

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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January 16, 2004

Opinion No. 04-007

Vote Required for Zoning Ordinance

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**QUESTION**

Under Article XI, Section 9 of the Tennessee Constitution, “any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity” must require adoption by a two-thirds vote of the local legislative body or a general election. Does this provision require an act of zoning to be passed by a two-thirds vote of the local body or by a general election?

**OPINION**

A zoning ordinance adopted by a local legislative body under authority delegated to it by a public or private act is not an “act of the General Assembly” within the meaning of this provision. There is no constitutional requirement, therefore, that such a zoning ordinance be adopted by a two-thirds vote of the local legislative body or in a general election.

**ANALYSIS**

This opinion addresses whether an act of zoning must, under Article XI, Section 9, be adopted by a two-thirds vote of the local legislative body or by a general election. The request does not define the term “act of zoning.” Under Tennessee law, zoning takes the form of local ordinances enacted by a county or city legislative body under public or private acts that delegate this authority to them.<sup>1</sup> *Family Golf of Nashville, Inc. v. Metropolitan Government of Nashville*, 964 S.W.2d 254 (Tenn.Ct.App. 1997), *p.t.a. denied* (1998) (the legislature may delegate zoning authority to local governments). Article XI, Section 9 of the Tennessee Constitution provides in relevant part:

*any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect*

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<sup>1</sup> The State’s growth law, Tenn. Code Ann. §§ 6-58-101, *et seq.*, has been challenged on the grounds that it violates Article XI, Section 9 of the Tennessee Constitution. That issue is still the subject of litigation in many annexation lawsuits pending in Knox County Chancery Court. *See, e.g., State of Tennessee ex rel. Davis and Eagle Bend Realty, L.L.C. v. Knoxville*, Knox County Chancery Court No. 151330-3. It is the policy of this Office not to comment on matters that are the subject of litigation.

unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

The general law governing adoption of local zoning ordinances appears at Tenn. Code Ann. §§ 13-7-101, *et seq.* Private acts delegating zoning authority, however, remain in effect. Tenn. Code Ann. § 13-7-115 (counties); Tenn. Code Ann. § 13-7-210 (cities). A private act delegating zoning authority to a particular city or county legislative body is an “act of the General Assembly” within the meaning of Article XI, Section 9 of the Tennessee Constitution. That act, therefore, must by its terms require approval by a two-thirds vote of the legislative body or a general election. But an ordinance adopted under such an act is not an “act of the General Assembly” subject to those constitutional requirements. *See, e.g., Rutherford v. Swink*, 96 Tenn. 564, 568, 35 S.W. 554 (1896) (a municipal ordinance is not a statute). Similarly, a zoning ordinance adopted under Tenn. Code Ann. §§ 13-7-101, *et seq.*, is not an “act of the General Assembly” that must, constitutionally, be approved by a two-thirds vote of the legislative body or a general election.<sup>2</sup>

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<sup>2</sup> It should be noted that, under Tenn. Code Ann. § 5-1-118(c), counties may exercise certain regulatory powers by the adoption of a resolution by a two-thirds vote of the county commission. While the two-thirds vote appears in the statute, however, it is not constitutionally mandated.