

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

January 26, 2000

Opinion No. 00-015

Voting on Metropolitan Planning Organization

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**QUESTION**

By-laws of the Chattanooga Urban Area Metropolitan Planning Organization provide that upon the announcement of a “critical issue,” then the number of votes for respective members will be based upon the population of the study area represented by each member. Members include representatives from towns within Hamilton County and three counties in Georgia, as well as representatives from each of the counties. The number of votes allocated to Hamilton County is based on the population of the unincorporated area of Hamilton County. Is this voting scheme lawful?

**OPINION**

This Office is unaware of any statute or constitutional provision that this voting scheme would violate.

**ANALYSIS**

This request concerns the legality of a provision in the by-laws of the Chattanooga Urban Area Metropolitan Planning Organization (the “Chattanooga MPO”). Metropolitan planning organizations are mandated under federal law to participate in transportation plans for their respective areas. The governor of each state must designate a metropolitan planning organization for each urbanized area with a population of more than 50,000. 23 U.S.C. § 134(b). The designation may be carried out either by agreement between the governor and local governmental units, or in accordance with procedures under state law. *Id.* Each metropolitan planning organization board includes local elected officials, officials of public agencies that administer or operate major modes of transportation in the area, and appropriate state officials. 23 U.S.C. § 134(b)(2). Two or more states may enter into agreements or compacts to carry out transportation planning and to establish agencies that the states may determine desirable for making the agreements and compacts effective. 23 U.S.C. § 134(d)(2).

Research indicates that the Chattanooga MPO was designated by the governors of Georgia and Tennessee in 1977 to serve as the metropolitan planning organization for a four-county area including Hamilton County and three adjacent counties in Georgia. Under the by-laws of the Chattanooga MPO, its members include the Governor of Tennessee, the Commissioner of the

Georgia Department of Transportation, the mayors or elected representatives of the cities in the area, the Hamilton County Executive, elected representatives of the Georgia counties, members selected by the legislative delegation for the counties, and the chairmen of the Chattanooga Area Regional Transportation Authority and the Chattanooga Metropolitan Airport Authority. By-laws, Article II, Section 1. Article II, Section 3 of the by-laws provides for a different method of voting on any issue that a member judges to be of major importance. Article II, Section 3 provides:

Upon the announcement of a “critical issue” (that being an issue judged by any voting members or their representative to be of major importance to their governmental jurisdiction), then the number of votes for any member of the Executive Board will be as shown in Appendix A. The number of votes for each member of the Executive Board shown in Appendix A shall be based on the population of the MPO Study Area represented by each member and will be based on the latest official U.S. Bureau of Census information. When new U.S. Bureau of Census information is made available, voting strengths of each member in Appendix A will be adjusted according to population changes and approved by resolution of the MPO Executive Board.

Appendix A lists the MPO board members and columns entitled “1996 U.S. CENSUS ESTIMATE” and “MPO VOTES.” The census estimate column includes population numbers for each city and for the unincorporated portions of each county in the Chattanooga MPO. The “MPO VOTES” column lists the number of votes apportioned to each member for critical issue voting. Each city or county member is accorded a number of votes roughly equal to its percentage of the total population represented by the figure in the census estimate column. For example, the City of Chattanooga has an estimated population of 150,425 and 41 critical issue votes. The population figures for each county includes estimated figures for only the unincorporated portion of the county. Thus, Hamilton County is listed with an unincorporated area population of 85,563 and accorded 23 critical issue votes.

The request states that Hamilton County has taken the position that the critical voting issue provision is unlawful because it does not reflect the entire population of Hamilton County which would, of course, include all the cities within the county. The request does not indicate the county’s legal basis for this position. This Office is not aware of any statute or constitutional provision that the critical voting apportionment would violate. The by-law indicates that critical voting is to be apportioned “based on the population of the MPO Study Area *represented by each member . . .*” (Emphasis added). Certainly, Hamilton County officials are elected by countywide vote, including the votes of residents of the cities within the county. But the by-laws reflect the view of the organization that critical issue voting should be apportioned among both the counties and the cities, and that the population of each city should be deemed to be the “population of the MPO Study Area” represented by that city. The number of critical issue votes for each of the Georgia counties is calculated in the same way as the number of votes for Hamilton County. This voting arrangement appears to be within the authority of the members of the Chattanooga MPO to adopt. Since the Chattanooga MPO is not a representative organization whose members are directly elected by the

public, but simply an administrative planning organization, this Office is unaware of any constitutional provision that would prohibit this voting arrangement.

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