

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

May 1, 2000

Opinion No. 00-081

Senate Bill 3291/House Bill 3301 - Private Act - Sevier County Commission - Nonbinding
Referendum - Zoning - Constitutionality

QUESTION

Whether Senate Bill 3291/House Bill 3301, which would authorize the Sevier County Commission to conduct an advisory nonbinding referendum relative to zoning in Sevier County, violates any provision of the Tennessee Constitution.

OPINION

It is the opinion of this Office that Senate Bill 3291/House Bill 3301, if enacted, would not violate any provision of the Tennessee Constitution.¹

ANALYSIS

This Office has previously opined that “[t]he General Assembly does have the constitutional power to enact a private act authorizing a municipality to submit advisory, nonbinding referendum questions to the voters of a municipality.” Tenn. Atty. Gen. Op. No. 95-013 (March 8, 1995). In particular, this Office stated the following:

This Office has considered the general issue raised in this opinion request on several occasions. We have opined in the past that the plenary legislative authority of the General Assembly encompasses the power, in the absence of any specific constitutional limitation to the contrary, to authorize local governments to hold advisory referendum elections. *See, e.g.*, Op. Tenn. Atty. Gen. No. U-80-069 (March 3, 1980) and No. U78-068 (March 2, 1978). We here reaffirm our earlier opinion that the General Assembly has the

¹This opinion assumes that the Sevier County Commission has the statutory authority to adopt a zoning plan to regulate those portions of Sevier County outside of Sevierville, Gatlinburg, Pigeon Forge and Pittman Center.

constitutional power to authorize local governments to hold advisory referendum elections.

Id.

In that opinion, this Office noted that “[a]s far as we are aware, the courts of this state have not addressed the General Assembly’s constitutional power to authorize advisory referenda.” *Id.* The opinion then proceeded to consider whether a Private Act authorizing an advisory, nonbinding referendum would violate several specific provisions of the Tennessee Constitution and found there to be no violation. *See* Tenn. Const. Art. II, § 3 (Tennessee Constitution is a limit on not source of power of the General Assembly); Tenn. Const. Art. XI, § 9 (requirement that private acts must require approval by two-thirds majority of local legislative body or majority of the voters in the political subdivision); Tenn. Const. Art. XI, § 8 (prohibition against suspending the general law absent a rational basis). That opinion then concluded that such private legislation would not violate any of these constitutional provisions.

Senate Bill 3291/House Bill 3303 provides that the “Sevier County Commission may, by resolution, direct the County Election Commission to conduct an advisory, nonbinding referendum of the voters of Sevier County, Tennessee.” This Private Act further provides that the question to be presented to the voters is “Should the Sevier County Commission adopt a zoning plan to regulate those portions of Sevier County which lie outside of Sevierville, Gatlinburg, Pigeon Forge and Pittman Center?”

As a Private Act, Senate Bill 3291/House Bill 3303 comports with the local government approval requirement of Article XI, Section 9 for Private Acts by requiring a two-thirds majority approval by the Sevier County Commission before it can become effective. Furthermore, there is no general law prohibiting county legislative bodies from authorizing advisory, nonbinding referenda on zoning issues. Therefore, it is the opinion of this Office that there is no constitutional prohibition against the General Assembly enacting Senate Bill 3291/House Bill 3303.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MICHAEL W. CATALANO
Associate Solicitor General

Requested by:

Honorable Bill Clabough
State Senator
309 War Memorial Building
Nashville, Tennessee 37243