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Ad Valorem Tax - Referendum
Elections - County Commissions

Act Nos. 87-490 and 87-491
passed to approve proposed
tax rate increase in school
districts pursuant to Amend-
ment No. 373 of the Constitu-
tion of Alabama of 1901 do
not support more than one
referendum each on the ques-
tion of increasing the tax
rate.

Dear Mr. Mullins:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

Can the Tuscaloosa County Commission
authorize more than one referendum each
under authority of Act Nos. 87-490 and
87-491?

FACTS, LAW AND ANALYSIS

Amendment No. 373 to the Constitution of Alabama of
1901, provides a procedure under Section (f) thereof for
increasing ad valorem tax rates. That section reads as
follows:

"(f) On and after October 1, 1979, any county, municipality or other taxing authority may at any time increase the rate at which any ad valorem tax is levied above the limit otherwise provided in this Constitution; provided, that the proposed increase to be made pursuant to this subsection shall have been (1) proposed by the governing body of the taxing authority after a public hearing on such proposal, (2) thereafter approved by an act of the legislature, and (3) subsequently approved by a majority vote of the qualified electors residing in the taxing authority who vote on the proposal at a special election called and held in accordance with the law governing special elections. . . ." (Emphasis supplied.)

Act Nos. 87-490 and 87-491 provide for increases in the rate of ad valorem tax in school districts 2 and 1 respectively in Tuscaloosa County pursuant to Amendment No. 373 of the 1901 Constitution of Alabama. The language of each of these acts is the same except for reference to different school districts. The pertinent language is as follows:

"Section 2. The county is presently authorized to levy and collect the special school district tax at a rate of \$.40 on each one hundred dollars (4 mills on each dollar) of assessed value pursuant to Amendment No. 3 and proceedings heretofore taken by the commission under Amendment No. 373. Pursuant to a resolution adopted by the Commission in accordance with the provision of Amendment No. 373, the county proposes to increase the rate at which the special school district tax is levied to a maximum rate, for any tax year of the county, which is equal to \$1.40 on each one hundred dollars (14 mills on each dollar) of assessed value.

"Section 3. Pursuant to subsection (f) of Amendment No. 373 and a resolution heretofore adopted by the Commission after a public hearing, the Commission is hereby authorized to increase the rate at which the county is authorized to levy and collect the Special School District

Tax to a maximum rate, for any tax year of the county, which is equal to \$1.40 on each one hundred dollars (14 mills on each dollar) of assessed value.

"Section 4. The limitation on the maximum rate of the Special School District Tax contained in the preceding Section 3 of this act, shall not be construed to prohibit a subsequent increase in the rate at which the Special School District Tax may be levied pursuant to the provisions of subsection (f) of Amendment No. 373 or any subsequent amendment to the Constitution authorizing an increase in the rate at which the Special School District Tax or ad valorem taxes in general are authorized to be levied.

"Section 5. The increase in the rate at which the Special School District Tax may be levied and collected pursuant to this act is subject to the approval of a majority of the qualified electors residing in Tuscaloosa County School District No. 2 who vote on the proposed increase at a special election called and held for such purpose pursuant to the provisions of subsection (f) of Amendment No. 373."

Obviously, Amendment No. 373 provides a three-step procedure for increasing the rate of an ad valorem tax. The three steps are: (1) a public hearing on the proposal followed by action by the governing body of the taxing authority to formally propose a rate increase, (2) approval of the proposal by an act of the legislature, and (3) a subsequent approval by a majority vote of the qualified electors residing in the taxing authority who vote on the proposal at a special election called and held in accordance with the law governing special elections.

Obviously, if the governing body of the taxing authority does not, within a reasonable time after the public hearing, propose an increase in the rate of taxation, there can be no increase. Similarly, if after such a proposal is made by the governing body of the taxing authority an act approving the proposal is rejected by the legislature there is no increase. In the event no such act is submitted within a reasonable time to the legislature, then step (1) must also be repeated.

The question of what a reasonable period of time might be is pretermitted at this time.

Assuming the first two steps, proposal by the governing body of the taxing authority and approval by an act of the legislature, have been accomplished, then, in order for the increase to become effective, there must be a subsequent approval by a majority vote of the qualified electors residing in the taxing authority who vote on the proposal. It is the opinion of this office that if a majority of those voting on the proposal rejects the proposal, then the process is concluded and there is no increase. In other words, the people having spoken, if there is to be a tax increase under the constitutional scheme set forth in Amendment No. 373, there must again be a public hearing, a proposal after consideration by the governing body of the taxing authority, approval of the proposal by the legislature, and submission of the proposal to the people. There cannot be repeated re-submissions under Step 3 over and over again, exhausting the resources of those who would contend both for and against the proposal until the result sought by those who advocate the proposal is, by the process of exhaustion, reached. The process contemplated in Amendment No. 373 is a simple, straight-forward procedure, which is obviously designed to provide for the strongest and most effective input by those persons who will ultimately be subject to the tax, the residents of the jurisdiction in which the tax is proposed. It contemplates public hearings and legislative enactments during which the proposal will be examined and refined, in order to express the will of the people. Ultimately, of course, it is by the referendum that the people express their approval or disapproval of the proposal and, once disapproval has been expressed, the process must begin again.

CONCLUSION

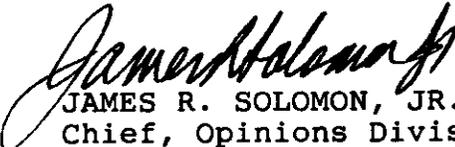
The answer to the question posed is negative. The county commission may not authorize more than one referendum each under the authority of Act Nos. 87-490 and 87-491 which were enacted pursuant to Amendment No. 373 and the provisions therein relating to the increase of the rate of taxation in a taxing authority (Amendment No. 373(f)).

Honorable Barry L. Mullins
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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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