STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

January 7, 2015

Opinion No. 15-02

County Financial Management System of 1981– Debt Service Requirements

QUESTIONS

A county commission operates under the County Financial Management System of 1981, codified at Tenn. Code Ann. §§ 5-21-101 to -130 ("CMFS"). As required by Tenn. Code Ann. § 5-21-110(d)(2), the county budget committee proposed an annual budget for 2014-2015 that included provision "for all requirements for debt service." Following a public hearing on the budget proposal, the budget committee submitted the proposal to the county commission. Tenn. Code Ann. § 5-21-111(e)(1) provides that "[t]he county legislative body may alter or revise the proposed budget except as to provision for debt service requirements and for other expenditures required by law." The county commission voted to reduce the proposed debt service allocations, but to increase the debt service tax rate to satisfy debt service requirements.

1. Did the county commission violate Tenn. Code Ann. § 5-21-111(e)(1)?

2. If the county commission violated Tenn. Code Ann. § 5-21-111(e)(1), who has the authority and obligation to enforce compliance with this statute?

3. If a county commission violated Tenn. Code Ann. § 5-21-111(e), who would have standing to sue? In what court would the case be filed? Under what statute?

OPINIONS

1. Yes.

2. A county official who violates Tenn. Code Ann. § 5-21-111(e)(1) is subject to the imposition of penalties set forth in Tenn. Code Ann. § 5-21-125. A suit to enforce the penalties would be a *quo warranto* action that ordinarily is initiated by the district attorney general. The county also has the authority to enforce future compliance with Tenn. Code Ann. § 5-21-111(e)(1) by instigating a declaratory judgment action that seeks injunctive relief.

3. Any person who suffers harm that is not common to every citizen may have standing to sue for violation of Tenn. Code Ann. § 5-21-111(e)(1). As discussed below, the type of harm suffered would dictate the type of case that could be brought.

ANALYSIS

1. In Tenn. Att'y Gen. Op. 14-09 (Jan. 15, 2014), this Office addressed whether the same county commission could vote to reduce the debt service portion of the 2013-2014 budget proposed by its budget committee after the budget committee had held a public hearing under Tenn. Code Ann. § 5-21-111. We opined that the county commission could not because the county commission would violate Tenn. Code Ann. § 5-21-111(e)(1), which clearly states that "[t]he county legislative body may alter or revise the proposed budget *except as to provision for debt service requirements* and for other expenditures required by law." *See* Tenn. Att'y Gen. Op. 14-09 at 2 (emphasis original).

Our opinion is the same with respect to the county commission's vote on the 2014-2015 proposed budget, even though the commission voted to increase the debt service tax rate at the same time that it voted to reduce the debt service allocations established by the budget committee. Under Tenn. Code Ann. § 5-21-111(e)(1), the county commission may "alter" or "revise" the proposed budget "except as to the provision for debt service requirements." The verb "alter" means "to change or make different; modify." *American Heritage Dictionary* 39 (3d Coll. ed. 1997). Similarly, the verb "revise" means "to reconsider and change or modify." *Id*. at 1169. Thus, under the plain meaning of the statute, the county commission may change the proposed budget except as to provision for debt service requirements. *See Montgomery v. Hoskins*, 222 Tenn. 45, 47, 432 S.W.2d 654, 665 (1968) ("Unambiguous statutes must be construed to mean what they say."). Consequently, we think the county commission may not change the budget committee's provision for debt service requirements, even if it increases the debt service tax rate to satisfy debt service requirements.

2. CMFS provides penalties for the violation of its provisions in Tenn. Code Ann. § 5-21-125. While Tenn. Code Ann. § 5-21-125 does not provide that a vote cast by a county official in violation of Tenn. Code Ann. § 5-21-111(e)(1) is void, it does provide that a violation of any provision of CMFS subjects the county official to removal from office.[1] CMFS, though, does not provide a procedure to enforce the penalties set forth in Tenn. Code Ann. § 5-21-125.

When a statute provides for the imposition of penalties upon a public official who breaches a public duty but does not prescribe the procedure for enforcement, the

[1] Tenn. Code Ann. § 5-21-125 also provides that a violation of any provision of CMFS is a Class C misdemeanor, but this Office has previously opined that a criminal penalty for violation of CMFS is probably unconstitutional. *See* Tenn. Att'y Gen. Op. 05-017 at 3 (Feb. 3, 2005).

proceeding is to be prosecuted according to the common law. *See State ex rel. Wallen v. Miller*, 202 Tenn. 498, 505, 304 S.W.2d 654, 657 (1957) (citation omitted). Accordingly, a suit to enforce the penalties set forth in Tenn. Code Ann. § 5-21-125 would be a *quo warranto* action. *Id.* at 506-08, 304 S.W.2d at 657-58 (under conflict of interest statutes that provide penalty of forfeiture of office for unlawful interest, *quo warranto* is proper remedy for violation in absence of any prescribed procedure for enforcement of the statutes).

