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Opinion No. 00-037

Reorganization of Department of Transportation

QUESTIONS

Organizational charts for the Department of Transportation ("TDOT") show a difference in the Department's former and current structure.

1. Has TDOT violated the provisions of Tenn. Code Ann. § 4-3-2303(6) by failing to seek the authorization of the General Assembly prior to adopting its current organizational structure?

2. Has TDOT violated the provisions of the Governmental Entity Review Law, Tenn. Code Ann. § 4-29-104(a), by failing to seek review of the General Assembly's Government Operations Committees prior to adopting its current organizational structure?

3. If the answer to either question 1. or 2. is yes, what remedies, sanctions or charges could be sought, imposed or filed against TDOT or its officers?

OPINIONS

1. It would appear so, based on the information provided with the opinion request.

2. No.

3. Tenn. Code Ann. § 4-3-2303 does not provide for any sanctions in the event of a violation.

ANALYSIS

This opinion is based on two organizational charts supplied with the opinion request, which describes one chart as depicting the current organization of the Tennessee Department of Transportation ("TDOT") and describes the other chart as depicting TDOT's former organization. For purposes of this opinion, we assume the latter chart shows the Department's organization as it existed as of July 1, 1981. The opinion request does not indicate when the reorganization reflected by the new chart became effective. We have made no independent factual inquiry.

1. The first question is whether TDOT violated the provisions of Tenn. Code Ann. § 4-3-2303(6) by failing to seek the authorization of the General Assembly prior to adopting the current organizational structure. TDOT is created and established by statute as an administrative department

of state government. Tenn. Code Ann. §§ 4-3-101(22) & 4-3-2301. The Commissioner of the department is its chief executive officer. Tenn. Code Ann. § 4-3-111(21). Like other departments, TDOT is vested "with such powers and required to perform such duties as are set forth in this chapter [Chapter 3 of Title 4] and shall be charged with the administration, execution and performance of such laws as the general assembly may enact from time to time." Tenn. Code Ann. § 4-3-103. Generally, the officers and employees of the department are to perform such duties as the Commissioner may prescribe. Tenn. Code Ann. § 4-3-121 (a)(1) & (2).

Certain specific powers and duties of the Commissioner are set forth in Tenn. Code Ann. § 4-3-2303, which provides in relevant part:

> The commissioner has the power and duty to:
>
> * * * *
>
> (5) Supervise, direct and account for the administration and operation of the department and its employees;
>
> (6) Organize the department into such units as the commissioner deems necessary to carry out the duties and functions imposed on the commissioner and the department; **any reorganization or creation or elimination of any units after July 1, 1981, shall be authorized by the general assembly, it being the intent of the general assembly to recognize the organization of the department as of July 1, 1981, as the legal organization of the department and any change in such organization to require the same action as the creation or abolition of a statutorily created division or unit would require[.]**

Tenn. Code Ann. § 4-3-2303(5) & (6) (emphasis added). Under this statute, and those previously cited, the Legislature gave the TDOT Commissioner general supervision over the Department. Under subsection (6), however, the emphasized language evidences the General Assembly's clear intent that TDOT should remain organized in the same units or divisions that existed as of July 1, 1981, unless changed by legislative enactment.

A comparison of the two charts submitted with the opinion request does reflect some reorganization of TDOT. According to the charts, for example, there was previously a unit or division called "Bureau of Operations." This Bureau had other offices and divisions reporting to it within the chain of command, or line of authority. The Bureau of Operations, as such, has been eliminated, and certain units that previously reported to the Bureau now appear to report to the Chief Engineer, including, but not limited to, the TDOT regional offices. The earlier chart had no unit called "Chief Engineer," so this would appear to be a new unit that has replaced the Bureau of Operations. Another example is that the former chart showed a "Finance Office" that reported to the Deputy Commissioner. The Finance Office is now one of six offices reporting to the Chief of Administration, who then reports to the Deputy Commissioner.

