for the local governments to supplement the aid allowed by that statute. Rather, the statute sets out the State's plan by specifying the conditions under which the general funds of the State will be used to reimburse taxpayers sixty-five years of age or older based on financial need.

Third, there is nothing in the language of Article II, Section 28 or T.C.A. § 67-5-702 that would make compliance with both state law and an ordinance adopting tax relief by the Metropolitan Government impossible. The State and the Metropolitan Government could each decide whether to provide tax relief and the decision of the Metropolitan Government with regard to such relief would not render impossible the action of the State in deciding whether to grant such relief. Finally, the apparent purpose of Article II, Section 28, of the Constitution is to provide a mechanism for the State to choose to provide tax relief to elderly low-income residents without reducing involuntarily the revenue from property taxes available to the counties, cities, and towns. Allowing the counties, cities, and towns voluntarily to make this decision for themselves does not provide an obstacle to the accomplishment of this purpose.

Conclusion

Under the tax relief program proposed by the mayor, all residential property will be assessed equally and uniformly and all taxes on residential property will be collected. Therefore there is no exemption being created and the Metropolitan Government will receive the full benefit of the property taxes imposed. The Metropolitan Government has authority under both its Charter and State law to provide assistance to senior citizens. The

assistance to senior citizens serves a county purpose as required by the Tennessee Constitution. There is no express or implied preemption by the Tennessee Constitution or by a Tennessee statute that prevents the Metropolitan Government from making grants to assist senior citizens.

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

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