Quo warranto is an extraordinary proceeding, prerogative in nature, addressed to preventing a continuing exercise of authority unlawfully asserted. *See* 65 Am.Jur.2d *Quo Warranto* § 2 (2014). The General Assembly has codified *quo warranto* at Tenn. Code Ann. §§ 29-35-101 to -121. *Quo warranto* actions are generally initiated by a district attorney general. *See* Tenn. Code Ann. § 29-35-109. In limited circumstances, a private citizen may file a *quo warranto* action. *See* Tenn. Code Ann. § 29-35-110. The suit, though, still must be brought in the name of the district attorney general. *State ex rel. Wallen*, 202 Tenn. at 508-09, 304 S.W.2d at 658-69. The plaintiff is required to serve a copy of the complaint upon the district attorney general, who must then decide whether to join in the petition. *Jordan v. Knox Cnty.*, 213 S.W.3d 751, 765-66 n. 5 (Tenn. 2007); *Bennett v. Stutts*, 521 S.W.2d 575, 577 (Tenn. 1975). If the district attorney general does not consent to the lawsuit, the trial court then has the duty to conduct an *in limine* hearing to determine whether the plaintiff should be permitted to proceed without the district attorney general's participation. *Id.* If it is determined that the district attorney general unjustifiably refused to bring the action or to authorize the use of his or her name to institute the action, the trial court shall permit the action to proceed in the name of the State of Tennessee. *Id.* The plaintiff, though, must aver a special interest or injury not common to the public to invoke the jurisdiction of the court. *Ray v. Weaver*, 586 S.W.2d 828, 830 (Tenn. 1979); *Bennett,* 521 S.W.2d at 576-77; *State ex rel. Vaughn v. King*, 653 S.W.2d 727, 729 (Tenn. Ct. App. 1982).

Quo warranto actions are typically filed in the chancery court in the county in which the office is held. *See*, *e.g.*, *Town of Smyrna v. Ridley*, 730 S.W.2d 318 (Tenn. 1987); *State ex rel. Inman v. Brock*, 622 S.W.2d 36 (Tenn. 1981); *Weaver v. Maxwell*, 189 Tenn. 183, 224 S.W.2d 832 (1949). *See also* Tenn. Code Ann. 29-35-111. In a *quo warranto* action, the chancery court may award any damages to which the plaintiff is entitled; and the court has jurisdiction to award a mandatory injunction, a peremptory mandamus, and all necessary writs to oust officers who have forfeited their offices, and plenary power in the same action to compel an officer to restore the *status quo* or do any other act the rights of the plaintiff or the public require. Henry R. Gibson, *Gibson's Suits in Chancery* § 40.02 (8th ed. 2004). *See* Tenn. Code Ann. §§ 29-35-106; 29-35-113.

We realize that in this instance restoring the *status quo* is not feasible because the county adopted its 2014-2015 budget in July. *See* Tenn. Code Ann. § 5-21-

111(e)(2). Consequently, a successful *quo warranto* action against the county commissioners who voted to reduce the proposed debt service allocations, but to increase the debt service tax rate to satisfy debt service requirements, would only indirectly produce compliance with Tenn. Code Ann. § 5-21-111(e)(1) by other county commissioners in the future. While *quo warranto* proceedings are generally the only proper remedy in cases in which they are available, alternative remedies are not barred when *quo warranto* is not an adequate remedy. *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948, 952 (Tenn. 1998). In a similar vein, our courts have also determined that *quo warranto* is not the only available remedy when a declaratory judgment action is proper. *See City of Rockwood v. Chamberlain Memorial Hosp.*, 221 Tenn. 468, 474, 427 S.W.2d 829, 831 (Tenn. 1968); *City of Kingsport v. Lay*, 62 Tenn. App. 145, 459 S.W.2d 786 (1970). *Cf. Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695 (Tenn. 2009) (declaratory judgment action should not be considered when special statutory proceedings provide an adequate remedy; thus *quo warranto* procedures established in annexation statutes precluded declaratory judgment action).

To directly enforce the county commission's future compliance with Tenn. Code Ann. § 5-21-111(e)(1), the county could file a declaratory judgment action that seeks injunctive relief. *See generally Abel v. Welch*, 204 Tenn. 6, 13, 315 S.W.2d 268, 270-71 (1958) (where wrongs complained of involve the county government, county is real party in interest to seek declaratory judgment). Tennessee's Declaratory Judgment Act grants courts of record the power to construe statutes and declare rights, status, and other legal relations. Tenn. Code Ann. §§ 29-14-102; 29-14-103. Matters involving disputes concerning the legal relation of local governments and their officials have frequently been the subject of actions for declaratory judgment. *See*, *e.g.*, *Shelby Cnty. Bd. of Comm'rs v. Shelby Cnty. Quarterly Court*, 216 Tenn. 470, 483, 392 S.W.2d 935, 941 (1965) (granting of declaratory judgment in suit between county board of commissioners and county quarterly court proper where declaration of duties of the two parties with respect to administration of county's affairs would legally terminate controversy between them); *Crockett Cnty. v. Walters*, 170 Tenn. 337, 341, 95 S.W.2d 305, 306 (1936) (declaratory judgment action proper when there was bona fide controversy between two sets of county officials as to who had authority to direct expenditure of county's pro rata of gasoline tax fund).