As a state agency, every action taken by TDOT must be grounded in an express statutory grant of authority or must arise by necessary implication from an express statutory grant of authority.

Tennessee Pub. Serv. Comm'n v. Southern Ry. Co., 554 S.W.2d 612, 613 (Tenn. 1977). One such statute is Tenn. Code Ann. § 4-4-101, which provides:

> The commissioner of each department under chapter 3 of this title, with the approval of the governor, has the authority to consolidate any two (2) or more offices within the commissioner's department, or reduce the number of divisions, or create new divisions therein.

It is well settled, however, that a statute that is specific in nature controls over a statute that is general in nature. *Matter of Harris*, 849 S.W.2d 334, 337 (Tenn. 1993). Further, a statute adopted later in time controls over a conflicting statute adopted earlier in time. *Steinhouse v. Neal*, 723 S.W.2d 625, 627 (Tenn. 1987). Tenn. Code Ann. § 4-4-101, which authorizes department commissioners to reorganize their departments with the Governor's approval was enacted as Section 76 of Chapter 33 of the Public Acts of 1937. It does not control over § 4-3-2303(6), which requires the General Assembly to authorize any reorganization or creation or elimination of TDOT units after July 1, 1981, because § 4-4-101 applies to departments generally, whereas subsection (6) applies to TDOT specifically and was enacted later in time as part of Section 24 of Chapter 264 of the Public Acts of 1981.

Accordingly, it would violate Tenn. Code Ann. § 4-3-2303(6) for TDOT units or divisions to be reorganized, created or eliminated from the department's structure as it existed on July 1, 1981, if the General Assembly has not authorized such reorganization.

2. The second question is whether TDOT violated the provisions of the Governmental Entity Review Law, Tenn. Code Ann. §§ 4-29-101, *et seq.*, by failing to seek review of the General Assembly's Government Operations Committees prior to adopting its current organizational structure. The opinion request asks specifically whether TDOT violated Tenn. Code Ann. § 4-29-104(a), which provides:

> Prior to the termination, continuation, reestablishment or restructuring of any governmental entity, the evaluation committee created in § 4-29-103 shall hold at least one (1) public hearing and receive testimony from the public and from the administrative head of the governmental entity.

We do not think this statute requires a department wishing to reorganize itself to notify the legislative evaluation committee that is referred to in subsection (a) and seek the committee's approval or disapproval. As a general matter, statutes in pari materia — those relating to the same subject or having a similar purpose — are to be construed together, and the construction of one such statute may be aided by considering the words and the legislative intent indicated by the language of another statute. *Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 726 (Tenn. 1978). The Governmental Entity Review Law, or Sunset Law, schedules state agencies for statutory termination. Tenn. Code Ann. §§ 4-29-219 — 227. Further, it provides that a legislative evaluation committee will hold a public hearing, review the agency in light of the objectives and criteria set forth in the

statute, and recommend either terminating, continuing, reestablishing or restructuring the entity with the introduction of appropriate legislation. Tenn. Code Ann. §§ 4-29-103 — 108.

Under § 4-29-122 of this law, any department whose functions, duties or responsibilities are transferred[1] to another department shall notify the legislative evaluation committee in writing. If the General Assembly had wanted the committee notified of any departmental reorganization as well, it could have provided for such. It did not do so, and thus, we do not think TDOT violated Tenn. Code Ann. § 4-29-104(a) if it failed to seek review and a public hearing under that statute.

3. The third question is what remedies, sanctions or charges could be sought, imposed or filed upon TDOT or its officers if the answer to either, or both, questions above is yes. Because we have concluded there is no violation of the Governmental Entity Review Law, we address this question only with respect to a violation of Tenn. Code Ann. § 4-3-2303(6). Although the statute requires action by the Legislature before TDOT may be organized differently from its structure as of July 1, 1981, it provides no express remedy against TDOT or its officials in the event this is not done.

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[1] The Governor may transfer functions between departments by executive order. Tenn. Code Ann. § 4-4-102.