



September 20, 2024

Financial Management Under Private Acts

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Financial Management Under Private Acts

Reference Number: CTAS-704

Private acts are acts of the General Assembly which apply to only one county or to a very few counties. However, the authority of the legislature to pass a law which is not general in its application is limited by several principles. The first is the requirement of local approval. Article XI, Section 9 of the Tennessee Constitution provides:

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 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.

A legislative act may provide a deadline for local approval or disapproval, either by a two-thirds vote of the county legislative body or by referendum. Within 30 days after that approval or disapproval, the chairman of the county legislative body or the chairman of the county election commission, as appropriate, must certify the action to the secretary of state. If the act does not specify a deadline, failure to approve the act by December 1 of the year the act was passed renders the act of no effect. T.C.A. § 8-3-202.

The second limitation is that the General Assembly lacks power to suspend laws for the benefit of any particular individual. This prohibition includes private acts in contravention of the general law for the benefit of particular counties unless there is a rational basis for the exception. *Brentwood Liquors Corp. v. Fox*, 496 S.W.2d 454 (Tenn. 1973). It cannot be circumvented by the use of population classes; when a population class makes an exception for only one county, it will be treated as a private act, requiring local approval under Article XI, Sections 8 and 9 of the Tennessee Constitution. Op. Tenn. Att'y. Gen. 87-88 (May 14, 1987); Op. Tenn. Att'y. Gen. (February 4, 1982). Furthermore, the use of the words "or any subsequent federal census" in the language setting forth the population classification will not necessarily guarantee the constitutionality of the exception.

In other words, two basic questions arise in the consideration of county-related legislation. The first question is whether a county can be exempted from a requirement of general law without violating the Tennessee Constitution. The second is whether local approval should be required to put such an exception in place. The first question is often restated as whether there exists a rational basis for the exception, and the second, whether certain legislation, irrespective of its form, is local in effect and application, and therefore should be ratified according to the rules for private act ratification.

In considering the question of whether a rational basis exists for a "special classification" (that is, treating one county differently from other counties), courts have held that the reasonable basis for the distinction does not have to appear on the face of the legislation. If any possible reason can be conceived to justify the classification, it will be upheld and deemed reasonable. Even if there is a rational basis for the statute, it must still be submitted for local ratification unless it is potentially applicable in a genuine sense throughout the state.

Because of the constitutional issues that arise when legislation is drafted with population classifications, it is a good policy to always include a severability clause, a Section contained in the act itself which states, that if any portion of the act is declared unconstitutional, the validity of the remainder of the act will be unaffected. However, all statutes, including private acts, are presumed to be valid unless declared unconstitutional by a court of law.

One basis for questioning the constitutionality of a private act is the method of ratification. Therefore, care must be taken to properly follow the mandates of the local approval requirement of a private act, or public act of local application, which will call for the act to be approved either by a referendum or by a two-thirds vote of the county legislative body; then the results of this action must be certified to the secretary of state.

As a practical matter, your county's representatives in the General Assembly are generally very responsive to the desires of the county commission for the introduction of private acts. Should your county desire to have a private act on an allowable subject introduced, many legislators require a formal requesting resolution passed by a two-thirds vote of your county legislative body before submitting the act to the General Assembly.

Private acts are not included in the Tennessee Code Annotated. Instead, each year the secretary of state publishes a volume of all private acts passed by the General Assembly during that year. Periodically an index is published which lists private acts by the county or city they affect. The County Technical Assistance Service provides a complete compilation of each county's private acts and periodically updates

that compilation.

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