The county commissioners who voted to reduce the debt service allocations in the proposed budget, but to increase the debt service tax rate to satisfy debt service requirements, contend that they did not violate Tenn. Code Ann. § 5-21-111(e)(1), citing advice that they received to that effect. While we think a violation has occurred for the reasons stated above, no court has addressed the question. Thus, it appears that a bona fide disagreement exists. Moreover, the disagreement has existed for the past two budget years and is likely to persist with future budgets, based on the information provided. Thus, the issue seems to be a justiciable one under the Declaratory Judgment Act. *See City of Rockwood*, 221 Tenn. at 476-78, 427 S.W.2d

at 832-33 (city which had long named member to board of incorporated hospital was entitled to maintain declaratory judgment action to determine its right and duty to name member, where city had been denied right to name particular trustee and it appeared that right would be denied when other appointments came up). Certainly if the county commission makes known that it plans to change the budget committee's provision as to debt service requirements for the 2015-2016 budget, a justiciable controversy would exist. *See Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836-37 (Tenn. 2008) (present injury is not required; declaratory judgment action is proactive means of preventing injury to the legal interests and rights of litigant).

3. Others may also have standing to sue for a violation of Tenn. Code Ann. § 5-21-111(e)(1). While suit cannot be brought merely for the vindication of a public wrong, persons who suffer harm that is not common to every citizen have standing to sue. *See Badgett v. Rogers*, 222 Tenn. 374, 378-79, 436 S.W.2d 292, 293-94 (1969); *Skelton v. Barnett*, 190 Tenn. 70, 72-73, 227 S.W.2d 774, 775 (1950). Thus, bondholders, for instance, could have standing to sue if the county commission's changes to the debt service requirements have caused bond covenants to be breached. Bondholders who are harmed by such breach may maintain an action at law or in equity. *See* Tenn. Code Ann. § 9-21-216 (general obligation bonds); Tenn. Code Ann. § 9-21-310 (revenue bonds). Similarly, creditors of the county would have standing to sue if the county commission's changes to the debt service requirements cause the county to default on its obligations. Suits to redress this type of harm may be brought in any court having jurisdiction over breach of contract actions. *See Simpson v. Sumner County*, 669 S.W.2d 657, 660-61 (Tenn. Ct. App. 1983) (Governmental Tort Liability Act does not cover contract disputes with governmental entities despite the broad definition of "injury" contained therein).

Taxpayers may also have standing to sue. While taxpayers do not have standing to challenge the improvident expenditure of public funds, they do have standing to challenge the "illegal" use of public funds. *Cobb v. Shelby Cnty. Bd. of Comm'rs*, 771 S.W.2d 124, 126 (Tenn. 1989) (citing *Soukup v. Sell*, 171 Tenn. 437, 104 S.W.2d 830, 831 (1937)). Thus, Tennessee courts have conferred standing when a taxpayer (1) alleges a specific illegality in the expenditure of funds and (2) has made a prior demand on the governmental entity asking it to correct the alleged illegality.[2] *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010) (citing *Cobb*, 771 S.W.2d at 126). As explained in *Cobb*, the taxpayer's complaint must allege a specific legal prohibition on the disputed use of funds or demonstrate that it is outside the grant of authority to the local government. *Id. See, e.g., State ex. rel. Baird v. Wilson Cnty.*, 212 Tenn. 619, 628-29, 371 S.W.2d 434, 439 (1963) (taxpayers of county could maintain action to prevent unlawful diversion of county funds for elementary school

[2] Prior demand "is excused where the status and relation of the involved officials to the transaction in question is such that any demand would be a formality." *Badgett*, 222 Tenn. at 381, 436 S.W.2d at 295 (citations omitted); *Fannon*, 329 S.W.3d at 428 (same).

purposes that had increased their tax burden); *Pope v. Dykes*, 116 Tenn. 230, 241-42, 93 S.W. 85, 87-88 (1905) (taxpayers able to maintain action when officials entered contract that diverted funds from their authorized purpose, resulting in the imposition of additional tax burdens). Consequently, county taxpayers could have standing to sue for a violation of Tenn. Code Ann. 5-21-111(e)(1) if the county commission's vote to reduce the budget committee's debt service allocations has resulted in the diversion of funds and the imposition of an additional tax burden. As demonstrated by the cases above, these types of suits are typically equitable ones brought in the chancery court.

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